

HOUSE BILL NO. 5220

November 07, 2019, Introduced by Reps. Koleszar, Pohutsky, Hood, Brixie, Coleman, Brenda Carter, Kennedy, Manoogian, Sabo, Sowerby, Pagan, Anthony, Camilleri, Howell, Cherry, Stone, Lasinski, Chirkun, Warren, Clemente, Hope, Tate, Haadsma, Shannon, Hertel, Sneller, Bolden, Wittenberg, Hammoud, Whitsett, Jones and Ellison and referred to the Committee on Military, Veterans and Homeland Security.

A bill to amend 1939 PA 280, entitled
"The social welfare act,"
by amending sections 11, 11a, 11b, and 11f (MCL 400.11, 400.11a,
400.11b, and 400.11f), sections 11, 11a, and 11f as amended by 1990
PA 122 and section 11b as amended by 2012 PA 175.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:



RMW



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1 Sec. 11. As used in this section and sections 11a to 11f:

2 (a) "Abuse" means harm or threatened harm to an adult's health
3 or welfare caused by another person. Abuse includes, but is not
4 limited to, nonaccidental physical or mental injury, sexual abuse,
5 or maltreatment.

6 (b) "Adult in need of protective services" or "adult" means a
7 vulnerable ~~person~~**individual** not less than 18 years of age who is
8 suspected of being or believed to be abused, neglected, or
9 exploited.

10 (c) "Exploitation" means an action that involves the misuse of
11 an adult's funds, property, or personal dignity by another person.

12 (d) **"Michigan veterans' facility" means a Michigan veterans'**
13 **facility established under 1885 PA 152, MCL 36.1 to 36.12, or a**
14 **veterans' facility as that term is defined in section 2 of the**
15 **Michigan veterans' facility authority act, 2016 PA 560, MCL 36.102.**

16 (e) ~~(d)~~—"Neglect" means harm to an adult's health or welfare
17 caused by the inability of the adult to respond to a harmful
18 situation or by the conduct of a person who assumes responsibility
19 for a significant aspect of the adult's health or welfare. Neglect
20 includes the failure to provide adequate food, clothing, shelter,
21 or medical care. ~~A person~~**An individual** shall not be considered to
22 be abused, neglected, or in need of emergency or protective
23 services for the sole reason that the ~~person~~**individual** is
24 receiving or relying upon treatment by spiritual means through
25 prayer alone in accordance with the tenets and practices of a
26 recognized church or religious denomination, and this act shall not
27 require any medical care or treatment in contravention of the
28 stated or implied objection of that ~~person~~**individual**.

29 (f) ~~(e)~~—"Protective services" includes, but is not limited to,



remedial, social, legal, health, mental health, and referral services provided in response to a report of alleged harm or threatened harm because of abuse, neglect, or exploitation.

(g) ~~(f)~~—"Vulnerable" means a condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age.

Sec. 11a. (1) A person who is employed, licensed, registered, or certified to provide health care, educational, social welfare, mental health, or other human services; an employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services; a law enforcement officer; or an employee of the office of the county medical examiner who suspects or has reasonable cause to believe that an adult has been abused, neglected, or exploited shall make immediately, by telephone or otherwise, an oral report to the county department ~~of social services~~ of the county in which the abuse, neglect, or exploitation is suspected of having or believed to have occurred. After making the oral report, the reporting person may file a written report with the county department. A person described in this subsection who is also required to make a report ~~pursuant to~~ **under** section 21771 of the public health code, ~~Act No. 368 of the Public Acts of 1978, as amended, being section 333.21771 of the Michigan Compiled Laws 1978 PA 368, MCL 333.21771,~~ and who makes that report is not required to make a duplicate report to the county department ~~of social services~~ under this section.

(2) A report made by a physician or other licensed health professional ~~pursuant to~~ **under** subsection (1) ~~shall is~~ not be ~~considered~~ a violation of any legally recognized privileged



1 communication or a violation of article 15 of the public health
2 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~
3 ~~333.16101 to 333.18838 of the Michigan Compiled Laws.1978 PA 368,~~
4 **MCL 333.16101 to 333.18838.**

5 (3) In addition to those persons required to make an oral
6 report under subsection (1), any person who suspects that an adult
7 has been abused, neglected, or exploited may make a report to the
8 county department ~~of social services~~ of the county in which the
9 abuse, neglect, or exploitation is suspected of having occurred.

10 **This subsection includes a report of abuse, neglect, or**
11 **exploitation concerning an adult residing in a Michigan veterans'**
12 **facility.**

13 (4) The department shall provide a toll-free telephone
14 complaint line for receiving reports of abuse, neglect, or
15 exploitation concerning an adult residing in a Michigan veterans'
16 facility. The telephone number must be listed on the department's
17 website as the "Veterans' Home Abuse Hotline". The complaint line
18 must be accessible 24 hours per day and monitored at a level to
19 ensure that a response is initiated to a complaint within 24 hours
20 after its receipt.

21 (5) ~~(4)~~ A report made under this section ~~shall~~ **must** contain
22 the name of the adult and a description of the abuse, neglect, or
23 exploitation. If possible, the report ~~shall~~ **must** contain the
24 adult's age and the names and addresses of the adult's guardian or
25 next of kin, and of the persons with whom the adult resides,
26 including their relationship to the adult. The report ~~shall~~ **must**
27 contain other information available to the reporting person that
28 may establish the cause of the abuse, neglect, or exploitation and
29 the manner in which the abuse, neglect, or exploitation occurred or



1 is occurring. The county department shall ~~reduce to~~ **put in** writing
 2 the information provided in an oral report received ~~pursuant to~~
 3 **under** this section.

4 (6) ~~(5)~~—The county department shall report to a police agency
 5 any criminal activity that it believes to be occurring, upon
 6 receipt of the oral report.

7 (7) ~~(6)~~—This section ~~shall not be construed as limiting~~ **does**
 8 **not limit** the responsibilities of the police agency of a local unit
 9 of government to enforce the laws of this state ~~or as precluding~~
 10 **and does not preclude** the police agency from reporting and
 11 investigating, as appropriate, alleged criminal conduct.

12 Sec. 11b. (1) Within 24 hours after receiving a report made or
 13 information obtained under section 11a, the county department shall
 14 commence an investigation to determine whether the ~~person~~
 15 **individual** suspected of being or believed to be abused, neglected,
 16 or exploited is an adult in need of protective services. A
 17 reasonable belief on the part of the county department that the
 18 ~~person~~ **individual** is an adult in need of protective services is a
 19 sufficient basis for investigation. **The following applies to an**
 20 **investigation commenced under this subsection:**

21 (a) If an investigation ~~pertains to~~ **concerns** an adult residing
 22 in an adult foster care facility licensed by the department of
 23 ~~human services,~~ **licensing and regulatory affairs,** the county
 24 department shall provide the adult foster care licensee with the
 25 substance of the abuse or neglect allegations as soon as
 26 practicable after the beginning of the investigation. The licensee
 27 shall have the opportunity to respond to the allegations, and the
 28 response ~~shall~~ **must** be included in the record.

29 (b) If an investigation concerns an adult residing in a



1 Michigan veterans' facility, the county department shall provide a
2 written copy of the report made or information obtained under
3 section 11a to the office of the Michigan veterans' facility
4 ombudsman and the department of military and veterans affairs
5 within 24 hours after receiving the report. The county department
6 shall coordinate the investigation commenced under this subsection
7 with an investigation undertaken by the office of the Michigan
8 veterans' facility ombudsman or the department of military and
9 veterans affairs concerning the report provided under this
10 subdivision.

11 (2) Upon a request by the county department, local law
12 enforcement officers shall cooperate with the county department in
13 an investigation of suspected abuse, neglect, or exploitation.
14 ~~However, the~~ **The** investigation required by this section ~~shall is~~
15 not ~~be~~ in place of an investigation by the appropriate police
16 agency regarding suspected criminal conduct arising from the
17 suspected abuse, neglect, or exploitation.

18 (3) The investigation ~~shall must~~ include a determination of
19 the nature, extent, and cause of the abuse, neglect, or
20 exploitation; examination of evidence; identification, if possible,
21 of the person responsible for the abuse, neglect, or exploitation;
22 the names and conditions of other adults in the place of residence;
23 an evaluation of the persons responsible for the care of the adult,
24 if appropriate; the environment of the residence; the relationship
25 of the adult to the person responsible for the adult's care; an
26 evaluation as to whether or not the adult would consent to
27 receiving protective services; and other pertinent data.

28 (4) The investigation ~~shall must~~ include an in-person
29 interview with the adult. The county department shall conduct the



1 interview by means of a personal visit with the adult in the
2 adult's dwelling or in the office of the county department. In
3 attempting to conduct a personal visit with the adult in the
4 adult's dwelling, if admission to the dwelling is denied, the
5 county department may seek to obtain a search warrant as provided
6 in 1966 PA 189, MCL 780.651 to 780.659.

7 (5) The investigation may include a medical, psychological,
8 social, vocational, and educational evaluation and review.

9 (6) In the course of an investigation, the county department
10 shall determine if the adult is or was abused, neglected, or
11 exploited. The county department shall make available to the adult
12 the appropriate and least restrictive protective services, directly
13 or through the purchase of services from other agencies and
14 professions, and shall take necessary action to safeguard and
15 enhance the welfare of the adult, if possible. The county
16 department also shall collaborate with law enforcement officers,
17 courts of competent jurisdiction, and appropriate state and
18 community agencies providing human services ~~, which services that~~
19 are provided in relation to preventing, identifying, and treating
20 adult abuse, neglect, or exploitation. If the abuse, neglect, or
21 exploitation involves substance abuse, the county department shall
22 collaborate with the local substance abuse coordinating agency as
23 designated by the office of ~~substance abuse services in the~~
24 ~~department of community health~~ **recovery oriented systems of care**
25 for a referral for substance ~~abuse~~ **use disorder** services. The
26 county department may petition for a finding of incapacity and
27 appointment of a guardian or temporary guardian as provided in
28 section 5303 or 5312 of the estates and protected individuals code,
29 1998 PA 386, MCL 700.5303 and 700.5312, and may petition for the



1 appointment of a conservator as provided in section 5401 of the
 2 estates and protected individuals code, 1998 PA 386, MCL 700.5401,
 3 for a vulnerable adult.

4 (7) Upon completion of an investigation, the county department
 5 shall prepare a written report of the investigation and its
 6 findings. A copy of this written report ~~shall~~ **must** be forwarded to
 7 the department ~~of human services upon the request. of the~~
 8 ~~department of human services.~~ **If an investigation concerns an adult**
 9 **residing in a Michigan veterans' facility, the county department**
 10 **shall provide a copy of the written report prepared under this**
 11 **subsection to the department, the Michigan veterans' facility**
 12 **ombudsman, and the department of military and veterans affairs.**

13 (8) The county department may provide a copy of the written
 14 report **prepared under subsection (7)** to the prosecuting attorney
 15 for the county in which the adult suspected of being or believed to
 16 be abused, neglected, or exploited resides or is found.

17 (9) A representative from the department, ~~of human services,~~
 18 the department of state police, the department of attorney general,
 19 and the ~~office of services to the aging~~ **and adult services agency,**
 20 and an individual **designated by the state attorney general** who is a
 21 representative of long-term care providers, ~~and is designated by~~
 22 ~~the state attorney general,~~ shall meet and develop a state model
 23 protocol for the investigation of vulnerable adult abuse cases.
 24 ~~This state model protocol shall be developed not more than 1 year~~
 25 ~~after the effective date of the amendatory act that added this~~
 26 ~~subsection.~~ A county prosecuting attorney, in cooperation with the
 27 local county department and local law enforcement agencies, may
 28 adopt a local protocol for the investigation of vulnerable adult
 29 abuse cases that is based on the state model protocol.



(10) A representative from the department shall meet with a representative from the office of the Michigan veterans' facility ombudsman and a representative from the department of military and veterans affairs to develop a model protocol for the investigation of reports of abuse concerning adults residing in Michigan veterans' facilities. The model protocol must be based on the state model protocol developed under subsection (9). The model protocol must be developed not more than 1 year after the effective date of the amendatory act that added this subsection.

Sec. 11f. (1) ~~The state~~ **Except as provided in this subsection,** the department shall not take any action pursuant to ~~under~~ sections 11 to 11e in the case of ~~a person~~ **an adult** who is residing in a state funded and operated facility or institution, including but not limited to a correctional institution, mental hospital, psychiatric hospital, psychiatric unit, or a developmental disability regional center. **This subsection does not preclude the department from taking action in accordance with sections 11 to 11e in the case of an adult who is residing in a Michigan veterans' facility in this state.**

(2) The ~~state~~ department shall not investigate suspected abuse, neglect, or any other suspected incident pursuant to ~~under~~ sections 11 to 11e if the department of ~~public health~~ **licensing and regulatory affairs** has investigative and enforcement responsibility for the incident pursuant to ~~under~~ section 20201, 21771, or 21799a of the public health code, ~~Act No. 368 of the Public Acts of 1978, as amended, being sections 333.20201, 333.21771, and 333.21799a of the Michigan Compiled Laws. 1978 PA 368, MCL 333.20201, 333.21771, and 333.21799a.~~ The ~~state~~ department shall refer a report of suspected abuse or neglect in an institution governed by those



1 sections to the department of ~~public health~~. **licensing and**
 2 **regulatory affairs.**

3 (3) Sections 11 to 11e do not preclude the director from
 4 entering into interdepartmental agreements to carry out the duties
 5 and responsibilities of the ~~state~~ department under sections 11 to
 6 11e in state funded and operated facilities or institutions, or to
 7 coordinate investigation in state licensed facilities under
 8 contract with a state agency in order to avoid duplication of
 9 effort among state agencies having statutory responsibility to
 10 investigate.

11 (4) The ~~state~~ department and the department of attorney
 12 general shall enter into an agreement establishing criteria to be
 13 used to ~~determine those~~ **identify** complaints involving a facility
 14 that receives funding under title XIX ~~of the social security act,~~
 15 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396d, 1396f to 1396g,~~
 16 ~~and 1396i to 1396s,~~ or involving the delivery of a service funded
 17 under title XIX. ~~of the social security act, which~~ **The** complaints
 18 ~~shall identified under this subsection must~~ be referred immediately
 19 to the department of attorney general for possible investigation
 20 and prosecution.

21 Enacting section 1. This amendatory act does not take effect
 22 unless all of the following bills of the 100th Legislature are
 23 enacted into law:

24 (a) Senate Bill No. ____ or House Bill No. 5219 (request no.
 25 04816'19).

26 (b) Senate Bill No. ____ or House Bill No. 5221 (request no.
 27 04895'19).

