

SECOND REGULAR SESSION

HOUSE BILL NO. 1635

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BERNSKOETTER.

5462H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 198.070, RSMo, and to enact in lieu thereof one new section relating to sexual assault reporting in long-term care facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 198.070, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 198.070, to read as follows:

198.070. 1. When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; social worker; or other person with the care of a person sixty years of age or older or an eligible adult has reasonable cause to believe that a resident of a facility has been abused or neglected, he or she shall immediately report or cause a report to be made to the department. **In the event of reasonable cause to believe a suspected sexual assault of a resident has occurred, in addition to the report to be made to the department, a report shall be made to a local law enforcement entity in accordance with federal law under the provisions of 42 U.S.C. Section 1320b-25.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 2. The report shall contain the name and address of the facility, the name of the resident,
18 information regarding the nature of the abuse or neglect, the name of the complainant, and any
19 other information which might be helpful in an investigation.

20 3. Any person required in subsection 1 of this section to report or cause a report to be
21 made to the department who knowingly fails to make a report within a reasonable time after the
22 act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

23 4. In addition to the penalties imposed by this section, any administrator who knowingly
24 conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in
25 section 556.061, is guilty of a class E felony.

26 5. In addition to those persons required to report pursuant to subsection 1 of this section,
27 any other person having reasonable cause to believe that a resident has been abused or neglected
28 may report such information to the department.

29 6. Upon receipt of a report, the department shall initiate an investigation within
30 twenty-four hours and, as soon as possible during the course of the investigation, shall notify the
31 resident's next of kin or responsible party of the report and the investigation and further notify
32 them whether the report was substantiated or unsubstantiated unless such person is the alleged
33 perpetrator of the abuse or neglect. As provided in section 192.2425, substantiated reports of
34 elder abuse shall be promptly reported by the department to the appropriate law enforcement
35 agency and prosecutor.

36 7. If the investigation indicates possible abuse or neglect of a resident, the investigator
37 shall refer the complaint together with the investigator's report to the department director or the
38 director's designee for appropriate action. If, during the investigation or at its completion, the
39 department has reasonable cause to believe that immediate removal is necessary to protect the
40 resident from abuse or neglect, the department or the local prosecuting attorney may, or the
41 attorney general upon request of the department shall, file a petition for temporary care and
42 protection of the resident in a circuit court of competent jurisdiction. The circuit court in which
43 the petition is filed shall have equitable jurisdiction to issue an ex parte order granting the
44 department authority for the temporary care and protection of the resident, for a period not to
45 exceed thirty days.

46 8. Reports shall be confidential, as provided pursuant to section 192.2500.

47 9. Anyone, except any person who has abused or neglected a resident in a facility, who
48 makes a report pursuant to this section or who testifies in any administrative or judicial
49 proceeding arising from the report shall be immune from any civil or criminal liability for
50 making such a report or for testifying except for liability for perjury, unless such person acted
51 negligently, recklessly, in bad faith or with malicious purpose. It is a crime under section
52 565.189 for any person to knowingly file a false report of elder abuse or neglect.

53 10. Within five working days after a report required to be made pursuant to this section
54 is received, the person making the report shall be notified in writing of its receipt and of the
55 initiation of the investigation.

56 11. No person who directs or exercises any authority in a facility shall evict, harass,
57 dismiss or retaliate against a resident or employee because such resident or employee or any
58 member of such resident's or employee's family has made a report of any violation or suspected
59 violation of laws, ordinances or regulations applying to the facility which the resident, the
60 resident's family or an employee has reasonable cause to believe has been committed or has
61 occurred. Through the existing department information and referral telephone contact line,
62 residents, their families and employees of a facility shall be able to obtain information about their
63 rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to
64 a report being made pursuant to this section.

65 12. Any person who abuses or neglects a resident of a facility is subject to criminal
66 prosecution under section 565.184.

67 13. The department shall maintain the employee disqualification list and place on the
68 employee disqualification list the names of any persons who are or have been employed in any
69 facility and who have been finally determined by the department pursuant to section 192.2490
70 to have knowingly or recklessly abused or neglected a resident. For purposes of this section
71 only, "knowingly" and "recklessly" shall have the meanings that are ascribed to them in this
72 section. A person acts "knowingly" with respect to the person's conduct when a reasonable
73 person should be aware of the result caused by his or her conduct. A person acts "recklessly"
74 when the person consciously disregards a substantial and unjustifiable risk that the person's
75 conduct will result in serious physical injury and such disregard constitutes a gross deviation
76 from the standard of care that a reasonable person would exercise in the situation.

77 14. The timely self-reporting of incidents to the central registry by a facility shall
78 continue to be investigated in accordance with department policy, and shall not be counted or
79 reported by the department as a hot-line call but rather a self-reported incident. If the
80 self-reported incident results in a regulatory violation, such incident shall be reported as a
81 substantiated report.

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