

Analysis of 2004 State Legislation Amending Adult Protective Services Laws

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Introduction

This analysis summarizes amendments to Adult Protective Services laws that were enacted during 2004. While there may have been other state legislative activity related to elder abuse during 2004, this analysis only addresses amendments to APS laws. For a list of citations to state APS laws, visit <http://www.abanet.org/aging/elderabuse.shtml>.

Trends

In 2004, state legislatures continued making adjustments to their APS programs. Seven states enacted seven laws addressing a variety of topics. These laws:

- Enhanced the ability of APS to access victims (Virginia)
- Amended definitions of elder abuse (Maine, Massachusetts, South Carolina)
- Revised provisions related to mandatory and voluntary reporters (Iowa, Maine, Virginia)
- Added provisions related to notifying licensing and regulatory agencies when mandated reporters fail to make reports (Maine)
- Added or changed provisions related to disclosure of records (Kansas, Maine)
- Amended provisions related to civil liability (Maine, Tennessee)
- Added provisions related to outreach to victims (Tennessee)
- Added provisions related to elder abuse fatality review teams (Maine, Virginia)
- Revised APS investigation procedures (Virginia)
- Added provisions related to case referrals to the medical examiner and/or law enforcement (Maine, Virginia)
- Added provisions requiring APS to work collaboratively with other agencies (Virginia)
- Added provisions regarding training of newly mandated reporters (Virginia)
- Created penalties for filing false reports and failing to file mandated reports (Virginia)
- Changed provisions regarding involuntary APS (Virginia)
- Addressed the problem of employers/supervisors who fail to report when an employee/supervisee who is a mandatory reporter expresses to the employer/supervisor a suspicion of abuse (Iowa, Virginia).

As these amendments to state APS laws are highly diverse and sometimes address multiple issues, the changes made are discussed on a state-by-state basis, rather than clustered by trends. A chart showing broad categories of amendments and the states that made them follows the summary.

Iowa

[H.F. 2390](#), Section 17, effective on July 1, 2004, made the following changes to Iowa Code Ann. § 235B1 and § 235B.3:

- Added staff of elder group homes, assisted living programs, and assisted day programs to the list of mandatory reporters; included employees of financial institutions on the list of voluntary reporters; and removed inspectors of elder group homes and resident advocate committee members from the list of mandatory reporters.
- Added a requirement that mandatory reporters who are staff members or employees make an immediate report to the Department of Human Services. Staff members or employees were previously required to report only to their supervisors or supervisors' designees, who were responsible for filing a report with the Department by the end of the next business day. Now the supervisors or supervisors' designees are relieved of the responsibility to file a report with the Department by the end of the next business day.

Kansas

[H.B. 2133](#) changed the requirements governing the provision of records relevant to an investigation of adult abuse to the Department of Social and Rehabilitation Services or a law enforcement agency. The new bill eliminated the need for written consent of the abused adult or the adult's guardian. Kansas law now directs that records should not be shared unless the Department has provided (1) a written request for information; (2) a written notice that the Department is conducting an investigation; and (3) a certification or confirmation that the Department has notified the involved adult or the adult's guardian in writing. Effective on July 1, 2004, this bill amended K.S.A. 2003 Supp. 39-1432 and 39-1436.

Maine

[L.D. 1765](#) and HP 1287, effective on July 20, 2004, clarified responsibilities and definitions of the Adult Protective Services Act. It amended sections 3471, 3472, 3473, 3474, 3475, 3477, 3479, 3479-A, 3480, 3480-A, 3484, and 3485 of the Adult Protective Services Act, and amended section 5106 of Chapter 1453 of the 1973 Act of Maine's Elderly by making these changes:

- Added to the Act a statement that federal law supersedes requirements for disclosure or information contained in the Act if federal law prohibits them.
- Modified the definition of abuse to include acts as well as omissions and changed the definition of those omissions from "willful deprivation of essential needs" to "intentional, knowing, or reckless deprivation of essential needs." The bill also redefined a "dependent adult" and added "serious waste or dissipation of resources" to the definition of "serious harm."
- Added a requirement that the Department make referrals to law enforcement agencies where appropriate.
- Provided protection for the identity of reporters when the Department optionally discloses records and expanded the list of persons to whom the Department of Human Services may disclose relevant information to include a member of a panel appointed by the Department or the Office of the Attorney General to review the death or serious injury of an incapacitated or dependent adult.

- Added a provision requiring the Department to notify professional licensing, registration, or accrediting organizations when a professional is found to have violated the mandatory reporting requirements (previously only the court was required to notify those organizations).
- Added an exception for mandatory reporting where the factual basis for knowing or suspecting abuse, neglect, or exploitation is a result of the professional's treatment of the person suspected of *being* abused, neglected, or exploited.
- Added (to the existing protection from civil liability for good faith reporters) a clarification that such protection included “civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information.”
- Added confidential health care information to the existing subpoena provision that requires disclosure of records that are relevant to an abuse investigation to the Department.
- Added a new section stating that the confidentiality of communications under certain sections of the Maine Code are nullified to the extent allowed by federal law for the purposes of abuse reports and investigations, and that information made available to the Department under this new provision must be treated as confidential and protected from disclosure by the Department unless otherwise allowed.
- Repealed all provisions regarding placement and therapeutic services for dependent and incapacitated adults who are not mentally retarded.

Massachusetts

[H.B. 4850](#) redefined “abuse” to include the “failure, inability or resistance of an elderly person to provide for him (sic) one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community.” This bill amended Mass. Gen. Laws Ann. ch. 19A § 14 and became effective on September 23, 2004.

South Carolina

[H.B. 4004](#), effective on September 8, 2004, revised the definition of exploitation to include causing a vulnerable adult to buy goods or services for the benefit of another using undue influence, harassment, duress, coercion or swindling. It amended section 43-35-10 of the Omnibus Adult Protection Act.

Tennessee

[H.B. 2343](#) and S.B. 2364, effective on July 1, 2004 (except for the provisions specified below), added new provisions and clarified others by making grammatical and technical changes. The bill amended Tennessee Code Annotated Section 40-11-150; Section 40-15-105(a); Section 68-11-254(a); Section 68-11-1004; Section 71-6-102(5), Section 71-6-120, and added Section 71-6-121 and Section 71-6-122 to the Tennessee Adult Protection Act by making the following changes:

- Limited the role of financial institutions as caretakers of funds or other assets to those institutions that have entered into trustee agreements or have been appointed by the court to act as trustee. It also limited the civil liability of officers, directors, and employees of financial institutions in civil actions brought under the Adult Protection Act unless the institution, officer, director or employee has first been convicted of willful abuse, neglect, exploitation, or has committed theft or conversion, or is liable under other laws.
- Added a new section on posting requirements effective January 1, 2005. The new section required physicians' offices, health care facilities, senior centers, community centers, and pharmacies to post the telephone numbers for the division of adult protective services and the local district attorney's office, along with a statement that victims of elder abuse may seek assistance or file a complaint. The new section also required nursing homes, assisted living facilities, and other licensed residential facilities to supply each resident, upon admission, with the statewide toll-free number for the division of adult protective services. However, it exempted any nursing home that complies with the requirements of § 68-11-254 (related to notification of nursing home residents about complaint-filing) from the new posting requirements.

Virginia

[H.B. 952](#) and S.B 318, effective on July 1, 2004, revised and added new provisions to existing adult protective services law, including reporting and investigation procedures. The bill amended and reenacted Sections 2.2-3705, 2.2-3711, 2.2-4002, 32.1-279, 63.2-1603 through 63.2-1606, 63.2-1608, 63.2-1609, and 63.2-1610; amended Sections numbered 63.2-1606.1 and 63.2-1607.1; and repealed Section 63.2-1607 of the Code of Virginia by making the following changes:

- Added to the Adult Protective Services Unit the responsibility to work collaboratively with other state agencies to facilitate the reporting and investigation of suspected adult abuse, neglect or exploitation.
- Added a requirement that local departments of social services initiate investigations of suspected adult abuse, neglect or exploitation within 24 hours of receiving a valid report and defined the criteria of a valid report.
- Established a general requirement that APS refer appropriate cases to licensing, regulatory, or legal authorities for administrative or criminal actions, and also added a specific requirement that APS notify the appropriate law enforcement agency of reports involving sexual abuse, serious bodily injury or disease, or other criminal activity involving abuse or neglect that places the victim in imminent danger of death or serious bodily harm.
- Added provisions related to the Department's authority to take photographs, video recordings, or appropriate medical imaging of the adult and his or her environment with consent of the adult or the adult's representative and to obtain court orders allowing access to an adult in need of protective services when such access has been denied.
- Revised reporting provisions by including employees of accounting firms in the list of financial personnel designated as voluntary reporters; adding guardians, conservators, mental health service providers, emergency medical services personnel, and contractors of public or private agencies or facilities who work with adults to the list of mandatory

reporters; and providing penalties for persons who knowingly make false reports of adult abuse. In addition, the bill directed that employers cannot prohibit mandatory reporters from reporting abuse and must notify them of their obligation to report upon hiring.

- Created criminal penalties for false reports and civil penalties for failure to make required reports.
- Added a provision that mandatory reporters who suspect that an adult died due to abuse or neglect shall report that suspicion to the appropriate medical examiner and law enforcement agency even if a physician has signed a death certificate and that the medical examiner and law enforcement agency shall determine if an investigation, including an autopsy, is justified.
- Increased the initial period in which involuntary adult protective services may be provided through a court order from five to fifteen days.
- Eliminated the section requiring mandatory reporters to submit written reports within seventy-two hours and the section outlining the responsibility of mandatory reporters to report sexual abuse to local law enforcement.
- Required (1) the Department of Social Services to develop a plan and cost estimate to educate newly mandated reporters on adult abuse, neglect and exploitation, and to delay implementation of the penalty provisions on newly mandated reporters until the delivery of such training; and (2) the Secretary, in consultation with the Departments of Social Services and Health and other state and local entities, to establish procedures and cost estimates for the operation of adult fatality review teams to review suspicious deaths of vulnerable adults.

2004 CHART OF APS AMENDMENT CATEGORIES

Categories	State
APS Access to Victims	VA
Civil Liability	ME, TN
Collaboration with Other Agencies	VA
Definitions of Elder Abuse	ME, MA, SC
Emergency/Involuntary APS	VA
Fatality Review Teams	ME, VA
Information/Record Disclosure	KS, ME
Investigations	VA
Notification/Referral to Other Agencies	ME, VA
Outreach to Victims	TN
Reporting	IA, ME, VA

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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