

HOUSE BILL No. 5616

February 20, 2018, Introduced by Rep. Kosowski and referred to the Committee on Military and Veterans Affairs.

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:

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

1 vulnerable ~~person~~**INDIVIDUAL** not less than 18 years of age who is
2 suspected of being or believed to be abused, neglected, or
3 exploited.

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

6 (d) "Neglect" means harm to an adult's health or welfare
7 caused by the inability of the adult to respond to a harmful
8 situation or by the conduct of a person who assumes responsibility
9 for a significant aspect of the adult's health or welfare. Neglect
10 includes the failure to provide adequate food, clothing, shelter,
11 or medical care. ~~A person~~**AN INDIVIDUAL** shall not be considered to
12 be abused, neglected, or in need of emergency or protective
13 services for the sole reason that the ~~person~~**INDIVIDUAL** is
14 receiving or relying upon treatment by spiritual means through
15 prayer alone in accordance with the tenets and practices of a
16 recognized church or religious denomination, and this act shall not
17 require any medical care or treatment in contravention of the
18 stated or implied objection of that ~~person~~**INDIVIDUAL**.

19 (e) "Protective services" includes, but is not limited to,
20 remedial, social, legal, health, mental health, and referral
21 services provided in response to a report of alleged harm or
22 threatened harm because of abuse, neglect, or exploitation.

23 **(F) "VETERANS' FACILITY" MEANS A LONG-TERM CARE FACILITY AND**
24 **ANCILLARY FACILITIES FOR VETERANS AND THEIR DEPENDENTS AS DEFINED**
25 **IN SECTION 2 OF THE MICHIGAN VETERANS' FACILITY AUTHORITY ACT, 2016**
26 **PA 560, MCL 36.102.**

27 **(G) ~~(f)~~"Vulnerable"** means a condition in which an adult is

1 unable to protect himself or herself from abuse, neglect, or
2 exploitation because of a mental or physical impairment or because
3 of advanced age.

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

23 (2) A report made by a physician or other licensed health
24 professional ~~pursuant to~~ **UNDER** subsection (1) shall **IS** not be
25 ~~considered~~ a violation of any legally recognized privileged
26 communication or a violation of article 15 of the public health
27 code, ~~Act No. 368 of the Public Acts of 1978, being sections~~

1 ~~333.16101 to 333.18838 of the Michigan Compiled Laws.1978 PA 368,~~
2 **MCL 333.16101 TO 333.18838.**

3 (3) In addition to those persons required to make an oral
4 report under subsection (1), any person who suspects that an adult
5 has been abused, neglected, or exploited may make a report to the
6 county department ~~of social services~~ of the county in which the
7 abuse, neglect, or exploitation is suspected of having occurred.
8 **THIS SUBSECTION INCLUDES A REPORT OF ABUSE, NEGLECT, OR**
9 **EXPLOITATION CONCERNING AN ADULT RESIDING IN A VETERANS' FACILITY.**

10 (4) **THE DEPARTMENT SHALL PROVIDE A TOLL-FREE TELEPHONE**
11 **COMPLAINT LINE FOR RECEIVING REPORTS OF ABUSE, NEGLECT, OR**
12 **EXPLOITATION CONCERNING AN ADULT RESIDING IN A VETERANS' FACILITY.**
13 **THE TELEPHONE NUMBER SHALL BE LISTED ON THE DEPARTMENT'S WEBSITE AS**
14 **THE "VETERANS' HOME ABUSE HOTLINE". THE COMPLAINT LINE SHALL BE**
15 **ACCESSIBLE 24 HOURS PER DAY AND MONITORED AT A LEVEL TO ENSURE THAT**
16 **A RESPONSE IS INITIATED TO A COMPLAINT WITHIN 24 HOURS AFTER ITS**
17 **RECEIPT.**

18 (5) ~~(4)~~A report made under this section shall contain the
19 name of the adult and a description of the abuse, neglect, or
20 exploitation. If possible, the report shall contain the adult's age
21 and the names and addresses of the adult's guardian or next of kin,
22 and of the persons with whom the adult resides, including their
23 relationship to the adult. The report shall contain other
24 information available to the reporting person that may establish
25 the cause of the abuse, neglect, or exploitation and the manner in
26 which the abuse, neglect, or exploitation occurred or is occurring.
27 The county department shall reduce to writing the information

1 provided in an oral report received ~~pursuant to~~ **UNDER** this section.

2 **(6)** ~~(5)~~—The county department shall report to a police agency
3 any criminal activity that it believes to be occurring, upon
4 receipt of the oral report.

5 **(7)** ~~(6)~~—This section ~~shall not be construed as limiting~~ **DOES**
6 **NOT LIMIT** the responsibilities of the police agency of a local unit
7 of government to enforce the laws of this state ~~or as precluding~~
8 **AND DOES NOT PRECLUDE** the police agency from reporting and
9 investigating, as appropriate, alleged criminal conduct.

10 Sec. 11b. (1) Within 24 hours after receiving a report made or
11 information obtained under section 11a, the county department shall
12 commence an investigation to determine whether the ~~person~~
13 **INDIVIDUAL** suspected of being or believed to be abused, neglected,
14 or exploited is an adult in need of protective services. A
15 reasonable belief on the part of the county department that the
16 ~~person~~ **INDIVIDUAL** is an adult in need of protective services is a
17 sufficient basis for investigation. **THE FOLLOWING APPLIES TO AN**
18 **INVESTIGATION COMMENCED UNDER THIS SUBSECTION:**

19 **(A)** If an investigation ~~pertains to~~ **CONCERNS** an adult residing
20 in an adult foster care facility licensed by the department of
21 ~~human services,~~ **LICENSING AND REGULATORY AFFAIRS**, the county
22 department shall provide the adult foster care licensee with the
23 substance of the abuse or neglect allegations as soon as
24 practicable after the beginning of the investigation. The licensee
25 shall have the opportunity to respond to the allegations, and the
26 response shall be included in the record.

27 **(B) IF AN INVESTIGATION CONCERNS AN ADULT RESIDING IN A**

1 VETERANS' FACILITY, THE COUNTY DEPARTMENT SHALL PROVIDE A WRITTEN
2 COPY OF THE REPORT MADE OR INFORMATION OBTAINED UNDER SECTION 11A
3 TO THE OFFICE OF THE MICHIGAN VETERANS' FACILITY OMBUDSMAN AND THE
4 DEPARTMENT OF MILITARY AND VETERANS AFFAIRS WITHIN 24 HOURS AFTER
5 RECEIVING THE REPORT. THE COUNTY DEPARTMENT SHALL COORDINATE THE
6 INVESTIGATION COMMENCED UNDER THIS SUBSECTION WITH AN INVESTIGATION
7 UNDERTAKEN BY THE OFFICE OF THE MICHIGAN VETERANS' FACILITY
8 OMBUDSMAN OR THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
9 CONCERNING THE REPORT PROVIDED UNDER THIS SUBDIVISION.

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

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

27 (4) The investigation shall include an in-person interview

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

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

10 (6) In the course of an investigation, the county department
11 shall determine if the adult is or was abused, neglected, or
12 exploited. The county department shall make available to the adult
13 the appropriate and least restrictive protective services, directly
14 or through the purchase of services from other agencies and
15 professions, and shall take necessary action to safeguard and
16 enhance the welfare of the adult, if possible. The county
17 department also shall collaborate with law enforcement officers,
18 courts of competent jurisdiction, and appropriate state and
19 community agencies providing human services ~~, which services~~ **THAT**
20 are provided in relation to preventing, identifying, and treating
21 adult abuse, neglect, or exploitation. If the abuse, neglect, or
22 exploitation involves substance abuse, the county department shall
23 collaborate with the local substance abuse coordinating agency as
24 designated by the office of ~~substance abuse services in the~~
25 ~~department of community health~~ **RECOVERY ORIENTED SYSTEMS OF CARE**
26 for a referral for substance ~~abuse~~ **USE DISORDER** services. The
27 county department may petition for a finding of incapacity and

1 appointment of a guardian or temporary guardian as provided in
2 section 5303 or 5312 of the estates and protected individuals code,
3 1998 PA 386, MCL 700.5303 and 700.5312, and may petition for the
4 appointment of a conservator as provided in section 5401 of the
5 estates and protected individuals code, 1998 PA 386, MCL 700.5401,
6 for a vulnerable adult.

7 (7) Upon completion of an investigation, the county department
8 shall prepare a written report of the investigation and its
9 findings. A copy of this written report shall be forwarded to the
10 ~~department of human services upon the request. of the department of~~
11 ~~human services.~~ **IF AN INVESTIGATION CONCERNS AN ADULT RESIDING IN A**
12 **VETERANS' FACILITY, THE COUNTY DEPARTMENT SHALL PROVIDE A COPY OF**
13 **THE WRITTEN REPORT PREPARED UNDER THIS SUBSECTION TO THE**
14 **DEPARTMENT, THE MICHIGAN VETERANS' FACILITY OMBUDSMAN, AND THE**
15 **DEPARTMENT OF MILITARY AND VETERANS AFFAIRS.**

16 (8) The county department may provide a copy of the written
17 report **PREPARED UNDER SUBSECTION (7)** to the prosecuting attorney
18 for the county in which the adult suspected of being or believed to
19 be abused, neglected, or exploited resides or is found.

20 (9) A representative from the department, ~~of human services,~~
21 the department of state police, the department of attorney general,
22 and the ~~office of services to the aging~~ **AND ADULT SERVICES AGENCY,**
23 and an individual **DESIGNATED BY THE STATE ATTORNEY GENERAL** who is a
24 representative of long-term care providers, ~~and is designated by~~
25 ~~the state attorney general,~~ shall meet and develop a state model
26 protocol for the investigation of vulnerable adult abuse cases.
27 ~~This state model protocol shall be developed not more than 1 year~~

1 ~~after the effective date of the amendatory act that added this~~
2 ~~subsection.~~ A county prosecuting attorney, in cooperation with the
3 local county department and local law enforcement agencies, may
4 adopt a local protocol for the investigation of vulnerable adult
5 abuse cases that is based on the state model protocol.

6 **(10) A REPRESENTATIVE FROM THE DEPARTMENT SHALL MEET WITH A**
7 **REPRESENTATIVE FROM THE OFFICE OF THE MICHIGAN VETERANS' FACILITY**
8 **OMBUDSMAN AND A REPRESENTATIVE FROM THE DEPARTMENT OF MILITARY AND**
9 **VETERANS AFFAIRS TO DEVELOP A MODEL PROTOCOL FOR THE INVESTIGATION**
10 **OF REPORTS OF ABUSE CONCERNING ADULTS RESIDING IN VETERANS'**
11 **FACILITIES. THE MODEL PROTOCOL SHALL BE BASED ON THE STATE MODEL**
12 **PROTOCOL DEVELOPED UNDER SUBSECTION (9). THE MODEL PROTOCOL SHALL**
13 **BE DEVELOPED NOT MORE THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE**
14 **AMENDATORY ACT THAT ADDED THIS SUBSECTION.**

15 Sec. 11f. (1) ~~The state~~ **EXCEPT AS PROVIDED IN THIS SUBSECTION,**
16 **THE** department shall not take any action ~~pursuant to~~ **UNDER** sections
17 11 to 11e in the case of a person who is residing in a state funded
18 and operated facility or institution, including but not limited to
19 a correctional institution, mental hospital, psychiatric hospital,
20 psychiatric unit, or a developmental disability regional center.
21 **THIS SUBSECTION DOES NOT PRECLUDE THE DEPARTMENT FROM TAKING ACTION**
22 **IN ACCORDANCE WITH SECTIONS 11 TO 11E IN THE CASE OF AN ADULT WHO**
23 **IS RESIDING IN A VETERANS' FACILITY IN THIS STATE.**

24 (2) The ~~state~~ department shall not investigate suspected
25 abuse, neglect, or any other suspected incident ~~pursuant to~~ **UNDER**
26 sections 11 to 11e if the department of ~~public health~~ **LICENSING AND**
27 **REGULATORY AFFAIRS** has investigative and enforcement responsibility

1 for the incident pursuant to ~~UNDER~~ section 20201, 21771, or 21799a
2 of the public health code, ~~Act No. 368 of the Public Acts of 1978,~~
3 ~~as amended, being sections 333.20201, 333.21771, and 333.21799a of~~
4 ~~the Michigan Compiled Laws. 1978 PA 368, MCL 333.20201, 333.21771,~~
5 **AND 333.21799A.** The ~~state~~ department shall refer a report of
6 suspected abuse or neglect in an institution governed by those
7 sections to the department of ~~public health.~~ **LICENSING AND**
8 **REGULATORY AFFAIRS.**

9 (3) Sections 11 to 11e do not preclude the director from
10 entering into interdepartmental agreements to carry out the duties
11 and responsibilities of the ~~state~~ department under sections 11 to
12 11e in state funded and operated facilities or institutions, or to
13 coordinate investigation in state licensed facilities under
14 contract with a state agency in order to avoid duplication of
15 effort among state agencies having statutory responsibility to
16 investigate.

17 (4) The ~~state~~ department and the department of attorney
18 general shall enter into an agreement establishing criteria to be
19 used to ~~determine these~~ **IDENTIFY** complaints involving a facility
20 that receives funding under title XIX ~~of the social security act,~~
21 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396d, 1396f to 1396g,~~
22 ~~and 1396i to 1396s,~~ or involving the delivery of a service funded
23 under title XIX. ~~of the social security act, which~~ **THE** complaints
24 **IDENTIFIED UNDER THIS SECTION** shall be referred immediately to the
25 department of attorney general for possible investigation and
26 prosecution.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect

3 unless Senate Bill No. _____ or House Bill No. 5617 (request no.

4 05505'18) of the 99th Legislature is enacted into law.