I. Civil Statute Protecting Dependent Adults and Elders from Neglect or Abuse: 
*Maine Revised Statutes title 22 ch. 958-A (The Adult Protective Services Act)*

A. Conduct

(1) **Abuse**: The infliction of injury, unreasonable confinement, intimidation, or cruel punishment that causes or is likely to cause physical harm, pain, or mental anguish. Abuse also includes sexual abuse, sexual exploitation, the intentional, knowing, or reckless deprivation of essential needs.¹

(2) **Exploitation**: The illegal or improper use of an incapacitated or dependent adult or their resources for another’s benefit.²

(3) **Neglect**: A threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs, or for failing to protect from such harm.³

(4) **Sexual Abuse or Sexual Exploitation**: Contact or interaction of a sexual nature involving an incapacitated or dependent adult without their informed consent.⁴

(5) **Serious Harm⁵**: Serious harm is:

(i) Serious physical injury or impairment

(ii) Serious mental injury or impairment that is or will likely be evidenced by serious mental or dysfunctional behavioral disorders

(iii) Sexual abuse or sexual exploitation

(iv) Serious waste or dissipation of resources

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¹ *M.R.S. tit. 22, § 3472(1)*
² *M.R.S. tit. 22, at § 3472(9)*
³ *M.R.S. tit. 22, § 3472(11)*
⁴ *M.R.S. tit. 22, § 3472(15)*
⁵ *M.R.S. tit. 22, § 3472(13)*
(6) **Spiritual Treatment Exception:** A dependent adult will not be considered abused when undergoing treatment by spiritual means by an accredited practitioner of a recognized religion.\(^6\)

B. **Dependent Adult:** A person 18 years or older who has a physical or mental condition that substantially impairs their ability to adequately provide for their own daily needs. These persons include:\(^7\)

1. Residents of nursing homes
2. Residents of facilities providing assisted living services
3. A person considered a dependent person under *Title 17-A, section 555*, defined as:
   - (i) A dependent person for the purposes of the criminal statute is a person who cannot perform self care as a result of advanced age, or a physical or mental disease, disorder, or defect\(^8\)
4. A person regardless of residence who is wholly or partially dependent on one or more persons for care or support because the person suffers from a significant limitation in mobility, vision, hearing, or emotional or mental functioning.

C. **Persons/Entities Excluded From Liability Under Statute**

1. Any person participating in good faith in an adult protection investigation or has reported abuse is immune from any civil liability that might otherwise result from these actions. In any proceeding involving immunity from liability, there is a rebuttable presumption of good faith.\(^9\)

D. **Reporting Requirement for Litigation to State**

Reports must be made immediately by telephone to the Department of Health and Human Services. A subsequent written report must follow within 48 hours if requested by the department. The report must identify the abused person, the nature of the abuse, and their contact information, as well as any other helpful information.\(^10\) Furthermore, if the person required to report is a member of a law enforcement agency or hospital, and observes visible trauma on an incapacitated

\(^6\) *M.R.S. tit. 22, § 3476(1)*
\(^7\) *M.R.S. tit. 22, (6)(A-D)*
\(^8\) *M.R.S. tit. 17-A, § 555 (1)(A)*
\(^9\) *M.R.S. tit. 22, § 3479-A(1-2)*
\(^10\) *M.R.S. tit. 22, § 3477(2)*
person, they must make a reasonable effort to document the trauma with color photographs.\textsuperscript{11}

E. Preclusion of Arbitration

A valid, final award by arbitration has the same effect as the judgment of a court under res judicata. \textit{Beal v. Allstate Ins. Co.}, 989 A.2d 733, 739 (Me. 2010). Maine has adopted such a policy to prevent continuous litigation under the doctrine of collateral estoppel. \textit{Id}.

F. Criminal Provision: Endangering a person includes failing to act when a legal duty to protect the health, safety, and mental welfare of a dependent person.\textsuperscript{12} A person is guilty of endangering a dependent person if:

(1) The person recklessly endangers the health, safety, or mental welfare of a dependent person who is unable to perform self care because of advanced age or a physical or mental disorder or defect. Such a violation is a Class D crime.\textsuperscript{13}

(2) The person intentionally or knowingly endangers the health, safety or mental welfare of a dependent person who is unable to perform self-care due to advanced age or physical or mental malady. Violation of this paragraph is a Class C crime.\textsuperscript{14}

(3) Interplay With Civil Statute

For a person to be liable under \textit{M.R.S. tit 17-A}, \textsection 555 as a result of an omission, they must have a “positive duty to protect an incompetent person”. \textit{State v. Lamson}, 640 A.2d 1076, 1083 (Me. 1994). An entity or individual with such a duty would include a caretaker of a dependent person.\textsuperscript{15}

H. Statute of Limitations:

Six years – \textit{M.R.S. tit. 14}, \textsection 752

I. Burden of Proof:

\begin{itemize}
\item[\textsuperscript{11}] \textit{M.R.S. tit. 22}, \textsection 3477(6)
\item[\textsuperscript{12}] \textit{M.R.S. tit. 17-A}, \textsection 555 (2)
\item[\textsuperscript{13}] \textit{M.R.S. tit. 17-A}, \textsection 555 (1)(A)
\item[\textsuperscript{14}] \textit{M.R.S. tit. 17-A}, \textsection 555 (1)(B)
\item[\textsuperscript{15}] \textit{M.R.S. tit. 22}, \textsection 3472
\end{itemize}
Preponderance of the Evidence – *Minott v. F.W. Cunningham & Sons*, 413 A.2d 1325, 1331 (Me. 1980)

J. Can Regulations Establish Standard of Care:

Yes. In Maine, regulations may be used by a trial court in deciding if a legal duty existed. *Trusiani v. Cumberland & York Distributors, Inc.*, 538 A. 2d 258, 262 (Me. 1988).

II. DAMAGES

A. Damages Available

1. Actual Damages
2. Special Damages
3. Punitive Damages
4. Injunctive Relief
5. Costs of Suit

B. Does Pain and Suffering of Decedent Survive Death?

Yes. If the individual dies prior to any judgment, they may recover damages for pain and suffering. Pain and suffering damages may be awarded only for the period of time up until the decedent’s death. *Phillips v. Eastern Maine Medical Center*, 565 A.2d 306, 311 (Me. 1989).

C. Attorney’s Fees Available: Yes. Maine tort law typically does not allow for the recovery of attorney’s fees. However, when a claim is brought under the Maine Human Rights Act, which protects elders and developmentally disabled individuals from various forms of discrimination, the court has the discretion to award attorney’s fees. 16

1. Limitation of Attorney’s Fees

   Attorney’s fees may not be awarded unless the plaintiff establishes that they filed a complaint with the Maine Human Rights Commission, and the commission either: 17

\[ 16 \text{M.R.S. tit. 5 § 4614} \]
\[ 17 \text{M.R.S. tit. 5 § 4622(A-D)} \]
(i) Dismissed the case

(ii) Failed within 90 days to enter a conciliation agreement when reasonable grounds for unlawful discrimination were found

(iii) Issued a right to sue letter

(iv) Dismissed the case in error

D. Limitations on Damages

An award of damages against a governmental entity or its employees may not exceed $400,000 for claims arising out of a single event. *M.R.S. tit. 14, § 8105(1)*. Punitive damages and exemplary damages are not allowed against government entities. *Id. at (5).*

III. LEGISLATION AFFECTING STATUTE

A. Pending:

(i) 2011 ME S.P. 664 (NS)

B. Anticipated: None