I. Civil Statute Protecting Elders and Dependant Adults From Neglect or Abuse: 

Massachusetts General Laws (M.G.L.A.) ch. 19A,-C

A. Abuse:

1. Abuse of an Elderly Person: An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability, or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being. No person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof. 

651 Massachusetts Code of Regulations (C.M.R.) 5.02.

An act(s) or omission(s) include any or all of the following:

(a) Physical Abuse
(b) Sexual Abuse
(c) Emotional Abuse
(d) Neglect
(e) Financial Exploitation
(f) Self Neglect

2. Single Act and/or Pattern

(a) A single act or omission, as well as multiple acts for omissions will qualify for the purposes of abuse.

3. Legal Requirement for the act(s) or omission(s)¹:

(a) Physical Abuse: The non-accidental infliction of serious physical injury to an elder or the threat of serious physical injury in which

¹ 651 C.M.R. 5.02(1)-(6)
the Protective Services Agency has reasonable cause to believe that an individual may have the intent and capacity to carry out the threatened serious physical injury.

(b) Sexual Abuse: Sexual assault, rape, sexual misuse, or sexual exploitation of an elder qualify as sexual abuse. Threats of sexual abuse also qualify where the individual has the intent and capacity to carry out the threatened sexual misconduct.

(c) Emotional Abuse: The non-accidental infliction of serious emotional injury to an elder. To establish emotional abuse, there must be a relationship between the abusive actions and a resulting effect on the emotional state of the elder.

(d) Neglect: The failure or refusal by a caretaker to provide one or more of the necessities essential for physical well-being, such as food, clothing, shelter, personal care, and medical care, which has resulted in or has the substantial immediate potential to result in serious physical harm to an elder.

(e) Financial Exploitation: The non-accidental act or omission by another person without consent of the elder resulting in substantial monetary or property loss to the elder, or substantial monetary or property gain to the other person that would otherwise benefit the elder but for the act of another person.

(f) Self Neglect: The failure or refusal of an elder to provide for himself or herself one or more necessities essential for physical or emotional well-being, including food, clothing, shelter, personal care, supervision, and medical care, and such failure or refusal will immediately result in serious harm.

2. **Abuse of a Disabled Person:** An act or omission which results in serious physical or emotional injury to a disabled person; provided, however, that no person shall be considered to be abused for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.² An injury shall not be considered abuse when³

(a) It did not result from a caretaker’s negligent act

(b) It did not result from a caretaker’s reckless act

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² *M.G.L.A. c. 19C § 1*

³ *118 C.M.R. 2.02*
(c) It was caused by a caretaker’s necessary application of force under the circumstances

(d) It was caused by a caretaker’s good faith effort to prevent physical injury, pain, or emotional injury to a disabled person

B. Disabled Person(s)

1. Definition: A “disabled person” is someone between the ages of eighteen to fifty-nine, with an intellectual disability, or someone who is otherwise mentally or physically disabled who is wholly or partially dependent on others to meet their daily living needs.

C. Persons/Entities Excluded From Statute

1. Mandated reporters of abuse are not liable in any civil or criminal action. A person who is not a mandated reporter who submits a report will also not be liable for any civil or criminal action, provided the report was made in good faith. No person engaged in abuse shall be free from civil or criminal liability by making such a report.\(^4\)

(a) Definition of Mandated Reporters for the Abuse of a Disabled Person: Any physician, medical intern, hospital personnel engaged in the examination, care or treatment of persons, medical examiner, dentist, psychologist, nurse, chiropractor, podiatrist, osteopath, public or private school teacher, educational administrator, guidance or family counselor, day care worker, probation officer, social worker, foster parent, police officer or person employed by a state agency within the executive office of health and human services, or employed by a private agency providing services to disabled persons who, in his professional capacity shall have reasonable cause to believe that a disabled person is suffering from a reportable condition.\(^5\)

(i) Mandated reporters for the abuse of disabled persons have no duty to report when they are constrained by professional privilege.

(b) Mandated Reporters for the Abuse of an Elder: Any physician, physician assistant, medical intern, dentist, nurse, family counselor, probation officer, social worker, policeman, firefighter, emergency medical technician, licensed psychologist, coroner, registered physical therapist, registered occupational therapist,

\(^4\) M.G.L.A. c. 19C § 10
\(^5\) M.G.L.A. c. 19C § 1
\(^6\) M.G.L.A. c. 19C § 10
osteopath, podiatrist, director of a council on aging, outreach worker employed by a council on aging, executive director of a licensed home health agency or executive director of a homemaker service agency or manager of an assisted living residence who has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.7

(c) **Reasonable Cause:** The reasonable cause standard is interpreted as merely a “threshold function” that is a relatively low standard to meet. *Care and Protection of Robert, 408 Mass. 52, 63 (1990).* The purpose of this standard is to quickly determine if further assessment and intervention is needed. *J.P.B. v. Department of Children & Families, 83 Mass. App. Ct. 1111, 1111 (2013).*

2. **State Employers and Employees**

In civil actions for negligent acts or omissions of state employees, state employers are not subject to punitive damages or for any amount in excess of $100,000, or for the levy of property to satisfy judgment, or for interest prior to judgment. State employees are not liable for negligent acts or omissions while working in the scope of their employment so long as they reasonably cooperate with the public employer in their defense.8

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

1. **Reporting Requirements for Elderly Abuse**

Mandated reporters under *M.G.L.A. c. 19A § 14* who have reasonable cause to believe that an elder is the victim of abuse must immediately make a verbal report to the Department of Elder Affairs. They must also file a written report within forty eight hours of the suspected abuse. Failure to do so will result in a fine of not more than one thousand dollars.9 Also, any other person who is not a mandated reporter may file a report if they have reasonable cause to believe than an elder has been subject to abuse.10

2. **Reporting Requirements for Disabled Persons Abuse**

Mandated reporters under *M.G.L.A. c. 19C § 1* shall immediately notify the Disabled Persons Protection Commission orally of any abuse of a disabled person. If they have reasonable cause to suspect that a disabled person has died from abuse, they shall immediately report the death to the

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7 *M.G.L.A. c. 19A § 14*
8 *M.G.L.A. c. 258 § 2*
9 *M.G.L.A c 19A § 15(a)*
10 *Id. § 15(c)*
commission, as well as to the district attorney’s office for that county and to the medical examiner. Failure to make a report as required will result in a fine of no more than one thousand dollars. Furthermore, any person may file a report if they have reasonable cause to suspect that a disabled person has suffered abuse.\textsuperscript{11}

\section*{E. Criminal Provision}

A caretaker of an elder or person with a disability, who wantonly or recklessly commits or permits another to commit abuse, neglect, or mistreatment upon such elder or person with a disability, shall be punished by imprisonment in the state prison for not more than three years, or imprisonment in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.\textsuperscript{12}

Wanton or reckless conduct is defined as “intentional conduct involving a high degree of likelihood that substantial harm will result to another”. Com. v. Levesque, 463 Mass. 443,451-452 (2002), quoting Com. v. Welansky, 316 Mass. 383, 391 (1944). The risk of harm must be more than a mere probability, and the harm itself must be one that can result in “an injury causing permanent disfigurement, protracted loss or impairment of bodily function, limb or organ, or substantial risk of death.” Id. at 452.

\section*{F. Statute of Limitations} Three years – M.G.L.A. ch. 260 § 2A

\section*{G. Burden of Proof:} A preponderance of the evidence

\section*{H. Can Regulations Establish Standard of Care:}

Yes. Regulations, as well as policies and past practices are sufficient to establish the standard of care. Pelletier v. Main Street Textiles, LP, 470 F.3d 48, 56 (1st Cir. 2006)

\section*{II. DAMAGES}

\subsection*{A. Damages Available}

1. Actual Damages

2. Special Damages

3. Punitive Damages

4. Injunctive Relief

\begin{footnotes}
\item[12] M.G.L.A c. 265 § 13K(d 1/2)
\end{footnotes}
5. Costs of Suit

B. Does Pain and Suffering of Decedent/Resident Survive Death:

Yes. *M.G.L.A. c. 229 § 6* provides that if the decedent dies before judgement, they are still able to receive damages for pain and suffering. Any sum recovered is “held and disposed of by the executors and administrators as assets of the estate of the deceased.” *Id.*

C. Attorney’s Fees Available:

Possibly. The Massachusetts Civil Rights Act provides that a person who brings action for the interference of their rights under the United States Constitution or of the Commonwealth is entitled to costs and reasonable attorney fees should they prevail in the action.\(^{13}\) This includes rights interfered with through actual or attempted threats, intimidation, or coercion.\(^{14}\) In order for attorney’s fees to be obtained, the claimant must prevail on a substantial question of law “arising out of the common nucleus of facts that give rise to cause of action under the statute”. *Batchelder v. Allied Stores Corp.* , 393 Mass. 819, 822 (1985).

1. If available, are the attorney’s fees limited?

Yes. Only reasonable attorney fees may be awarded.\(^ {13}\)

III. LEGISLATION AFFECTING STATUTES

A. Pending:

(1) For *M.G.L.A c.19C § 14-15*

   (i) 2013 MA H.B. 3479 (NS)
   2013 MA S.B. 290 (NS)
   2013 MA H.B. 549 (NS)

B. Anticipated: None

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\(^{13}\) *M.G.L.A. c. 12 § 11I*

\(^{14}\) *Id. § 11H*