

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1635

99TH GENERAL ASSEMBLY

5462H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 198.070, RSMo, and to enact in lieu thereof twelve new sections relating to sexual assault reporting in long-term care facilities, with penalty provisions.

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

Section A. Section 198.070, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 198.070, 198.610, 198.612, 198.614, 198.616, 198.618, 198.620, 198.622, 198.624, 198.626, 198.628, and 198.630, 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, **as defined in section 192.2400**, 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.

**198.610. 1. The provisions of sections 198.610 to 198.630 shall be known and may
2 be cited as the "Authorized Electronic Monitoring in Long-Term Care Facilities Act".**

3 2. For purposes of sections 198.610 to 198.630, the following terms shall mean:

**4 (1) "Authorized electronic monitoring", the placement and use of an electronic
5 monitoring device by a resident in his or her room in accordance with the provisions of
6 sections 198.610 to 198.630;**

7 (2) "Department", the department of health and senior services;

8 (3) “Electronic monitoring device”, a surveillance instrument with a fixed position
9 video camera or an audio recording device, or a combination thereof, that is installed in
10 a resident’s room under the provisions of sections 198.610 to 198.630 and broadcasts or
11 records activity or sounds occurring in the room;

12 (4) “Facility”, any residential care facility, assisted living facility, intermediate care
13 facility, or skilled nursing facility;

14 (5) “Resident”, a person residing in a facility;

15 (6) “Resident’s representative”, a resident’s legal representative.

198.612. 1. A resident may be permitted to conduct authorized electronic
2 monitoring of the resident’s room through the use of electronic monitoring devices placed
3 in the room under the provisions of sections 198.610 to 198.630 if the facility in which the
4 resident resides permits electronic monitoring devices in its policies and procedures, and
5 the electronic monitoring devices comply with the facility’s requirements therein.

6 2. Nothing in sections 198.610 to 198.630 shall be construed to allow the use of an
7 electronic monitoring device to take still photographs or for the nonconsensual interception
8 of private communications.

9 3. Except as otherwise provided in this section, a resident, a resident’s
10 representative, or the parent of a resident under eighteen years of age and the facility shall
11 consent in writing on a notification and consent form prescribed by the department in
12 order for authorized electronic monitoring to be conducted in the resident’s room. If the
13 resident has not affirmatively objected to the authorized electronic monitoring and the
14 resident’s physician determines that the resident lacks the ability to understand and
15 appreciate the nature and consequences of electronic monitoring, the following individuals
16 may consent on behalf of the resident in order of priority:

17 (1) An attorney-in-fact under a durable power of attorney for health care;

18 (2) The resident’s representative;

19 (3) The resident’s spouse;

20 (4) The resident’s parent;

21 (5) The resident’s adult child who has the written consent of all other adult children
22 of the resident to act as the sole decision maker regarding authorized electronic
23 monitoring; or

24 (6) The resident’s adult brother or sister who has the written consent of all other
25 adult siblings of the resident to act as the sole decision maker regarding authorized
26 electronic monitoring.

27 4. Prior to another person, other than a resident’s representative, consenting on
28 behalf of a resident eighteen years of age or older in accordance with the provisions of

29 sections 198.610 to 198.630, the resident shall be asked by that person, in the presence of
30 a facility employee, if he or she wants authorized electronic monitoring to be conducted.

31 The person shall explain to the resident:

- 32 (1) The type of electronic monitoring device to be used;
- 33 (2) The standard conditions that may be placed on the electronic monitoring
34 device's use, including those listed in subdivision (7) of subsection 2 of section 198.614;
- 35 (3) With whom the recording may be shared according to section 198.622; and
- 36 (4) The resident's ability to decline all recording.

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38 For the purposes of this subsection, a resident affirmatively objects if he or she orally,
39 visually, or through the use of auxiliary aids or services declines authorized electronic
40 monitoring. The resident's response shall be documented on the notification and consent
41 form.

42 5. A resident or roommate may consent to authorized electronic monitoring with
43 any conditions of the resident's choosing including, but not limited to, the list of standard
44 conditions provided in subdivision (7) of subsection 2 of section 198.614. A resident or
45 roommate may request that the electronic monitoring device be turned off or the visual
46 recording component of the electronic monitoring device be blocked at any time.

47 6. Prior to the authorized electronic monitoring, a resident shall obtain the written
48 consent of any other resident residing in the room on the notification and consent form
49 prescribed by the department. Except as otherwise provided in this subsection, a
50 roommate, a roommate's legal representative, or the parent of a roommate under eighteen
51 years of age shall consent in writing to the authorized electronic monitoring in the
52 resident's room. If the roommate has not affirmatively objected to the authorized
53 electronic monitoring in accordance with subsection 4 of this section and the roommate's
54 physician determines that the roommate lacks the ability to understand and appreciate the
55 nature and consequences of electronic monitoring, the following individuals may consent
56 on behalf of the roommate, in order of priority:

57 (1) An attorney-in-fact under a durable power of attorney for health care;

58 (2) The roommate's legal representative;

59 (3) The roommate's spouse;

60 (4) The roommate's parent;

61 (5) The roommate's adult child who has the written consent of all other adult
62 children of the roommate to act as the sole decision maker regarding authorized electronic
63 monitoring; or

64 **(6) The roommate’s adult brother or sister who has the written consent of all other**
65 **adult siblings of the roommate to act as the sole decision maker regarding authorized**
66 **electronic monitoring.**

67 **7. Consent by a roommate under subsection 6 of this section authorizes the**
68 **resident’s use of any recording obtained under sections 198.610 to 198.630 as provided**
69 **under section 198.622.**

70 **8. Any resident previously conducting authorized electronic monitoring shall obtain**
71 **consent from any new roommate before the resident may resume authorized electronic**
72 **monitoring. If a new roommate does not consent to authorized electronic monitoring and**
73 **the resident conducting the authorized electronic monitoring does not remove or disable**
74 **the electronic monitoring device, the facility may turn off the device.**

75 **9. Consent may be withdrawn by the resident or roommate at any time, and the**
76 **withdrawal of consent shall be documented in the resident’s clinical record. If a roommate**
77 **withdraws consent and the resident conducting the authorized electronic monitoring does**
78 **not remove or disable the electronic monitoring device, the facility may turn off the**
79 **electronic monitoring device.**

198.614. 1. Authorized electronic monitoring may begin only after a notification
2 **and consent form prescribed by the department has been completed and submitted to the**
3 **facility, and the facility consents.**

4 **2. A resident shall notify the facility in writing of his or her intent to install an**
5 **electronic monitoring device by providing a completed notification and consent form**
6 **prescribed by the department that shall include at minimum the following information:**

7 **(1) The resident’s signed consent to electronic monitoring or the signature of the**
8 **person consenting on behalf of the resident in accordance with section 198.612. If a person**
9 **other than the resident signs the consent form, the form shall document the following:**

10 **(a) The date the resident was asked if he or she wants authorized electronic**
11 **monitoring to be conducted in accordance with subsection 4 of section 198.612;**

12 **(b) Who was present when the resident was asked; and**

13 **(c) An acknowledgment that the resident did not affirmatively object;**

14 **(2) The resident’s roommate’s signed consent or the signature of the person**
15 **consenting on behalf of the roommate in accordance with section 198.612, if applicable, and**
16 **any conditions placed on the roommate’s consent. If a person other than the roommate**
17 **signs the consent form, the form shall document the following:**

18 **(a) The date the roommate was asked if he or she wants authorized electronic**
19 **monitoring to be conducted in accordance with subsection 4 of section 198.612;**

20 **(b) Who was present when the roommate was asked; and**

- 21 (c) An acknowledgment that the roommate did not affirmatively object;
- 22 (3) The type of electronic monitoring device to be used;
- 23 (4) Any installation needs such as mounting of a device to a wall or ceiling;
- 24 (5) The proposed date of installation for scheduling purposes;
- 25 (6) A copy of any contract for maintenance of the electronic monitoring device by
- 26 a commercial entity;
- 27 (7) A list of standard conditions or restrictions that the facility, resident, or
- 28 roommate may elect to place on the use of the electronic monitoring device including, but
- 29 not limited to:
- 30 (a) Prohibiting audio recording;
- 31 (b) Prohibiting broadcasting of audio or video; or
- 32 (c) Turning off the electronic monitoring device or blocking the visual recording
- 33 component of the electronic monitoring device for the duration of an exam or procedure
- 34 by a health care professional; while dressing or bathing is performed; or for the duration
- 35 of a visit with a spiritual advisor, ombudsman, attorney, financial planner, intimate
- 36 partner, or other visitor; and
- 37 (8) Any other condition or restriction elected by the facility, resident, or roommate
- 38 on the use of an electronic monitoring device.
- 39 3. A copy of the completed notification and consent form shall be placed in the
- 40 resident's and any roommate's clinical record and a copy shall be provided to the resident
- 41 and his or her roommate, if applicable.
- 42 4. The department shall prescribe the notification and consent form required in this
- 43 section no later than sixty days after the effective date of sections 198.610 to 198.630. If the
- 44 department has not prescribed such a form by that date, the attorney general shall post a
- 45 notification and consent form on its website for resident use until the department has
- 46 prescribed the form.
- 198.616. 1. A resident authorized to conduct authorized electronic monitoring shall
- 2 do so at his or her own expense, including paying purchase, installation, maintenance, and
- 3 removal costs.
- 4 2. If a resident authorized to conduct authorized electronic monitoring chooses to
- 5 install an electronic monitoring device that uses internet technology for visual or audio
- 6 monitoring, such resident is responsible for contracting with an internet service provider.
- 7 3. The electronic monitoring device shall be placed in a conspicuously visible
- 8 location in the room.
- 9 4. No facility shall charge the resident a fee for the cost of electricity used by an
- 10 electronic monitoring device.

11 **5. All electronic monitoring device installations and supporting services shall**
12 **comply with the requirements of the National Fire Protection Association (NFPA) 101 Life**
13 **Safety Code (2015 edition).**

198.618. 1. If a resident of a facility conducts authorized electronic monitoring, a
2 **sign shall be clearly and conspicuously posted at all building entrances accessible to**
3 **visitors. The notice shall be entitled “Electronic Monitoring” and shall state in large, easy-**
4 **to-read type: “The rooms of some residents may be monitored electronically by or on**
5 **behalf of the residents.”.**

6 **2. A sign shall be clearly and conspicuously posted at the entrance to a resident’s**
7 **room where authorized electronic monitoring is being conducted. The notice shall state**
8 **in large, easy-to-read type: “This room is electronically monitored.”.**

9 **3. The facility is responsible for installing and maintaining the signage required in**
10 **this section.**

198.620. 1. No person or entity shall knowingly hamper, obstruct, tamper with, or
2 **destroy an electronic monitoring device installed in a resident’s room without the**
3 **permission of the resident or the individual who consented on behalf of the resident, and**
4 **the facility, in accordance with section 198.612.**

5 **2. No person or entity shall knowingly hamper, obstruct, tamper with, or destroy**
6 **a video or audio recording obtained in accordance with sections 198.610 to 198.630 without**
7 **the permission of the resident or the individual who consented on behalf of the resident,**
8 **and the facility, in accordance with section 198.612.**

9 **3. A person or entity that violates this section is guilty of a class B misdemeanor.**
10 **A person or entity that violates this section in the commission of or to conceal a**
11 **misdemeanor offense is guilty of a class A misdemeanor. A person or entity that violates**
12 **this section in the commission of or to conceal a felony offense is guilty of a class D felony.**

13 **4. It is not a violation of this section if a person or facility turns off the electronic**
14 **monitoring device or blocks the visual recording component of the electronic monitoring**
15 **device at the direction of the resident or the person who consented on behalf of the resident**
16 **in accordance with section 198.612.**

198.622. 1. No facility shall access any video or audio recording created through
2 **authorized electronic monitoring without the written consent of the resident or the person**
3 **who consented on behalf of the resident, and the facility, in accordance with section**
4 **198.612.**

5 **2. Except as required under the Freedom of Information Act, a recording or copy**
6 **of a recording made under sections 198.610 to 198.630 shall only be disseminated for the**

7 purpose of addressing concerns relating to the health, safety, or welfare of a resident or
8 residents.

9 3. The resident or person who consented on behalf of the resident in accordance
10 with section 198.612 shall provide a copy of any video or audio recording to parties
11 involved in a criminal or administrative proceeding, upon a party's request, if the video
12 or audio recording was made during the time period that the conduct at issue in the
13 proceeding allegedly occurred.

198.624. Any individual who has reasonable cause to believe, as a result of any
2 video or audio recording created through authorized electronic monitoring in accordance
3 with the provisions of sections 198.610 to 198.630, that a resident has been the victim of a
4 sexual assault shall report such suspected assault to a local law enforcement entity and
5 provide such entity with a copy of the video or audio recording. Subject to applicable rules
6 of evidence and procedure, any video or audio recording created through authorized
7 electronic monitoring in accordance with the provisions of sections 198.610 to 198.630 may
8 be admitted into evidence in a civil, criminal, or administrative proceeding if the contents
9 of the recording have not been edited or artificially enhanced and the video recording
10 includes the date and time the events occurred.

198.626. Each facility shall report to the department, in a manner prescribed by the
2 department, the number of authorized electronic monitoring notification and consent
3 forms received annually. The department shall report the total number of authorized
4 electronic monitoring notification and consent forms received from facilities to the attorney
5 general annually.

198.628. 1. No facility shall be civilly or criminally liable for the inadvertent or
2 intentional disclosure of a recording by a resident or a person who consents on behalf of
3 the resident for any purpose not authorized by sections 198.610 to 198.630. Nothing in
4 sections 198.610 to 198.630 shall permit or authorize a resident to use any device that in
5 any way violates any other state or federal law or regulation.

6 2. No facility shall be civilly or criminally liable for a violation of a resident's right
7 to privacy arising out of any electronic monitoring conducted under sections 198.610 to
8 198.630.

9 3. The department shall promulgate rules to adopt the form described in subsection
10 2 of section 198.614. Any rule or portion of a rule, as that term is defined in section
11 536.010, that is created under the authority delegated in this section shall become effective
12 only if it complies with and is subject to all of the provisions of chapter 536 and, if
13 applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of
14 the powers vested with the general assembly pursuant to chapter 536 to review, to delay

15 the effective date, or to disapprove and annul a rule are subsequently held
16 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
17 after August 28, 2018, shall be invalid and void.

198.630. No person shall:

2 (1) Intentionally retaliate or discriminate against any resident for consenting to
3 authorized electronic monitoring under sections 198.610 to 198.630; or

4 (2) Prevent the installation or use of an electronic monitoring device by a resident
5 who has received authorization from the facility with notice and consent as required under
6 section 198.614 that otherwise meets the requirements of sections 198.610 to 198.630.

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