
MALTREATMENT OF VULNERABLE ADULTS & MINORS-WHAT TO KNOW AND HOW TO REPORT

VULNERABLE ADULTS

INTRODUCTION

In our community, there are adults experiencing maltreatment who need our help. Examples of maltreatment include abuse, neglect and financial exploitation. To help them find safety and security, the community needs to know about these problems and what to do about it.

This training is designed to help you learn more about the maltreatment of vulnerable adults and what you can do to help. If you are a mandated reporter, it will help you learn more about your duty to report suspected maltreatment. If you are a relative, friend, neighbor, or other interested person, this training will help you understand the adult protection system and assist you in finding protective services for someone in need.

Anyone of us may need protective services at some point in life. As you help your vulnerable clients, relatives, friends and neighbors, remember that you are strengthening a system that you too may need. If you have any questions after reading this training, you can get more information from your local county human service agency. Ask for the social worker who is familiar with adult protection services.

DEFINITIONS

Who is a vulnerable adult?

A “vulnerable adult” is any person, 18 years of age or older, who is a resident or patient of a facility such as a hospital, group home, nursing home, day service facility, day activity center, adult foster care home, or a person who receives services during the day from an agency that is licensed/certified by the Minnesota Department of Human Services or the Minnesota Department of Health such as a home care agency or a personal care services.

A vulnerable adult also includes a person who, regardless of where they live or what type of services they receive, possess a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual’s ability to provide adequately for their own care without assistance **AND** because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect themselves from maltreatment.

Conservatorship

Conservatorship is when a legal proceeding in which one person is appointed to act as a substitute decision-maker for another person. Conservatorship does not presume that the incapacitated person is incompetent in all areas of his/her life. It can be tailor-made to meet the needs of the individual. Additionally, persons under conservatorships can be voluntary or involuntary and can be of the person and/or estate.

Guardianship

Guardianship is when legal proceeding in which a person is appointed to act as a substitute decision-maker for another person. This is the most restrictive option. A person under guardianship loses **all** rights. The guardian becomes responsible for all aspects of the incapacitated person's life.

REPORTING

Who is required to report adult maltreatment?

"Mandated Reporters" include professionals or professional delegates while engaged in "the care of vulnerable adults." Some of the professions identified as mandated reporters include: law enforcement, education and most health-care related professionals including nursing home administration, nursing, medicine, social work and psychology. A mandated reporter who has reason to believe a vulnerable adult is being or has been maltreated, or has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained, shall immediately (within 24 hours) report.

ANY employee or volunteer of a public or private facility or agency caring for vulnerable adults, including employees not generally involved with patient care (maintenance and food services staff, etc.) must comply with this law.

ANY person concerned about the well-being of a vulnerable adult may report known or suspected maltreatment.

Where do I report maltreatment?

Any incident of known or suspected maltreatment should be reported to MAARC (Minnesota Adult Abuse Reporting Line). MAARC is reachable 24/7/365 at 1(844) 880-1574, or online at:

<https://tnt09.agileapps.dhs.state.mn.us/networking/sites/880862836/MAARC>.

Nothing in the law prevents a reporter from also reporting to a law enforcement agency.

A mandated reporter may meet the reporting requirements by reporting to an internal reporting system; then the facility remains responsible for complying with immediate reporting requirements. A facility may not prohibit a mandated reporter from reporting externally and is prohibited from retaliating against a mandated reporter who reports in good faith.

How do I report suspected maltreatment and is my report confidential?

Mandated reporters must make oral reports to MAARC or through their internal reporting system. To the extent possible, all reporters should be prepared to identify the vulnerable adult and the caregiver; the nature and extent of the suspected maltreatment; and any evidence of previous maltreatment; the time, date and location of the incident; and other information regarding the situation.

Written reports are no longer required, nor are they a substitute for a call to MAARC. The identity of the reporter may not be released unless the reporter has given consent or by a court order.

Are there any exemptions from the reporting requirements?

Federal law specifically prohibits release of patient-identifying information without patient consent in

certain federal-funded programs such as chemical dependency programs.

- Resident to resident physical or verbal abuse, of self-abusive behavior not causing serious harm-based on contingencies of the situation and the severity of the circumstances.
- Accidents: sudden, unforeseen and unexpected event which is not likely to occur, event which could not have been prevented by exercise of due care, when facility is compliant with relevant rules and laws
- Individual's single mistake: when providing therapeutic conduct, no injury or harm which reasonably requires care of physician or mental health professional, if reported internally and documented for outside review

What is the penalty for failing to report suspected maltreatment?

If you are mandated by law to report suspected maltreatment and negligently or intentionally fail to report, you can be held liable for any damages or harm caused by your failure to report the maltreatment. There are also criminal charges for failure to report.

Are there protections for reporting maltreatment?

- Immunity from civil or criminal liabilities for good faith reports
- Identity of reporter is not released without consent of the reporter or by a court order
- There are penalties for retaliation against reporter
- There is civil protection for good faith investigation activities

What happens when a report is filed?

If MAARC determines maltreatment to a vulnerable adult has occurred, the report will be referred to either the county where the abuse occurred, the Minnesota Department of Health or the Minnesota Department of Human Services. Law enforcement may also be contacted if there is reason to believe criminal activity has taken place.

What are the penalties for adult maltreatment?

- Lose the right to work in a facility or agency
- Lose professional license
- Be subject to criminal penalties

What are some of the protective services available to vulnerable adults?

- A restraining order
- A court order for removal of the perpetrator from the residence of the vulnerable adult
- The appointment of a guardian or conservator by a court
- The replacement of a guardian or conservator suspected of maltreatment
- A referral to the prosecuting attorney for possible criminal prosecution of the perpetrator

Adult Protection Workers cannot solve every problem. Even vulnerable adults have the right to make decision, possibly bad ones. Adult protection works may follow an individual case for months before they are able to establish a pattern and intervene in the person's best interests.

Maltreatment of Minors Act

Overview of the Maltreatment of Minors Act

The Minnesota Maltreatment of Minors Act establishes a system for reporting possible child abuse and neglect to government agencies that provide protective services for the child or conduct criminal investigations. The act also governs agency responses to reports and access to information generated under the act. Some of the system's features are determined by requirements in federal law that the state must satisfy in order to qualify for federal child abuse prevention and treatment grants. This information brief provides an overview of the Maltreatment of Minors Act, Minnesota Statutes, section 626.556 and related law and rules.

THE REPORTER

Who is permitted to report child abuse or neglect?

Anyone who knows, or has reason to believe, or suspects that a child is being, or has been, neglected or abused. As a mandated reporter, if you know or suspect that a minor has been maltreated, you must report it immediately. Immediately means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.

Who is required to report child abuse or neglect?

An individual who knows or has reason to believe a child is being neglected or abused, and who is:

- (1) A member of the clergy who receives the information while engaged in ministerial duties, excluding information exempt under the confessional privilege; or
- (2) A professional or the professional's delegate who is engaged in
 - The healing arts
 - Social services, including employee assistance counseling and guardian ad litem services
 - Hospital administration
 - Psychological or psychiatric treatment
 - Child care
 - Education
 - Law enforcement

A parent, guardian, or caretaker who knows or reasonably should know a child's health is in serious danger must report neglect. These individuals are subject to criminal penalties for failing to report if the child suffers substantial or great bodily harm or dies for lack of medical care. The criminal law that permits reliance on spiritual means or prayer for health care does not eliminate this reporting duty.

What are an employer's obligations to an employee who reports neglect or abuse?

The employer may not retaliate against an employee who is required to report and does so in good faith.

What is the penalty for failing to make a required report?

It is a misdemeanor exclusively prosecuted by the county attorney rather than the city attorney who usually prosecutes misdemeanors.

What are the consequences of making a false report?

An individual who makes a false report in good faith is immune from civil or criminal liability. An individual who knowingly makes a false report is liable in a civil suit for actual and punitive damages, costs, & attorney fees.

REPORTABLE ABUSE & NEGLECT***Whose abuse or neglect is reportable under the act?*****Persons Responsible for the Child's Care:**

- Parent/Guardian
- Teacher
- School Administrator
- School Employees or Agents
- Daycare Provider
- Paid or Unpaid Babysitter
- Counselor / Coach
- Other lawful custodian with care responsibilities

What is "abuse" under the act?

Physical Abuse – physical abuse or threatened physical abuse occurring within the preceding three years, including:

- Physical injury, mental injury, or threatened injury inflicted other than by accident
- Physical or mental injury not reasonably explained by the child's history of injuries
- Aversive or deprivation procedures (e.g., electric shock) not authorized by Department of Human Services rules
- Regulated interventions (e.g., time out) not authorized by Department of Children, Families and Learning Rules

Excluded from this definition is reasonable and moderate discipline by a parent or guardian or use of reasonable force by a teacher, principal, or school employee.

Sexual Abuse – sexual abuse or threatened sexual abuse occurring within the preceding three years, including:

- Criminal sexual conduct
- Soliciting a child to practice prostitution
- Receiving profit derived from prostitution by a child

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- Hiring or agreeing to hire a child as a prostitute
 - Using a minor in a sexual performance or pornographic work

What is “neglect” under the act?

Within the preceding three years:

- Failure to supply necessary food, clothing, shelter, or medical care
- Failure to protect a child from serious danger to physical or mental health when reasonably able to do so
- Failure to provide necessary supervision or appropriate child care
- Chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the child’s care that adversely affects the child’s basic needs and safety
- Emotional harm demonstrated by a substantial and observable effect on the child
- Withholding medically indicated treatment from a disabled infant with a life-threatening condition
- Prenatal exposure to specified controlled substances
- Failure to ensure that a child is educated in accordance with state law

What else must be reported under the act?

A mandated reporter must report to law enforcement kidnapping or actions that deprive a parent of custodial or parenting time rights. This report does not trigger a local social services agency assessment.

Person in a Position of Authority: A parent or someone acting in a parent’s place who has responsibility for the health, welfare, or supervision of a child for any period of time, however brief.

Person with a Significant Relationship to the Child: A person who has a significant relationship to the child because of being a relative or stepparent, or because of intermittently residing in the child’s home.

CREATION OF REPORTS***Where can a child abuse report be made?***

In most cases a person may report to either the police or county sheriff or the local social services agency.

Exceptions:

- If a person required to report believes a child died because of neglect or abuse, the report must be made to the medical examiner or coroner
- If abuse or neglect occurs in a licensed facility (day care, foster care, etc.) a person required to report must report to the agency that licenses the facility
- If abuse or neglect occurs in a school, a board or licensing entity must provide information about the circumstances of the alleged maltreatment to the Department of Children, Families and Learning

How is a report made?

The initial report may be oral. If the reporter is an individual required to report under the act, an oral report must be followed by a written report within 72 hours, exclusive of weekends or holidays.

What must be included in the report?

- The child's identity
- The person believed responsible for the abuse or neglect, if known
- The nature and extent of abuse or neglect
- The reporter's name and address

INVESTIGATION OR ASSESSMENTS OF REPORTS***How are reports of abuse or neglect in the home handled?***

The local social services agency will conduct an assessment and determine (1) whether there was maltreatment, and (2) whether protective services are needed. If an incident results in the death of a child, the local social services agency may rely on the law enforcement investigation to determine whether there was maltreatment.

A determination that protective services are needed should result when a child protection worker concludes that (1) there is significant risk of maltreatment, and (2) persons responsible for the child's care are not likely to protect the child from maltreatment. When necessary the agency may remove the child from the home. In cases alleging criminal sexual abuse, physical abuse, or criminal child neglect or endangerment, the local social services agency and local law enforcement must coordinate efforts to avoid duplicate fact-finding and multiple interviews. The social service or law enforcement agency may interview the alleged victim and other children (1) without parental consent, and (2) outside the parent or alleged offender's presence.

What are the requirements for assessments and investigations?

The act provides various protocols. It lists several relevant kinds of information the local social services agency or agency responsible for assessing or investigating the report should collect, and authorizes the agency to collect additional information.

The agency is required to interview the alleged perpetrator and victim. Audio recordings of interviews are to be made whenever possible, except that in sexual abuse cases videotaping is required. The act authorizes the agency to make an early determination of no maltreatment and close the case if there is no basis for further information. Determinations whether there is maltreatment and whether protective services are needed must be based on a preponderance of the evidence.

A person conducting an assessment should not have:

- A financial interest in a child abuse or neglect treatment provider, or
- A personal or family relationship with anyone under investigation

If an independent assessor isn't available, the services of someone who doesn't satisfy these requirements may be used.

Is there an appeal process?

- **YES:** A person acting on the child's behalf or the individual/facility determined to have maltreated the child may ask for reconsideration. However, all requests must be submitted in writing 15 days after receipt of final determination.
- If denied or not acted on in the 15 days, may make a request to Department of Human Services. The department then holds a hearing in order to reach a decision within 90 days. But either party can make an extension to have the hearing postponed.
- For facility maltreatment of a child, a person on their behalf may request that the review panel investigate the agency's maltreatment determination. The panel is the commissioners of health, human services, children, families, and the ombudsman for crime victims as well as mental health/retardation, or their designees.
- 30 days of the review, the panel must notify the agency and person of whether: (A) the panel agrees with the determination, or (B) must reconsider. If (B) the agency must report back to the panel with its reconsidered determination within 30 days. If the agency changes its determination or review, they must notify parties who got notice of the original determination.

What is the potential legal liability of those involved in child abuse cases?

If action is taken in good faith, there is immunity from civil or criminal liability for:

- A voluntary or mandated reporter
- Anyone who participates in a case assessment
- A school or licensed facility and its employees when permitting interviews and helping with an assessment or investigation
- A person performing duties under the act or the supervisor of such person

What are county alternative response programs?

Counties may establish programs that use alternative responses, instead of traditional investigative responses, to child maltreatment reports. A family's participation in an alternative response program is voluntary. The programs may include alternative approaches to assessing and providing appropriate services to a family following a child maltreatment report. Counties that use an alternative response program are still required to notify law enforcement of child maltreatment reports. A county may not use an alternative response program for reports involving maltreatment in licensed facilities, unlicensed personal care settings, or schools, or reports involving substantial child endangerment.

What do Vulnerable Adults and Maltreatment of Minors have in common?

Both are susceptible to abuse in many different ways: Here is a list of types of abuses that both sets of individuals have in common.

1. Neglect

- Failure or omission by caregiver to provide for basic needs such as: food, health care, clothing, shelter and supervision
- Neglect may be committed by: caregiver or self
- It is not neglect for an authorized person to make decision in good faith to give or withhold health care, feeding or spiritual means of healing
- It is not neglect for a vulnerable adult to make decision on their own behalf which place them at risk when they understand the consequences of the decision
- Criminal penalties are in effect for some kinds of neglect

2. Abuse

- Assault in the first through fifth degrees
- Criminal sexual conduct in the first through fifth degrees
- Conduct producing pain or injury: verbal abuse, hitting, slapping, kicking, corporal punishment, etc., Rule 40 violations (unauthorized use of aversive or deprivation procedures for persons with mental retardation or developmental disabilities), involuntary confinement, deprivation
- Use of drugs to injure or facilitate a crime
- Promotion of prostitution
- Staff/facility sexual contact: unless pre-existing consensual sexual relationship, unless consensual sexual relationship with a Personal Care Attendant (PCA)
- Criminal penalties now are in effect for some kinds of abuse

3. Financial Exploitation

- When there is a legal financial relationship (such as Guardians, Power of Attorney, Conservators): unauthorized use of a vulnerable adult's money or assets, failure to use a vulnerable adult's money and assets resulting in harm to the vulnerable adult
- In absence of legal authority: willful use, withholding or disposal of a vulnerable adult's money and assets, obtaining control of a vulnerable adult's money and assets by fraud, coercion or harassment
- There are criminal penalties for financial exploitation

4. Serious Maltreatment

- Amended to include neglect when it results in criminal sexual conduct against a child or vulnerable adult

What are the differences between the two?

- Who to report to and Maltreatment of Minors Act does not include financial exploitation, but that does not mean that it cannot happen in certain circumstances.