

1 HB227
2 214974-1
3 By Representative Simpson
4 RFD: Judiciary
5 First Read: 02-FEB-22

8 SYNOPSIS: Existing law provides for the original and
9 general jurisdiction of probate courts, including
10 jurisdiction over the change of name of adults.

11 This bill would further provide for the
12 jurisdiction of probate courts to include
13 jurisdiction over the change of name of minors,
14 under certain conditions.

15 Under the Adult Protective Services Act of
16 1976, only circuit courts have jurisdiction to
17 preside over protective service proceedings.

18 This bill would provide probate courts with
19 concurrent general and original jurisdiction over
20 protective service proceedings under the Adult
21 Protective Services Act of 1976.

22 Under the Elder Abuse Protection Order and
23 Enforcement Act, circuit court judges along with
24 certain specially appointed circuit court judges
25 and district court judges may issue elder abuse
26 protection orders.

1 This bill would authorize judges of probate
2 who are members in good standing with the Alabama
3 State Bar to issue elder abuse protection orders
4 when authorized to do so by a written standing
5 order from the presiding circuit court judge.

6 This bill would also make nonsubstantive,
7 technical revisions to update existing code
8 language to current style.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 Relating to probate courts; to amend Sections
15 12-13-1, 38-9-2, and 38-9F-4, Code of Alabama 1975, and to add
16 Sections 38-9-3.1 and 38-9-6.1 to the Code of Alabama 1975, to
17 further provide for the original and general jurisdiction of
18 probate courts; to provide probate courts with jurisdiction
19 over certain proceedings under the Adult Protective Services
20 Act of 1976; to authorize certain judges of probate to issue
21 elder abuse protection orders under certain conditions; and to
22 make nonsubstantive, technical revisions to update existing
23 code language to current style.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 12-13-1 and 38-9-2, Code of
26 Alabama 1975, are amended to read as follows:

27 "§12-13-1.

1 "(a) The probate court shall have original and
2 general jurisdiction as to all matters mentioned in this
3 section and shall have original and general jurisdiction as to
4 all other matters which may be conferred upon them by ~~statute~~
5 law, unless the ~~statute~~ law so conferring jurisdiction
6 expressly makes the jurisdiction special or limited.

7 "(b) The probate court shall have original and
8 general jurisdiction over the following matters:

9 "(1) The probate of wills.

10 "(2) The granting of letters testamentary and of
11 administration and the repeal or revocation of the same.

12 "(3) All controversies in relation to the right of
13 executorship or of administration.

14 "(4) The settlement of accounts of executors and
15 administrators.

16 "(5) The sale and disposition of the real and
17 personal property belonging to and the distribution of
18 intestate's estates.

19 "(6) The appointment and removal of guardians for
20 minors and persons of unsound mind.

21 "(7) All controversies as to the right of
22 guardianship and the settlement of guardians' accounts.

23 "(8) The allotment of dower in land in the cases
24 provided by law.

25 "(9) The partition of lands within their counties.

26 "(10) The change of the name of any ~~person~~ adult
27 residing in their county, upon his or her filing a declaration

1 in writing, signed by him or her, stating the name by which he
2 or she is known and the name to which he or she wishes it to
3 be changed.

4 "(11) The change of the name of any minor residing
5 in their county, upon the filing of a declaration in writing,
6 signed by the parent or legal guardian of the minor, stating
7 the name by which the minor is known and the name to which it
8 is to be changed, along with the consent from all persons who
9 have natural parental or legal rights of the minor. Consent of
10 the minor is required if the minor is 14 or more years of age.
11 This subdivision does not apply to a minor who is involved in
12 a domestic relations matter that is pending in the circuit
13 court.

14 ~~"(11) Such other~~ (12) Other cases as jurisdiction is
15 or may be given to ~~such~~ probate courts by law, ~~in all cases~~ to
16 be exercised in the manner prescribed by law.

17 "(c) The probate court and circuit court shall have
18 concurrent original and general jurisdiction of any
19 proceedings under Chapter 9 of Title 38.

20 ~~"(c)~~ (d) All orders, judgments, and decrees of
21 probate courts shall be accorded the same validity and
22 presumptions which are accorded to judgments and orders of
23 other courts of general jurisdiction.

24 "§38-9-2.

25 "For the purposes of this chapter, the following
26 terms shall have the following meanings:

1 "(1) ABUSE. The infliction of physical pain, injury,
2 or the willful deprivation by a caregiver or other person of
3 services necessary to maintain mental and physical health.

4 "(2) ADULT IN NEED OF PROTECTIVE SERVICES. A person
5 18 years of age or older whose behavior indicates that he or
6 she is mentally incapable of adequately caring for himself or
7 herself and his or her interests without serious consequences
8 to himself or herself or others, or who, because of physical
9 or mental impairment, is unable to protect himself or herself
10 from abuse, neglect, exploitation, sexual abuse, or emotional
11 abuse by others, and who has no guardian, relative, or other
12 appropriate person able, willing, and available to assume the
13 kind and degree of protection and supervision required under
14 the circumstances.

15 "(3) CAREGIVER. An individual who has the
16 responsibility for the care of a protected person as a result
17 of family relationship or who has assumed the responsibility
18 for the care of the person voluntarily, by contract, or as a
19 result of the ties of friendship.

20 "(4) COURT. The circuit court or probate court.

21 "(5) DEPARTMENT. The Department of Human Resources
22 of the State of Alabama.

23 "(6) EMOTIONAL ABUSE. The willful or reckless
24 infliction of emotional or mental anguish or the use of a
25 physical or chemical restraint, medication, or isolation as
26 punishment or as a substitute for treatment or care of any
27 protected person.

1 "(7) EMPLOYEE OF A NURSING HOME. A person permitted
2 to perform work in a nursing home by the nursing home
3 administrator or by a person or an entity with an ownership
4 interest in the facility, or by both. A person shall be
5 considered an employee whether or not he or she receives
6 compensation for the work performed.

7 "(8) EXPLOITATION. The expenditure, diminution, or
8 use of the property, assets, or resources of a protected
9 person without the express voluntary consent of that person or
10 his or her legally authorized representative or the admission
11 of or provision of care to a protected person who needs to be
12 in the care of a licensed hospital by an unlicensed hospital
13 after a court order obtained by the State Board of Health has
14 directed closure of the unlicensed hospital. For the purpose
15 of this section and Sections 38-9-6 and 38-9-7, the term
16 "unlicensed hospital" shall have the meaning ascribed to it in
17 Section 22-21-33, and the term "licensed hospital" shall have
18 the meaning ascribed to it in Section 22-21-20.

19 "(9) INTENTIONALLY. A person acts intentionally with
20 respect to a result or to conduct described by a statute
21 defining an offense, when his or her purpose is to cause that
22 result or to engage in that conduct.

23 "(10) INTERESTED PERSON. Any adult relative, friend,
24 or guardian of a protected person, or any official or
25 representative of a public or private agency, corporation, or
26 association concerned with ~~his or her~~ the welfare of the
27 protected person.

1 "(11) MISAPPROPRIATION OF PROPERTY OF A NURSING HOME
2 RESIDENT. The deliberate misplacement or wrongful, temporary,
3 or permanent use or withholding of belongings or money of a
4 resident of a nursing home without the consent of the
5 resident.

6 "(12) NEGLECT. The failure of a caregiver to provide
7 food, shelter, clothing, medical services, or health care for
8 the person unable to care for himself or herself; or the
9 failure of the person to provide these basic needs for himself
10 or herself when the failure is the result of the person's
11 mental or physical inability.

12 "(13) NEURODEGENERATIVE. Relating to or being a
13 progressive loss of neurologic function.

14 "(14) NURSING FACILITY. A facility ~~which~~ that is
15 licensed as a nursing home by the Alabama Department of Public
16 Health pursuant to Article 2, Chapter 21, Title 22.

17 "(15) OTHER LIKE INCAPACITIES. Those conditions
18 incurred as the result of accident or mental or physical
19 illness, producing a condition ~~which~~ that substantially
20 impairs an individual from adequately providing for his or her
21 own care or protecting his or her own interests or protecting
22 himself or herself from physical or mental injury or abuse.

23 "(16) PERSON. Any natural human being.

24 "(17) PHYSICAL INJURY. Impairment of physical
25 condition or substantial pain.

26 "(18) PROTECTED PERSON. Any person ~~over 18~~ 19 years
27 of age or older subject to protection under this chapter or

1 any person, including, but not limited to, persons with a
2 neurodegenerative disease, persons with intellectual
3 disabilities and developmental disabilities, or any person
4 ~~over 18~~ 19 years of age or older who ~~that~~ is mentally or
5 physically incapable of adequately caring for himself or
6 herself and his or her interests without serious consequences
7 to himself or herself or others.

8 "(19) PROTECTIVE SERVICES. Those services whose
9 objective is to protect an incapacitated person from himself
10 or herself and from others.

11 "(20) RECKLESSLY. A person acts recklessly with
12 respect to a result or to a circumstance described by a
13 statute defining an offense when he or she is aware of and
14 consciously disregards a substantial and unjustifiable risk
15 that the result will occur or that the circumstance exists.
16 The risk shall be of such nature and degree that its disregard
17 constitutes a gross deviation from the standard conduct that a
18 reasonable person would observe in the situation. A person who
19 creates a risk but is unaware of that risk solely by reason of
20 voluntary intoxication, as defined in subdivision (e)(2) of
21 Section 13A-3-2, acts recklessly with respect thereto.

22 "(21) SERIOUS PHYSICAL INJURY. Physical injury ~~which~~
23 that creates a risk of death, or ~~which~~ that causes serious and
24 protracted disfigurement, protracted impairment of health,
25 protracted loss of the function of any bodily organ, or the
26 impairment of the function of any bodily organ.

1 "(22) SEXUAL ABUSE. Any conduct that ~~is~~ constitutes
2 a crime ~~as defined in Sections 13A-6-60 to 13A-6-70, inclusive~~
3 under Article 4 of Chapter 6 of Title 13A."

4 Section 2. Section 38-9-3.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §38-9-3.1.

7 The probate court and circuit court shall have
8 concurrent original and general jurisdiction as to all matters
9 mentioned in this chapter.

10 Section 3. Section 38-9-6.1 is added to the Code of
11 Alabama 1975, to read as follows:

12 §38-9-6.1.

13 (a) Nothing in this section applies to actions
14 pending in a probate court where the judge of probate is a
15 member in good standing with the Alabama State Bar.

16 (b) At any time after the filing of a petition, but
17 before a hearing contemplated in Section 38-9-6, any protected
18 person, interested person, or party to an action under this
19 chapter may remove the action from the probate court to the
20 circuit court for the county in which the probate court is
21 located by doing all of the following, which shall effect the
22 removal:

23 (1) Filing in the circuit court a notice of removal
24 together with a copy of all processes, pleadings, and orders
25 filed in the probate court.

26 (2) Serving all parties to the action with a copy of
27 the removal notice.

1 (3) Filing a copy of the removal notice with the
2 clerk of the probate court.

3 (c) Upon the removal of an action pursuant to
4 subsection (b), the probate court shall proceed no further.

5 Section 4. Section 38-9F-4, Code of Alabama 1975, is
6 amended to read as follows:

7 "§38-9F-4.

8 "(a) The following courts shall have jurisdiction to
9 issue elder abuse protection orders under this chapter:

10 "(1) Circuit courts.

11 "(2) A special circuit court judge appointed
12 pursuant to Section 12-1-14 or 12-1-14.1.

13 "(3) A district court judge designated by a written
14 standing order from the presiding circuit court judge.

15 "(4) A judge of probate designated by a written
16 standing order from the presiding circuit court judge, where
17 the judge of probate is a member in good standing with the
18 Alabama State Bar.

19 "(b) An elder abuse protection order may be
20 requested in any pending civil or domestic relations action,
21 as an independent civil action, or in connection with the
22 preliminary, final, or post-judgment relief in a civil action.

23 "(c) A petition for an elder abuse protection order
24 may be filed in any of the following locations:

25 "(1) Where the plaintiff or defendant resides.

1 "(2) Where the plaintiff is temporarily located if
2 he or she has left his or her residence to avoid further
3 abuse.

4 "(3) Where the abuse occurred.

5 "(d) There is no minimum period of residence for the
6 plaintiff in the State of Alabama or in the county in which a
7 case is filed.

8 "(e) An elder abuse protection order shall be a
9 status order that is specifically designed to protect the
10 elderly person, and in personam jurisdiction over the
11 defendant shall not be required in order to issue an ex parte
12 or final order under this chapter."

13 Section 5. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.