

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H2/9/11
A Bill

HOUSE BILL 1279

5 By: Representative Leding
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7 **For An Act To Be Entitled**

8 AN ACT TO AMEND VARIOUS PROVISIONS OF THE ARKANSAS
9 CODE REGARDING THE AUTHORITY OF THE DEPARTMENT OF
10 HUMAN SERVICES TO PROTECT MALTREATED ADULTS; AND FOR
11 OTHER PURPOSES.
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14 **Subtitle**

15 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
16 ARKANSAS CODE REGARDING THE AUTHORITY OF
17 THE DEPARTMENT OF HUMAN SERVICES TO
18 PROTECT MALTREATED ADULTS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 9-20-103 is amended to read as follows:
24 9-20-103. Definitions.

25 As used in this chapter:

26 (1)(A) "Abuse" means with regard to any long-term care facility
27 resident or any person who is at the Arkansas State Hospital an act by a
28 caregiver that falls into any of the following categories:

29 (i) Any intentional and unnecessary physical act
30 that inflicts pain on or causes injury to an endangered adult or an impaired
31 adult, excluding court-ordered medical care or medical care requested by an
32 endangered adult, an impaired adult, or a person who is legally authorized to
33 make a medical decision on behalf of an endangered adult or an impaired
34 adult;

35 (ii) Any intentional act that a reasonable person
36 would believe subjects an endangered adult or an impaired adult, regardless



1 of age, ability to comprehend, or disability, to ridicule or psychological
2 injury in a manner likely to provoke fear or alarm, excluding necessary care
3 and treatment provided in accordance with generally recognized professional
4 standards of care;

5 (iii) Any intentional threat that a reasonable
6 person would find credible and nonfrivolous to inflict pain on or cause
7 injury to an endangered adult or an impaired adult except in the course of
8 medical treatment or for justifiable cause; or

9 (iv) Any willful infliction of injury, unreasonable
10 confinement, intimidation, or punishment with resulting physical harm, pain,
11 or mental anguish.

12 (B) "Abuse" means with regard to any person who is not a
13 long-term care facility resident or at the Arkansas State Hospital:

14 (i) Any intentional and unnecessary physical act
15 that inflicts pain on or causes injury to an endangered adult or an impaired
16 adult;

17 (ii) Any intentional act that a reasonable person
18 would believe subjects an endangered adult or an impaired adult, regardless
19 of age, ability to comprehend, or disability, to ridicule or psychological
20 injury in a manner likely to provoke fear or alarm; or

21 (iii) Any intentional threat that a reasonable
22 person would find credible and nonfrivolous to inflict pain on or cause
23 injury to an endangered adult or an impaired adult except in the course of
24 medical treatment or for justifiable cause;

25 (2) "Adult maltreatment" means abuse, exploitation, neglect,
26 physical abuse, or sexual abuse of an adult;

27 (3) "Caregiver" means a related person or an unrelated person,
28 an owner, an agent, a high managerial agent of a public or private
29 organization, or a public or private organization that has the responsibility
30 for the protection, care, or custody of an endangered adult or an impaired
31 adult as a result of assuming the responsibility voluntarily, by contract,
32 through employment, or by order of the circuit court;

33 (4) "Custodian" means the Department of Human Services while the
34 department is exercising a seventy-two hour hold on an endangered or impaired
35 person or during the effective dates of an order granting custody to the
36 department;

1 (5) "Department" means the Department of Human Services;

2 (6) "Endangered adult" means:

3 (A) An adult eighteen (18) years of age or older who:

4 (i) Is found to be in a situation or condition that
5 poses a danger to himself or herself; and

6 (ii) Demonstrates a lack of capacity to comprehend
7 the nature and consequences of remaining in that situation or condition; or

8 (B) An adult resident of a long-term care facility who:

9 (i) Is found to be in a situation or condition that
10 poses an imminent risk of death or serious bodily harm to that person; and

11 (ii) Demonstrates a lack of capacity to comprehend
12 the nature and consequences of remaining in that situation or condition;

13 (7) "Exploitation" means the:

14 (A) Illegal or unauthorized use or management of an
15 endangered person's or an impaired person's funds, assets, or property;

16 (B) Use of an adult endangered person's or an adult
17 impaired person's power of attorney or guardianship for the profit or
18 advantage of one's own self or another;

19 (C) Fraudulent or otherwise illegal, unauthorized, or
20 improper act or process of an individual, including a caregiver or fiduciary,
21 that uses the resources of an endangered or an impaired person or long-term
22 care facility resident for monetary or personal benefit, profit, or gain or
23 that results in depriving the person or resident of rightful access to or use
24 of benefits, resources, belongings, or assets; or

25 (D) Misappropriation of property of a long-term care
26 facility resident;

27 (8)(A) "Fiduciary" means a person or entity with the legal
28 responsibility to:

29 (i) Make decisions on behalf of and for the benefit
30 of another person; and

31 (ii) Act in good faith and with fairness.

32 (B) "Fiduciary" includes without limitation a trustee, a
33 guardian, a conservator, an executor, an agent under financial power of
34 attorney or health care power of attorney, or a representative payee;

35 (9) "Imminent danger to health or safety" means a situation in
36 which death or serious bodily harm could reasonably be expected to occur

1 without intervention;

2 (10)(A) "Impaired adult" means a person eighteen (18) years of
3 age or older who, as a result of mental or physical impairment, is unable to
4 protect himself or herself from abuse, sexual abuse, neglect, or
5 exploitation.

6 (B) For purposes of this chapter, residents of a long-term
7 care facility are presumed to be impaired persons.

8 (C) For purposes of this chapter, a person with a mental
9 impairment does not include a person who is in need of acute psychiatric
10 treatment, chronic mental health treatment, alcohol or drug abuse treatment,
11 or casework supervision by mental health professionals;

12 (11) "Less-than-custody" means any emergency order issued by a
13 circuit court of the State of Arkansas on petition or motion of the
14 department that makes specific orders for the protection of an endangered
15 adult but does not give the department custody over an endangered adult;

16 ~~(11)~~(12) "Long-term care facility" means:

17 (A) A nursing home;

18 (B) A residential care facility;

19 (C) A post-acute head injury retraining and residential
20 facility;

21 (D) An assisted living facility;

22 (E) An intermediate care facility for individuals with
23 mental retardation; or

24 (F) Any facility that provides long-term medical or
25 personal care;

26 ~~(12)~~(13) "Long-term care facility resident" means a person
27 eighteen (18) years of age or older living in a long-term care facility;

28 ~~(13)~~(14) "Long-term care facility resident maltreatment" means
29 abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult
30 resident of a long-term care facility;

31 ~~(14)~~(15) "Maltreated adult" means an adult who has been abused,
32 exploited, neglected, physically abused, or sexually abused;

33 ~~(15)~~(16) "Misappropriation of property of a long-term care
34 facility resident" means the deliberate misplacement, exploitation, or
35 wrongful, temporary, or permanent use of a long-term care facility resident's
36 belongings or money without the long-term care facility resident's consent;

1 ~~(16)~~(17) “Neglect” means:

2 (A) An act or omission by an endangered or an impaired
3 adult, for example, self-neglect; or

4 (B) An act or omission by a caregiver responsible for the
5 care and supervision of an endangered or an impaired adult constituting
6 negligent failure to:

7 (i) Provide necessary treatment, rehabilitation,
8 care, food, clothing, shelter, supervision, or medical services to an
9 endangered or an impaired adult;

10 (ii) Report health problems or changes in health
11 problems or changes in the health condition of an endangered or an impaired
12 adult to the appropriate medical personnel;

13 (iii) Carry out a prescribed treatment plan; or

14 (iv) Provide to an adult resident of a long-term
15 care facility goods or services necessary to avoid physical harm, mental
16 anguish, or mental illness as defined in regulations promulgated by the
17 Office of Long-Term Care of the Division of Medical Services of the
18 Department of Human Services;

19 ~~(17)~~~~(A)~~(18)~~(A)~~ “Physical injury” means the impairment of a
20 physical condition or the infliction of substantial pain.

21 (B) If the person is an endangered or an impaired adult,
22 there is a presumption that any physical injury resulted in the infliction of
23 substantial pain;

24 ~~(18)~~~~(A)~~(19)~~(A)~~ “Protective services” means services to protect
25 an endangered or an impaired adult from:

26 (i) Self-neglect or self-abuse; or

27 (ii) Abuse or neglect by others.

28 (B) Protective services may include:

29 (i) Evaluation of the need for services;

30 (ii) Arrangements or referrals for appropriate
31 services available in the community;

32 (iii) Assistance in obtaining financial benefits to
33 which the person is entitled; or

34 (iv) As appropriate, referrals to law enforcement or
35 prosecutors;

36 ~~(19)~~(20) “Resident of a long-term care facility” means a person

1 eighteen (18) years of age or older living in a long-term care facility;

2 ~~(20)~~(21) "Serious bodily harm" means physical abuse, sexual
3 abuse, physical injury, or serious physical injury;

4 ~~(21)~~(22) "Serious physical injury" means physical injury to an
5 endangered or an impaired adult that:

6 (A) Creates a substantial risk of death; or

7 (B) Causes protracted disfigurement, protracted impairment
8 of health, or loss or protracted impairment of the function of any bodily
9 member or organ;

10 ~~(22)~~(23) "Sexual abuse" means deviate sexual activity, sexual
11 contact, or sexual intercourse, as those terms are defined in § 5-14-101,
12 with another person who is not the actor's spouse and who is incapable of
13 consent because he or she is mentally defective, mentally incapacitated, or
14 physically helpless; and

15 ~~(23)~~(24) "Subject of the report" means:

16 (A) The endangered or an impaired adult;

17 (B) The adult's legal guardian; and

18 (C) The offender.

19
20 SECTION 2. Arkansas Code § 9-20-108(a), concerning jurisdiction for
21 adult protective services, is amended to read as follows:

22 (a)(1) The probate division of circuit court shall have jurisdiction
23 over proceedings for:

24 (A) Custody;

25 (B) Temporary custody for purposes of evaluation;

26 (C) Less-than-custody;

27 ~~(C)~~(D) Court-ordered protective services; or

28 ~~(D)~~(E) An order of investigation ~~pursuant to~~ under this
29 chapter.

30 (2) The probate division of circuit court ~~shall~~ may retain
31 jurisdiction for no more than one hundred eighty (180) days after the death
32 of an adult in the custody of the Department of Human Services to enter
33 orders concerning disposition of the body of the adult as well as any assets
34 of the adult, including the ability to order payment for services rendered or
35 goods purchased by or for the adult while in the custody of the department
36 before the death of the adult.

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SECTION 3. Arkansas Code § 9-20-115, concerning emergency orders of custody for adult protection, is amended to add an additional subsection to read as follows:

(d) If there is probable cause to believe that immediate action is necessary to protect the health, safety, or welfare of an endangered or impaired adult, the probate division of circuit court may issue an ex parte order necessary to protect the adult.

SECTION 4. Arkansas Code § 9-20-119(c)(1), concerning the assets of a maltreated adult, is amended to read as follows:

(c)(1) The court may appoint the department only as custodian of the adult and not as guardian of the person or of the estate of the adult, except to appoint a public guardian under § 28-65-701 et seq.

SECTION 5 Arkansas Code § 9-20-120(a)(2), concerning the duties and responsibilities of custodian of a maltreated adult, is amended to read as follows:

(2) If the court appoints the department as the legal custodian of a maltreated adult on an emergency, temporary, or long-term basis, the department may:

(A) Consent to medical care for the adult;

(B) Obtain physical or psychological evaluations; ~~and~~

(C) Obtain medical, financial, and other records of the adult; and

(D) Obtain or view financial information of the adult that is maintained by a bank or similar institution.

SECTION 6. Arkansas Code Title 9, Chapter 20, Subchapter 1 is amended to read as follows:

9-20-122. Evaluation of prospective guardians.

(a) Regarding an individual listed in subsection (b) of this section, the Department of Human Services may:

(1) Request a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations for convictions regarding violations under this

1 subchapter;

2 (2) Perform a criminal records check with the Identification
3 Bureau of the Department of Arkansas State Police for convictions regarding
4 violations under this subchapter;

5 (3) Check the Adult and Long-term Care Facility Resident
6 Maltreatment Central Registry for previous true findings of adult
7 maltreatment;

8 (4) Request a check of the Adult and Long-term Care Facility
9 Resident Maltreatment Central Registry or its equivalent in the state of
10 residence; and

11 (5) Perform an evaluation of the home or proposed dwelling for
12 an adult in the Department of Human Services' custody.

13 (b) Subsection (a) of this section applies to an individual who has:

14 (1) Requested consideration to be appointed guardian under § 28-
15 65-101 et seq., of an adult in the custody of the department;

16 (2) Requested custody of an adult in the custody of the
17 department; and

18 (3) Petitioned a court of competent jurisdiction:

19 (A) To be appointed guardian, under § 28-65-101 et seq.;
20 or

21 (B) For custody of an adult in the custody of the
22 Department of Human Services.

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24 SECTION 7. Arkansas Code § 12-12-1703(5), concerning definitions for
25 the Adult and Long-Term Care Facility Resident Maltreatment Act, is amended
26 to add an additional subsection to read as follows:

27 (5) "Endangered person" means:

28 (A) A person eighteen (18) years of age or older who:

29 (i) Is found to be in a situation or condition that
30 poses a danger to himself or herself; and

31 (ii) Demonstrates a lack of capacity to comprehend
32 the nature and consequences of remaining in that situation or condition; or

33 (B) A long-term care facility resident or an Arkansas
34 State Hospital resident who:

35 (i) Is found to be in a situation or condition that
36 poses an imminent risk of death or serious bodily harm to the long-term care

1 facility resident; and

2 (ii) Demonstrates a lack of capacity to comprehend
3 the nature and consequences of remaining in that situation or condition;

4
5 SECTION 8. Arkansas Code § 12-12-1717(a), concerning the availability
6 of founded reports of adult or long-term care facility resident maltreatment,
7 is amended to add an additional subdivision to read as follows:

8 (17) A state or federal agency pursuing an official criminal
9 records check.

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11 SECTION 9. Arkansas Code Title, 12, Chapter 12, Subchapter 17 is
12 amended to add an additional section to read as follows:

13 12-12-1722. Services available on investigative finding of true or
14 unsubstantiated.

15 (a) If an investigation under this subchapter is determined to be
16 true, the Department of Human Services may open a protective services case.

17 (b)(1) If the department opens a protective services case under this
18 section, the department shall provide services to the endangered person or
19 impaired person in an effort to prevent:

20 (A) Additional maltreatment to the endangered person or
21 impaired person; or

22 (B) Removal of the endangered person or impaired person
23 from the home.

24 (2) Services provided by the department shall be relevant to the
25 needs of the endangered person or impaired person.

26 (c) If at any time during the protective services case the department
27 determines that the endangered person or impaired person cannot safely remain
28 at home, the department shall take steps to remove the endangered person or
29 impaired person under custody under the Arkansas Adult Maltreatment Custody
30 Act, § 9-20-101 et seq.

31 (d) Upon request, the department shall be provided a copy of the
32 results of radiology procedures, videotapes, photographs, medical records, or
33 financial records on an endangered person or impaired person if the
34 department has an open protective services case.

35 (e) If the report of adult maltreatment is deemed unsubstantiated, the
36 department may offer supportive services to the alleged endangered person or

1 impaired person.

2 (f) An alleged endangered person or impaired person may accept or
3 reject supportive services at any time.

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