

2020 Regular Session

SENATE BILL NO. 302

BY SENATOR BARROW

ELDERLY. Provides for a technical changes to the abuse and neglect of adults statute and Adult Protective Services Act. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 14:403.2(A) and (C), the introductory paragraph of R.S.

3 15:1503, (2), (3), (4)(b), (5), (6), (8), (9), the introductory paragraph of (10), (11),

4 and the introductory paragraph of (12), 1504(B)(1) and (2), 1505(A), 1506(B) and

5 (C), 1507(A) through (D), (F), (G), (H)(1), (2), and (3), (I)(1) and (2), 1508(A),

6 (B)(1), (2), and (5), and (D), 1509, 1510(A), and 1511(A)(1), (B), (C), (D)(2), (3),

7 and (7), and to repeal R.S. 15:1503(13), relative to the Adult Protective Services Act;

8 to provide for technical changes; to provide for definitions; to provide for timing of

9 reports; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 14:403.2(A) and (C) are hereby amended and reenacted to read as
12 follows:

13 §403.2. Abuse and neglect of adults

14 A. Any person, who under R.S. 15:1504(A), is required to report the abuse,

15 ~~or neglect,~~ **or exploitation** of an adult and knowingly and willfully fails to so report

16 shall be guilty of a misdemeanor and upon conviction shall be fined not more than

17 five hundred dollars or imprisoned for not more than six months, or both.

* * *

C. Any person who reports an adult as abused, ~~or neglected,~~ or exploited to an adult protection agency as defined in R.S. 15:1503 or to any law enforcement agency, knowing that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

Section 2. 15:1503, (2), (3), (4)(b), (5), (6), (8), (9), the introductory paragraph of (10), (11), and the introductory paragraph of (12), 1504(B)(1) and (2), 1505(A), 1506(B) and (C), 1507(A) through (D), (F), (G), (H)(1), (2), and (3), (I)(1) and (2), 1508(A), (B)(1), (2), and (5), and (D), 1509, 1510(A), and 1511(A)(1), (B), (C), (D)(2), (3), and (7) are hereby amended and reenacted to read as follows:

§1503. Definitions

For the purposes of this Chapter, the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

* * *

(2) "Abuse" means the infliction of physical or mental injury, or actions which may reasonably be expected to inflict physical or mental injury, on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value.

(3) "Adult" means any individual eighteen years of age or older, or an emancipated minor who, due to a physical, mental, or developmental disability or the infirmities of aging, is unable to manage his ~~own~~ resources, carry out the activities of daily living, or protect himself from abuse, neglect, or exploitation.

(4)(a) * * *

(b) "Adult protection agency" means the Louisiana Department of Health for any individual between the ages of eighteen and fifty-nine years of age in need of adult protective services as provided in this Chapter. The secretary of the Louisiana Department of Health may assign the duties and powers provided in this Chapter to any office of the department for the provision of adult protective services, as

1 provided in this Chapter

2 (5) "Capacity to consent" means the ability to understand and appreciate the
3 nature and consequences of making decisions concerning one's person, including but
4 not limited to provisions for health or mental health care, food, shelter, clothing,
5 safety, or financial affairs. This determination may be based on an assessment or
6 investigative findings, observation, or medical or mental health evaluations.

7 (6) "Caregiver" means any person or persons, either temporarily or
8 permanently, responsible for the care of a person who is aged or an adult with a
9 physical or mental disability. "Caregiver" includes but is not limited to adult
10 children, parents, relatives, neighbors, daycare personnel, adult foster home
11 sponsors, personnel of public and private institutions and facilities, adult congregate
12 living facilities, and nursing homes which have voluntarily assumed the care of a
13 person who is aged or an adult with a disability, have assumed voluntary residence
14 with a person who is aged or an adult with a disability, or have assumed voluntary
15 use or ~~tutelage~~ management of the assets, funds, or property of a person who is aged
16 or a person with a disability, and specifically shall include city, parish, or state law
17 enforcement agencies.

18 * * *

19 ~~(8) "Extortion" is the acquisition of a thing of value from an unwilling or~~
20 ~~reluctant adult by physical force, intimidation, or abuse of legal or official authority.~~

21 ~~(9)~~ "Isolation" includes:

22 (a) Intentional acts committed ~~for the purpose of preventing, and which do~~
23 ~~serve to prevent,~~ **to prevent** an adult from having contact with family, friends, or
24 concerned persons. This shall not be construed to affect a legal restraining order.

25 (b) Intentional acts committed to prevent an adult from receiving his mail or
26 telephone calls.

27 (c) Intentional acts of physical or chemical restraint of an adult committed
28 ~~for the purpose of preventing~~ **to prevent** contact with visitors, family, friends, or
29 other concerned persons.

1 (d) Intentional acts which restrict, place, or confine an adult in a restricted
2 area for ~~the purposes of~~ social deprivation or preventing contact with family, friends,
3 visitors, or other concerned persons. However, medical isolation prescribed by a
4 licensed physician caring for the adult shall not be included in this definition.

5 ~~(10)~~(9) "Neglect" means the failure, by a caregiver responsible for an adult's
6 care or by other parties, to provide the proper or necessary support or medical,
7 surgical, or any other care necessary for his well-being. No adult who is being
8 provided treatment in accordance with a recognized religious method of healing in
9 lieu of medical treatment shall for that reason alone be considered to be neglected
10 or abused.

11 ~~(11)~~(10) "Protective services" includes but is not limited to:

12 * * *

13 ~~(12)~~(11) "Self-neglect" means the failure, either by the adult's action or
14 inaction, to provide the proper or necessary support or medical, surgical, or any other
15 care necessary for his own well-being. No adult who is being provided treatment in
16 accordance with a recognized religious method of healing in lieu of medical
17 treatment shall, for that reason alone, be considered to be self-neglected.

18 ~~(13)~~(12) "Sexual abuse" means **the** abuse of an adult, as defined in this
19 Section, when any of the following occur:

20 * * *

21 §1504. Mandatory reports and immunity

22 * * *

23 B.

* * *

24 (1) Any alleged principal, conspirator, or accessory to an offense involving
25 the abuse, ~~or neglect,~~ **or exploitation** of the adult.

26 (2) Any person who makes a report known to be false or with reckless
27 disregard ~~for the truth of the report.~~

28 * * *

29 §1505. Contents of report and agency to receive **a** report

1 A. Reports reflecting the reporter's belief that ~~an~~ **a vulnerable** adult has been
 2 abused, ~~or~~ neglected, **or exploited** shall be made to ~~any~~ **the appropriate** adult
 3 protection agency or ~~to any~~ local or state law enforcement agency. These reports
 4 need not name the persons suspected of the alleged abuse, ~~or~~ neglect, **or**
 5 **exploitation.**

6 * * *

7 §1506. Receipt of reports

8 * * *

9 B. When the appropriate adult protection agency receives a report of sexual
 10 or physical abuse, whether directly or by referral, the agency shall notify the chief
 11 law enforcement agency of the parish in which the incident is alleged to have
 12 occurred of such report. Such notification shall be made ~~prior to~~ **before** the end of
 13 the **next** business day ~~subsequent to the day on~~ **in** which the adult protection agency
 14 received the report. For the purposes of this Subsection, the chief law enforcement
 15 agency of Orleans Parish shall be the New Orleans Police Department.

16 C. Upon receipt of a report from an adult protection agency, the chief law
 17 enforcement agency shall initiate an incident report and shall notify the referring
 18 adult protection agency of the disposition of the report **within seven business days**
 19 **after it is completed.**

20 §1507. Investigation of reports, assessment, actions taken, and court orders

21 A. The adult protection agency shall make **a** prompt investigation and
 22 assessment. When the report concerns care in a facility or program under the
 23 supervision of the Louisiana Department of Health, the secretary of the department
 24 may assign the duties and powers enumerated in Subsection B of this Section to any
 25 office or entity within the department to carry out the purposes of this Chapter.

26 B. The investigation and assessment shall include the nature, extent, and
 27 cause of the abuse, ~~and~~ neglect, **or exploitation**, the identity of the person or persons
 28 responsible for the abuse, ~~and~~ neglect, **or exploitation**, if known, and an interview
 29 with the adult and a visit to the adult's home, if possible. Consultation with others

1 having knowledge of ~~or information about~~ the facts of the particular case reported
2 abuse of the adult shall also be included in the investigation.

3 C. ~~In the event that~~ If admission to the adult's home or access to the adult for
4 ~~purposes of conducting~~ to conduct the investigation, including a face-to-face private
5 interview with the adult and with other members of the household and inspection of
6 the home is refused, the adult protection agency may apply to a court of competent
7 civil jurisdiction for an order to ~~be granted~~ access to the adult and to the location
8 where the alleged abuse, ~~or neglect,~~ or exploitation occurred to ~~make such an~~
9 conduct the investigation.

10 D. To secure further information and coordinate community service efforts,
11 the adult protection agency shall contact other appropriate local, ~~or state~~ or federal
12 agencies.

13 * * *

14 F. If it appears after an investigation that an adult has been abused, ~~and~~
15 neglected, or exploited by other parties and that the problem cannot be remedied by
16 extrajudicial means, the adult protection agency may refer the matter to the
17 appropriate district attorney's office or may initiate judicial proceedings as provided
18 in R.S. 15:1508. Evidence that abuse, ~~or neglect,~~ or exploitation has occurred must
19 be presented together with an account of the protective services given or available
20 to the adult and a recommendation as to what services, if ordered, would eliminate
21 the abuse, ~~or neglect,~~ or exploitation.

22 G. Protective services may not be provided in cases of self-neglect to any
23 adult having the capacity to consent, who does not ~~consent~~ agree to such service or
24 who, having consented, withdraws such consent. Nothing herein shall prohibit the
25 adult protection agency, the district attorney, the coroner, or the judge from
26 petitioning for interdiction pursuant to Civil Code Articles 389 through 399 or
27 petitioning for an order for protective custody or ~~for~~ judicial commitment pursuant
28 to R.S. 28:50 et seq., seeking an order for emergency protective services pursuant to
29 R.S. 15:1511, or from seeking an order for involuntary protective services pursuant

1 to R.S. 15:1508(B)(5).

2 H.(1) The adult protection agency shall have access to any records or
3 documents, including client-identifying information and medical, psychological,
4 criminal or financial records necessary to the performance of the agency's duties
5 under this Chapter. The duties include the provision of protective services to an
6 adult, or the investigation of abuse, neglect, or exploitation ~~or extortion~~ of an adult.
7 A person or agency that has a record or document that the adult protection agency
8 needs to perform its duties under this Chapter shall, without unnecessary delay, make
9 the record or document available to the agency.

10 (2) The adult protection agency is exempt from the payment of a fee
11 otherwise required or authorized by law to obtain a record if the request for a record
12 is made in the course of an investigation properly or in the provision of protective
13 services by the agency.

14 (3) If the adult protection agency is unable to obtain access to a record or
15 document that is necessary to properly conduct an investigation or to provide
16 protective services, the agency may petition a court of competent jurisdiction for
17 access to the record or document. The person or agency in possession of this
18 necessary record or document and the patient, in the case of a medical record, is
19 entitled to notice and a hearing on the petition.

20 * * *

21 I.(1) Information contained in the case records of the adult protection agency
22 shall be confidential and shall not be released without a handwritten authorization
23 from the adult or his legal representative, except that the information may be
24 released to law enforcement agencies pursuing enforcement of criminal statutes
25 related to the abuse of the adult or the filing of false reports of abuse, ~~or~~ neglect, or
26 exploitation to social service agencies, licensed health care providers, and
27 appropriate local or state agencies where indicated ~~for the purpose of coordinating~~
28 to coordinate the provision of services or treatment necessary to reduce the risk to
29 the adult from abuse, neglect, or exploitation, ~~or extortion~~ and to state regulatory

1 agencies ~~for the purpose of enforcing~~ **to enforce** federal or state laws and regulations
2 relating to abuse, neglect, or exploitation, ~~or extortion~~ by persons compensated
3 through state or federal funds.

4 (2) The identity of any person who in good faith makes a report of abuse,
5 neglect, or exploitation, ~~or extortion~~ shall be confidential and shall not be released
6 without the handwritten authorization of the person making the report, except that
7 the information may be released to law enforcement agencies pursuing enforcement
8 of criminal statutes related to the abuse of the adult or to the filing of false reports
9 of abuse, ~~or~~ neglect, **or exploitation**.

10 * * *

11 §1508. Petition for hearing, criminal proceedings, and subpoenas

12 A. The district attorney or adult protective services agency may petition a
13 court of competent civil jurisdiction for a hearing ~~with respect to~~ **concerning** the
14 alleged abuse, ~~or~~ neglect, **or exploitation**. The petitioner shall notify the adult of the
15 hearing and the proposed action. The adult shall be advised of his right to be
16 represented by an attorney.

17 B. The district attorney or adult protective services agency may apply for an
18 order to:

19 (1) Provide mandatory counseling for the parties involved to prevent further
20 abuse, ~~or~~ neglect, **or exploitation** of the adult.

21 (2) Enjoin the parties contributing to the abuse, ~~or~~ neglect, **or exploitation**
22 of the adult from continuing such acts.

23 * * *

24 (5) Provide protective services, if the adult lacks the capacity to consent to
25 services, and the adult is suffering harm or deterioration or is likely to suffer harm
26 or deterioration from abuse, neglect, **exploitation**, or self-neglect, if protective
27 services are not provided, and no other person authorized by law or by court order
28 to give consent for the adult is available or willing to arrange for protective services.
29 Such an order shall specify the services needed to protect the adult, which may

1 include medical treatment, social services, placement in a safer living situation, the
 2 services of law enforcement or emergency medical services to transport the adult to
 3 a treatment facility or ~~safe~~ **secure** living location and other services needed to protect
 4 the adult. Such an order shall be ~~effective~~ **valid** for a period of one hundred eighty
 5 days, but an order may be renewed one time for another one hundred eighty days and
 6 thereafter annually upon a showing to the court that continuation of the order is
 7 necessary to prevent further harm to the adult. However, admission to a mental
 8 health treatment facility shall be made only in accordance with the provisions of R.S.
 9 28:1 et seq.

10 * * *

11 D. Pursuant to Code of Criminal Procedure Article 66, the district attorney
 12 or the attorney general may cause to be issued a subpoena or subpoena duces tecum
 13 for the purpose of requiring a person having knowledge, written material, or other
 14 evidence pertinent to ~~alleged abuse, neglect, or exploitation~~ of the adult to produce
 15 such evidence to the district attorney, attorney general or the adult protection agency.
 16 §1509. Hearing

17 A. Upon **an** application under the provisions of R.S. 15:1508, the court shall
 18 fix a date for a hearing to be held not more than twenty days, excluding Saturdays,
 19 Sundays, and legal holidays, from receipt of the petition. If the ~~alleged abused or~~
 20 ~~neglected~~ adult has no attorney, the court shall appoint an attorney to represent him.
 21 The adult's attorney shall be granted access to all records of the adult.

22 B. The court shall cause the ~~alleged abused or neglected~~ adult and his
 23 attorney to be served with notice of the appointment and of the time, date, and place
 24 of the hearing no later than five days ~~prior to~~ **before** the hearing. The notice shall
 25 inform such respondent that he has a right to be present at the hearing, that he has a
 26 right to choose his own privately retained and paid counsel or have a court-appointed
 27 attorney if he cannot afford one, that he has a right to subpoena witnesses to testify
 28 on his behalf, and that he has a right to cross-examine any witness testifying against
 29 him. The ~~alleged abused or neglected~~ adult shall have the right to attend the hearing;

1 however, this may be waived by his attorney for cause with approval of the court.

2 C. ~~In order to~~ **To** protect the confidentiality and dignity of the ~~alleged abused~~
3 ~~or neglected~~ adult, any hearing conducted by the court may be closed and the record
4 of the hearing may be sealed.

5 D. In any proceeding concerning the ~~abuse, neglect, or self-neglect of an~~
6 adult, evidence may not be excluded on any ground of privilege, except in the case
7 of communications between an attorney and his client or between a priest, rabbi,
8 duly ordained minister, or Christian Science practitioner and his communicant.

9 §1510. Implementation

10 A. The adult protection agency may adopt such rules and regulations as may
11 be necessary ~~in~~ **for** carrying out the provisions of this Chapter. Specifically, such
12 rules shall provide for cooperation with local agencies, including but not limited to
13 hospitals, clinics, and nursing homes, and ~~cooperation~~ **collaboration** with other
14 states. The adult protection agency shall also be responsible for ongoing inservice
15 training for its staff which assures adequate performance.

16 * * *

17 §1511. Emergency protective services; ex parte order

18 A.(1) If the adult protection agency has reasonable cause to believe that an
19 adult is at immediate and present risk of substantial harm or deterioration from
20 abuse, neglect, **exploitation**, or self-neglect, and the adult lacks the capacity to
21 consent, or with the consent of an adult who has capacity, the agency or any entity
22 named in R.S. 15:1507(G) may petition a court of competent civil jurisdiction for an
23 ex parte order to provide emergency protective services. The petition shall contain
24 an affidavit setting forth the facts upon which the agency relied in making the
25 determination.

26 * * *

27 B. The ex parte order shall specify the services needed to protect the adult,
28 which may include medical treatment, social services, placement in a safer living
29 situation, the services of law enforcement or emergency medical services to transport

1 the adult to a treatment facility or ~~safe living~~ **secure** location, and other services
 2 ~~needed~~ **necessary** to protect the adult and may contain any remedy outlined in R.S.
 3 15:1508 or any remedy deemed by the court as ~~needed~~ **necessary** to protect the
 4 adult. However, admission to a mental health treatment facility shall be made only
 5 in accordance with the provisions of R.S. 28:1 et seq.

6 C. The ex parte order shall be ~~effective~~ **valid** for fifteen days but may be
 7 extended one time for another fifteen days upon a showing to the court that
 8 continuation of the order is necessary to prevent further harm to the adult.

9 D.(1) * * *

10 (2) The adult has the right to be represented by an attorney. If the ~~alleged~~
 11 ~~abused or neglected~~ adult has no attorney, the court shall appoint an attorney to
 12 represent him.

13 (3) At the hearing, the adult protection agency has the burden to prove that
 14 the adult lacks the capacity to consent, and that the adult is at immediate and present
 15 risk of substantial harm or deterioration from abuse, neglect, **exploitation**, or
 16 self-neglect.

17 * * *

18 (7) The order shall be ~~effective~~ **valid** for a period of one hundred eighty days,
 19 but the order may be renewed one time for another one hundred eighty days and
 20 thereafter annually upon a showing to the court that continuation of the order is
 21 necessary to prevent further harm to the adult.

22 Section 3. R.S. 15:1503(13) is hereby repealed in its entirety.

23 Section 4. This Act shall become effective upon signature by the governor or, if not
 24 signed by the governor, upon expiration of the time for bills to become law without signature
 25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 27 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Margaret M. Corley.

DIGEST

SB 302 Original

2020 Regular Session

Barrow

Present law provides for the Adult Protect Services Act which generally protects adults who cannot physically or mentally protect themselves and who are harmed or threatened with harm through action or inaction by themselves or by the individuals responsible for their care or by other parties.

Proposed law retains present law and makes technical changes to include exploitation of adults to reporting requirements.

Proposed law removes the definition for "extortion".

Present law requires the chief law enforcement agency to initiate an incident report after being notified of an incident by an adult protection agency and further requires the chief law enforcement agency to notify the reporting agency of the disposition of the report.

Proposed law retains present law and requires the chief law enforcement agency to notify the reporting agency of the disposition of the report within seven business days after it is complete.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:403.2(A) and (C), (intro para), R.S. 15:1503, (2), (3), (4)(b), (5), (6), (8), (9), (intro para) (10), (11), and (intro para)(12), 1504(B)(1) and (2), 1505(A), 1506(B) and (C), 1507(A) through (D), (F), (G), (H)(1), (2), and (3), (I)(1) and (2), 1508(A), (B)(1), (2), and (5), and (D), 1509, 1510(A), and 1511(A)(1), (B), (C), (D)(2), (3), and (7); repeals R.S. 15:1503(13))