

An Act

ENROLLED SENATE
BILL NO. 201

By: Thompson and Bergstrom of
the Senate

and

McEntire, Lawson, Manger
and Roe of the House

An Act relating to the Protective Services for Vulnerable Adults Act; amending 43A O.S. 2011, Section 10-103, as amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018, Section 10-103), which relates to definitions; modifying definition; adding definition for personal degradation; and providing an effective date.

SUBJECT: Vulnerable adults

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-103, as amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018, Section 10-103), is amended to read as follows:

Section 10-103. A. When used in the Protective Services for Vulnerable Adults Act:

1. "Protective services" means services which are necessary to aid a vulnerable adult in meeting the essential requirements for mental or physical health and safety that the vulnerable adult is unable to provide or obtain without assistance. The term

"protective services" includes but is not limited to services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, or exploitation of such person;

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include, but shall not be limited to:

- a. the identification of vulnerable adults in need of the services,
- b. the provision of medical care for physical and mental health needs,
- c. the provision of social services assistance in personal hygiene, food, clothing, and adequately heated and ventilated shelter,
- d. protection from health and safety hazards,
- e. protection from physical mistreatment,
- f. guardianship referral,
- g. outreach programs, and
- h. the transportation necessary to secure any of such services.

The term shall not include taking the person into physical custody without the consent of the person except as provided for in Sections 10-107 and 10-108 of this title, and the evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness to the vulnerable adult is likely to occur;

4. "Incapacitated person" means:

- a. any person eighteen (18) years of age or older:
 - (1) who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause, and
 - (2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others, or
- b. a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

5. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others;

6. "Caretaker" means a person who has:
- a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
 - b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or

c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;

7. "Department" means the Department of Human Services;

8. "Abuse" means causing or permitting:

a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, ~~or~~ mental anguish or personal degradation, or

b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

9. "Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

10. "Financial neglect" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,

b. refusing to pay for necessities or utilities in a timely manner, or

c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

11. "Neglect" means:

- a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

12. "Personal degradation" means a willful act by a caretaker intended to shame, degrade, humiliate or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display of an electronic image of a vulnerable adult by a caretaker, where the caretaker's actions constitute a willful act intended to shame, degrade, humiliate or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation or harm to the personal dignity of a reasonable person. Personal degradation does not include:

- a. the taking, transmission or display of an electronic image of a vulnerable adult for the purpose of reporting vulnerable adult abuse to law enforcement, the Department of Human Services or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules,
- b. the taking, transmission or display of an electronic image of a vulnerable adult for the purpose of treatment or diagnosis, or
- c. the taking, transmission or display of an electronic image of a vulnerable adult as part of an ongoing investigation;

13. "Sexual abuse" means:

- a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, or
- b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or
- c. indecent exposure by a caretaker or other person providing services to the vulnerable adult;

~~13.~~ 14. "Indecent exposure" means forcing or requiring a vulnerable adult to:

- a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or
- b. touch or feel the body or private parts of another;

~~14.~~ 15. "Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

~~15.~~ 16. "Sexual exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law; and

~~16.~~ 17. "Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or

behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

B. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

SECTION 2. This act shall become effective November 1, 2019.

Passed the Senate the 6th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____