

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 1118 of 2003
HOUSE BILL 2440

5 By: Representative Stovall
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ABUSE OF ADULTS CHAPTER OF
10 THE ARKANSAS CODE TO CLARIFY THE DEFINITION OF
11 LONG-TERM CARE FACILITY UNDER THE STATUTE; AND
12 FOR OTHER PURPOSES.
13

Subtitle

14 THE ABUSE OF ADULTS CHAPTER OF THE
15 ARKANSAS CODE TO CLARIFY THE DEFINITION
16 OF LONG-TERM CARE FACILITY UNDER THE
17 STATUTE.
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 5-28-101 is amended to read as follows:
24 5-28-101. Definitions.

25 As used in this chapter, unless the context otherwise requires:

26 (1) "Abuse" means:

27 (A) Any intentional and unnecessary physical act which inflicts
28 pain on or causes injury to an endangered or impaired adult, including sexual
29 abuse; or

30 (B) Any intentional or demeaning act which subjects an
31 endangered or impaired adult to ridicule or psychological injury in a manner
32 likely to provoke fear or alarm;

33 (2) "Caregiver" means a related or unrelated person, owner, agent,
34 high managerial agent of a public or private organization, or a public or
35 private organization that has the responsibility for the protection, care, or
36 custody of an endangered or impaired adult as a result of assuming the



1 responsibility voluntarily, by contract, through employment, or by order of
 2 the court;

3 (3)(A) "Department" means the Department of Human Services.

4 (B) The Director of the Department of Human Services may assign
 5 responsibilities for administering the various duties imposed upon the
 6 department under this chapter to respective divisions of the department
 7 which, in his or her opinion, are best able to render service or administer
 8 the provisions of this chapter;

9 (4) "Endangered adult" means:

10 (A) An adult eighteen (18) years of age or older who is found to
 11 be in a situation or condition which poses an imminent risk of death or
 12 serious bodily harm to that person and who demonstrates a lack of capacity to
 13 comprehend the nature and consequences of remaining in that situation or
 14 condition; or

15 (B) A resident eighteen (18) years of age or older of a long-
 16 term care facility, ~~which is required to be licensed under § 20-10-224~~
 17 certified pursuant to Title XIX of the Social Security Act, who is found to
 18 be in a situation or condition which poses an imminent risk of death or
 19 serious bodily harm to the person and who demonstrates the lack of capacity
 20 to comprehend the nature and consequences of remaining in that situation or
 21 condition;

22 (5) "Exploitation" means the illegal use or management of an
 23 endangered or impaired adult's funds, assets, or property, or the use of an
 24 endangered or impaired adult's person, power of attorney, or guardianship for
 25 the profit or advantage of himself, herself, or another;

26 (6)(A) "Imminent danger to health or safety" means a situation in
 27 which death or severe bodily injury could reasonably be expected to occur
 28 without intervention.

29 (B) The burden of proof shall be upon the department to show by
 30 clear and convincing evidence that such imminent danger exists;

31 (7)(A) "Impaired adult" means a person eighteen (18) years or older
 32 who, as a result of mental or physical impairment, is unable to protect
 33 himself or herself from abuse, sexual abuse, neglect, or exploitation, and as
 34 a consequence thereof is endangered.

35 (B) For purposes of this chapter, adult residents of a long-term
 36 care facility are presumed to be impaired adults;

1 (8) "Long-term care facility" means a nursing home, residential care
2 facility, post-acute head injury retraining and residential facility, or any
3 other facility which provides long-term medical or personal care;

4 ~~(8)~~(9) "Neglect" means acts or omissions by an endangered adult; for
5 example, self-neglect or intentional acts or omissions by a caregiver
6 responsible for the care and supervision of an endangered or impaired adult
7 constituting:

8 (A) Negligently failing to provide necessary treatment,
9 rehabilitation, care, food, clothing, shelter, supervision, or medical
10 services to an endangered or impaired adult;

11 (B) Negligently failing to report health problems or changes in
12 health problems or changes in the health condition of an endangered or
13 impaired adult to the appropriate medical personnel; or

14 (C) Negligently failing to carry out a prescribed treatment
15 plan;

16 ~~(9)~~(10)(A) "Physical injury" means the impairment of a physical
17 condition or the infliction of substantial pain.

18 (B) Where the person is an endangered or impaired adult, there
19 shall be a presumption that any physical abuse resulted in the infliction of
20 substantial pain;

21 ~~(10)~~(11)(A) "Protective services" means services to protect the
22 endangered or impaired adult from:

- 23 (i) Self-neglect or self-abuse; and
- 24 (ii) Abuse or neglect by others.

25 (B) Protective services shall include, but not be limited to:

- 26 (i) Evaluation of the need for services;
- 27 (ii) Arrangements for appropriate services;
- 28 (iii) Assistance in obtaining financial benefits to which
29 the person is entitled; or
- 30 (iv) Securing medical and legal services.

31 (C)(i) Protective services may include:

- 32 (a) Referrals for services available in the
33 community;
- 34 (b) Seeking protective custody or court-ordered
35 services for endangered adults; or
- 36 (c) In appropriate cases, assistance in locating an

1 appropriate person or entity interested in and able to assume guardianship
2 over an endangered adult.

3 (ii) In situations involving exploitation of an endangered
4 or impaired adult not resulting in any imminent danger to health or safety or
5 involving protection of the property of such an endangered or impaired adult,
6 protective services may include one (1) or more of the following:

7 (a) Referrals for legal assistance;

8 (b) Referrals, as appropriate, to law enforcement or
9 prosecutors; or

10 (c) Assistance in locating an appropriate person or
11 entity interested in and able to assume guardianship;

12 ~~(11)~~(12) "Serious bodily harm" means physical abuse, sexual abuse,
13 physical injury, or serious physical injury as defined in this chapter;

14 ~~(12)~~(13) "Serious physical injury" means physical injury to an
15 endangered or impaired adult that creates a substantial risk of death or that
16 causes protracted disfigurement, protracted impairment of health, or loss or
17 protracted impairment of the function of any bodily member or organ;

18 ~~(13)~~(14) "Sexual abuse" means deviate sexual activity, sexual contact,
19 or sexual intercourse, as those terms are defined in § 5-14-101, with another
20 person who is not the actor's spouse and who is incapable of consent because
21 he or she is mentally defective, mentally incapacitated, or physically
22 helpless, as those terms are defined in § 5-14-101; and

23 ~~(14)~~(15) "Subject of the report" means the endangered or impaired
24 adult, the adult's guardian, and the offender.

25
26
27 **APPROVED: 4/7/2003**
28
29
30
31
32
33
34
35
36