

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Gibson**

A Bill

HOUSE BILL 1962

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 5, CHAPTER 28,
9 PERTAINING TO ABUSE OF ADULTS; AND FOR OTHER PURPOSES."

Subtitle

12 "AN ACT TO AMEND THE ABUSE OF ADULTS ACT."

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17 SECTION 1. Arkansas Code 5-28-101 is amended to read as follows:

18 "5-28-101. Definitions.

19 (1) *'Endangered adult' means:*

20 (A) *An adult eighteen (18) years of age or older who is found to*
21 *be in a situation or condition which poses an imminent risk of death or*
22 *serious bodily harm to that person and who demonstrates the lack of capacity*
23 *to comprehend the nature and consequence of remaining in that situation or*
24 *condition; or*

25 (B) *A resident eighteen (18) years of age or older of a long-term*
26 *care facility which is required to be licensed under §20-10-224 who is found*
27 *to be in a situation or condition which poses an imminent risk of death or*
28 *serious bodily harm to such person and who demonstrates the lack of capacity*
29 *to comprehend the nature and consequences of remaining in that situation or*
30 *condition.*

31 (2) *_Abuse_ means:*

32 (a) *Any intentional and unnecessary physical act which inflicts*
33 *pain on or causes injury to an endangered adult, including sexual abuse;*

34 (b) *Any intentional or demeaning act which subjects an endangered*
35 *adult to ridicule or psychological injury in a manner likely to provoke fear*

1 or alarm.

2 (3) Neglect means:

3 (a) Negligently failing to provide necessary treatment,
4 rehabilitation, care, food, clothing, shelter, supervision, or medical
5 services to an endangered adult;

6 (b) Negligently failing to report health problems or changes in
7 health problems or changes in health condition of an endangered adult to the
8 appropriate medical personnel;

9 (c) Negligently failing to carry out a prescribed treatment plan;

10 (4) Exploitation means the illegal use or management of an endangered
11 adult's funds, assets, or property or the use of an endangered adult's power
12 of attorney or guardianship or person for the profit or advantage of himself
13 or another;

14 (5) Caregiver means a related or unrelated person, owner, agent, high
15 managerial agent of a public or private organization, or a public or private
16 organization, or a related or unrelated person, who has the responsibility for
17 the protection, care, or custody of an endangered adult as a result of
18 assuming the responsibility voluntarily, by contract, through employment, or
19 by order of the court;

20 (6) Physical injury means the impairment of physical condition or the
21 infliction of substantial pain. Where the person is an endangered adult there
22 shall be a presumption that any physical abuse resulted in the infliction of
23 substantial pain;

24 (7) Serious physical injury means physical injury that creates a
25 substantial risk of death or that causes protracted disfigurement, protracted
26 impairment of health, or loss or protracted impairment of the function of any
27 bodily member or organ;

28 (8) Imminent danger to health or safety means a situation in which
29 death or severe bodily injury could reasonably be expected to occur without
30 intervention. The burden of proof shall be upon the department to show by
31 clear and convincing evidence that such imminent danger exists;

32 (9) Protective services means services to protect the endangered adult
33 from himself and others. Protective services shall include, but not be limited
34 to, evaluation of the need for services, arrangements for appropriate
35 services, assistance in obtaining financial benefit to which the person is

1 entitled, or securing medical and legal services. In situations where
2 exploitation, prevention of injury, and protection of the person and his
3 property are at issue, protective services shall include seeking the
4 appointment of a guardian or seeking protective custody;

5 (10) *_Department_* means the Department of Human Services. The director
6 of the department may assign responsibilities for administering the various
7 duties imposed upon the department under this chapter to respective divisions
8 of the department which, in his opinion, are best able to render service or
9 administer the provisions of this chapter."

10

11 SECTION 2. Arkansas Code 5-28-103 is amended to read as follows:

12 "5-28-103. Penalties for adult abuse.

13 (1) It shall be unlawful for any *person* or caregiver to abuse, neglect,
14 or exploit any person subject to protection under the provisions of this
15 chapter.

16 (a) Any *person* or caregiver who or which purposely abuses an endangered
17 adult in violation of the provisions of this chapter, and if the abuse causes
18 *serious physical injury or substantial risk of death shall be guilty of a*
19 *Class B* felony and shall be punished as provided by law.

20 (b) Any *person* or caregiver who or which purposely abuses an endangered
21 adult in violation of provisions of this chapter, and if such abuse causes
22 physical injury shall be guilty of a Class D felony and shall be punished as
23 provided by law.

24 (c) Any *person* or caregiver who or which neglects an endangered adult
25 in violation of the provisions of this chapter causing serious physical injury
26 *or substantial risk of death shall be guilty of a Class D felony and shall be*
27 *punished as provided by law.*

28 (d) Any *person* or caregiver who or which neglects an endangered adult
29 *in violation of the provisions of this chapter causing physical injury shall*
30 *be guilty of a Class B misdemeanor and shall be punished as provided by law.*

31 (e) Any *person* or caregiver who or which abuses an endangered adult
32 *shall be guilty of a Class B misdemeanor and shall be punished as provided by*
33 *law.*

34 (f) Any *person* or caregiver who or which exploits a person in violation
35 of the provisions of this chapter shall be guilty of a Class B felony and

1 shall be punished as provided by law, where the value of the property, assets
2 or resources is \$2,500 or more.

3 (g) Any person or caregiver who or which exploits a person in violation
4 of the provisions of this chapter shall be guilty of a Class C felony and
5 shall be punished as provided by law, where the value of the property, assets
6 or resources is less than \$2,500 but more than \$200.

7 (h) Any person or caregiver who or which exploits a person in violation
8 of the provisions of this chapter shall be guilty of a Class A misdemeanor and
9 shall be punished as provided by law, where the value of the property, assets
10 or resources is \$200 or less."

11

12 SECTION 3. Subchapter 1 of Chapter 28 of Title 5 of the Arkansas Code
13 is amended by inserting two new sections to read as follows:

14 "5-28-107. Civil penalties.

15 (a) The State of Arkansas and the Attorney General may institute a
16 civil action against any long term care facility caregiver necessary to
17 enforce any provision of this act. Notwithstanding any criminal penalties
18 assessed under this chapter, any caregiver against whom or which any civil
19 judgment is entered as the result of a civil action brought or threatened to
20 be brought by the State of Arkansas, through the Attorney General, on a
21 complaint alleging that caregiver to have abused, neglected or exploited an
22 endangered adult in a long term care facility required to be licensed under
23 section 20-10-224, shall be required to pay a civil penalty of not less than
24 \$1,000 nor more than \$10,000 for each violation judicially found to have
25 occurred.

26 (b) In any action brought pursuant to this section, the State of
27 Arkansas shall be required to prove all essential elements of the cause of
28 action, including damages, by a preponderance of the evidence.

29 (c) Any penalty shall be paid into the Treasury of the State of
30 Arkansas and credited to the General Fund.

31 (d) Any caregiver against whom or which any civil judgment is entered as
32 the result of a civil action brought or threatened to be brought under this
33 section by the State of Arkansas, through the Attorney General, shall be
34 required to pay to the Attorney General all reasonable expenses which the
35 court determines have been necessarily incurred in the enforcement of this

1 chapter.

2 5-28-108. *Investigation by Attorney General and Department of Human*
3 *Services. The Department of Human Services shall have jurisdiction to*
4 *investigate cases of suspected abuse, neglect, or exploitation of an*
5 *endangered adult. The Office of Attorney General shall have concurrent*
6 *jurisdiction to investigate cases of suspected abuse, neglect, or exploitation*
7 *of an endangered adult in a long term care facility certified pursuant to*
8 *Title XIX of the Social Security Act. After a thorough investigation, the*
9 *Attorney General may make a referral to the prosecuting attorney having*
10 *criminal jurisdiction in the matter, or take appropriate civil action as*
11 *provided in this chapter."*

12

13 SECTION 4. Arkansas Code 5-28-201 is amended to read as follows:

14 "5-28-201. Central registry.

15 (a) Pursuant to this chapter, there shall be established within the
16 Department a statewide central registry for abuse, neglect, and exploitation.

17 (b) The central registry may adopt such rules and regulations which may
18 be necessary to encourage cooperation with other states in exchanging reports
19 to effect a national registry system of abuse, neglect, and exploitation."

20

21 SECTION 5. Arkansas Code 5-28-202 is amended to read as follows:

22 "5-28-202. Penalties for failure to report abuse.

23 (a) Any person or caregiver required by this chapter to report a case of
24 suspected abuse, neglect, or exploitation who *purposely* fails to do so shall
25 be guilty of a Class B misdemeanor and shall be punished as provided by law.

26 (b) Any person or caregiver required by this chapter to report a case of
27 suspected abuse, neglect, or exploitation who *purposely* fails to do so shall
28 be civilly liable for damages proximately caused by the failure."

29

30 SECTION 6. Arkansas Code 5-28-203(b) is hereby amended to read as
31 follows:

32 "(b) A report required under this chapter shall be made to the central
33 registry by the receiving agency for endangered adults not residing in long-
34 term care facilities. A report for endangered adults residing in a long-term
35 care facility shall be made immediately to the local law enforcement agency in

1 which the facility is located, and to the Office of Long Term Care pursuant to
2 regulations of that office. The Office of Long Term Care shall notify the
3 central registry and the office of the Attorney General."

4

5 SECTION 7. Arkansas Code 5-28-210 (a) is amended to read as follows:

6 "(a) In cases involving an endangered adult residing in a long-term
7 care facility certified pursuant to Title XIX of the Social Security Act, the
8 local law enforcement agency or the Office of the Attorney General shall make
9 a thorough investigation. In all other cases involving endangered adults, the
10 Department shall make a thorough investigation."

11

12 SECTION 8. All provisions of this act of a general and permanent nature
13 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
14 Revision Commission shall incorporate the same in the Code.

15

16 SECTION 9. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

21

22 SECTION 10. All laws and parts of laws in conflict with this act are
23 hereby repealed.

24

25 SECTION 11. EMERGENCY. It is hereby found and determined by the
26 General Assembly that the Attorney General and the prosecuting attorneys are
27 in need of specific legislation by which to protect endangered adults in the
28 State of Arkansas and that immediate passage of this act is necessary for that
29 purpose. Therefore, an emergency is hereby declared to exist and this act
30 being necessary for the immediate preservation of the public peace, health and
31 safety shall be in full force and effect from and after its passage and
32 approval.

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/s/Rep. Gibson

As Engrossed: 3/19/93 4/7/93

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