

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

HOUSE BILL 2235

5 By: Representative Dees
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING CUSTODY OF
10 ABUSED ADULTS; AND FOR OTHER PURPOSES.

Subtitle

13 AN ACT TO AMEND THE LAW REGARDING
14 CUSTODY OF ABUSED ADULTS.
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 5-28-301 is amended to read as follows:
20 5-28-301. Emergency custody.

21 (a)(1) The Department of Human Services or a law enforcement official
22 may take ~~an abused, neglected, or exploited~~ a maltreated adult into emergency
23 custody, or any person in charge of a hospital or similar institution or any
24 physician treating any such adult may keep that adult in custody, whether or
25 not medical treatment is required, if the circumstances or condition of the
26 adult is such that returning to or continuing at the adult's place of
27 residence or in the care or custody of a parent, guardian, or other person
28 responsible for the adult's care presents imminent danger to that adult's
29 health or safety, and the adult lacks the capacity to comprehend the nature
30 and consequences of remaining in a situation that presents imminent danger to
31 his or her health or safety.

32 (2)(A)(i) However, emergency custody shall not exceed seventy-
33 two (72) hours, ~~excluding weekends and holidays~~ except in the event that the
34 expiration of seventy-two (72) hours falls on a weekend or holiday, in which
35 case emergency custody may be extended through the next business day
36 following the weekend or holiday, and the department shall be notified



1 immediately upon taking the adult into emergency custody.

2 (ii) The department may release custody of the adult
 3 within the seventy-two (72) hours if the adult is no longer in circumstances
 4 or conditions that present imminent danger to the adult's health or safety.

5 (B) An emergency ex parte order of custody shall be
 6 obtained on the ~~abused, neglected, or exploited~~ maltreated adult within the
 7 seventy-two (72) hours, except in the event that the expiration of seventy-
 8 two (72) hours falls on a weekend or holiday, in which case emergency custody
 9 may be extended through the next business day following the weekend or
 10 holiday.

11 (3)(A)(i) When emergency custody is exercised pursuant to this
 12 section, the person exercising the custody or the department shall have
 13 authority to consent to having the ~~abused, neglected, or exploited~~ maltreated
 14 adult transported by law enforcement or by ambulance if medically
 15 appropriate, even if the adult objects.

16 (ii) No court order shall be required for law
 17 enforcement or ambulance transport.

18 (B)(i) When an ambulance driver or company or law
 19 enforcement officer acts in good faith pursuant to this subdivision (a)(3),
 20 the immunity provisions of § 5-28-215 shall apply.

21 (ii) The good faith of the ambulance driver or
 22 company or law enforcement officer shall be presumed.

23 (b)(1) If the court grants the ex parte order of emergency custody, a
 24 hearing shall be held within five (5) working days to establish probable
 25 cause for grounds for temporary custody.

26 (2) The probable cause hearing shall be a miscellaneous hearing.

27 (3) The emergency order shall include:

28 (A) Notice to the maltreated adult of the right to:

29 (i) A hearing and that the hearing will be held
 30 within five (5) business days of the issuance of the ex parte order and the
 31 date of the probable cause hearing, if known;

32 (ii) Effective assistance of counsel; and

33 (iii) Be present at the hearing; and

34 (B) The location and telephone number of the court and the
 35 procedure for obtaining a hearing.

36 (4) Immediate notice of the emergency order shall be given by

1 the petitioner or by the court to the respondent and the person from whom
2 physical custody of the respondent was removed.

3 (c) Upon a finding of probable cause, the court may order temporary
4 custody for up to thirty (30) days pending the hearing for long-term
5 protective custody, unless the court extends the time upon a finding that
6 extenuating circumstances exist.

7
8 SECTION 2. Arkansas Code § 5-28-303 is amended to read as follows:
9 5-28-303. Temporary custody.

10 (a)(1) The Department of Human Services may file a petition requesting
11 the ~~probate~~ court to find that there is probable cause to place ~~an abused,~~
12 ~~neglected, or exploited~~ a maltreated adult in temporary custody for a period
13 of up to thirty (30) days, unless the court extends the time upon a finding
14 that extenuating circumstances exist.

15 (2) This hearing shall be a miscellaneous hearing.

16 (b) During the period the ~~abused, neglected, or exploited~~ maltreated
17 adult is in emergency or temporary custody, the court may:

18 (1) Order or authorize the department to obtain:

19 (A) Medical treatment; or

20 (B) Physical or psychological evaluations;

21 (2) ~~Investigate~~ Issue orders regarding the adult's financial
22 affairs; or

23 (3) Order that a hearing for long-term protective custody or
24 court-ordered protective services be held.

25
26 SECTION 3. Arkansas Code § 5-28-304 is amended to read as follows:
27 5-28-304. Long-term custody - Notice - Court-ordered protective
28 services.

29 (a)(1)(A) The Department of Human Services may file a petition
30 requesting that ~~an abused, neglected, or exploited~~ a maltreated adult be
31 placed in the department's long-term protective custody.

32 (B) Alternatively, or in combination with a petition for
33 emergency or temporary custody, the department may file a petition for court-
34 ordered protective services requesting that the ~~abused, neglected, or~~
35 ~~exploited~~ maltreated adult or the primary caregiver of the adult be ordered
36 to accept protective services in the adult's home environment in lieu of

1 being placed in protective custody.

2 (2) The petition requesting long-term protective custody or
3 court-ordered protective services may be combined with the petition
4 requesting emergency or temporary custody.

5 (b) ~~Notice~~ If the respondent is not represented by counsel, notice of
6 a petition for long-term protective custody or court-ordered protective
7 services shall be served upon the respondent at least seven (7) calendar days
8 prior to the time set for a hearing.

9 (c) ~~Upon service of the notice, the respondent will be given notice of~~
10 ~~the long term hearing, a copy of the petition, and a copy of the order for~~
11 ~~the hearing.~~ Notice of the respondents rights shall be served upon the
12 respondent at least seven (7) calendar days before the long-term protective
13 custody hearing, and may be contained in the notice provided to the
14 respondent for the probable cause hearing or temporary hearing.

15 (d) ~~In addition, the~~ The respondent will be advised of the following
16 rights:

- 17 (1) The right to effective assistance of counsel;
- 18 (2) The right to be present at the hearing;
- 19 (3) The right to present evidence on the respondent's own
20 behalf;
- 21 (4) The right to cross-examine witnesses who testify against him
22 or her;
- 23 (5) The right to present witnesses in the respondent's own
24 behalf;
- 25 (6) The right to remain silent; and
- 26 (7) The right to view and copy all petitions, reports, and
27 documents retained in the court file.

28 (e) The person or persons serving the notice shall return the
29 certificate of service to the court verifying that the petition, the order
30 for hearing, and a statement of the rights in subsection (d) of this section
31 have been delivered and notice given.

32 (f) ~~Additionally, notice~~ Notice of the long term protective custody
33 hearing shall be given to:

- 34 (1) The legal counsel;
- 35 (2) The next of kin whose names and addresses are known to the
36 petitioner;

- (3) The person having physical custody of the respondent;
- (4) Any person named in the petition; and
- (5) Any other persons or entities as the court may require.

(g) The ~~probate~~ clerk shall not charge or collect a filing fee from the department when it files a petition for:

- (1) Emergency, temporary, or long-term protective custody;
- (2) Temporary custody for purposes of evaluation;
- (3) Court-ordered protective services; or
- (4) An order of investigation.

SECTION 4. Arkansas Code § 5-28-306 is amended to read as follows:

5-28-306. Long-term protective custody - Hearing - Placement - Appeal.

(a) A hearing for long-term protective custody or court-ordered protective services shall be no later than thirty (30) days from the date of the probable cause hearing or the date the order for emergency or temporary custody was signed, unless the court extends the time in which the hearing must be held upon a finding that extenuating circumstances exist.

(b) The court may hold a hearing for long-term protective custody or court-ordered protective services anywhere in the judicial district.

(c)(1) The court shall make a finding in connection with the determination of the least restrictive alternative to be considered proper under the circumstances, including the finding for noninstitutional care wherever possible.

(2) Where there are protective services available to remedy the imminent danger to the ~~abused, neglected, or exploited~~ maltreated adult, the court may order the adult or the caregiver for the adult to accept the protective services in lieu of placing the adult in protective custody.

(d) In the order, the court shall specify:

- (1) The placement or care plan to be followed;
- (2) The reason for the placement or care to be given;
- (3) The scope and duration of the order;
- (4) That the Department of Human Services periodically review

the case every six (6) months, or more frequently if warranted;

(5) That the department monitor the protective services being received in lieu of protective custody as often as is necessary to prevent the recurrence of the danger; and

1 (6)(A) The requirement of judicial court review of the case,
2 either formal or informal as determined by the court, at least one (1) time a
3 year.

4 (B) Notice for review hearings shall be by regular mail to
5 the attorney for the respondent and to the administrator of the facility in
6 which the respondent is placed.

7 (e) No long-term protective custody may be ordered, unless there is a
8 determination by the court that:

9 (1) The adult is lacking the capacity to comprehend the nature
10 and consequences of remaining in a situation that presents an imminent danger
11 to his or her health or safety;

12 (2) The adult is unable to provide for his or her own protection
13 from ~~abuse or neglect~~ maltreatment; and

14 (3) The court finds clear and convincing evidence that the adult
15 to be placed is in need of placement as provided in this chapter.

16 (f) Placement may be in facilities such as nursing homes, boarding
17 homes, medical institutions, foster care services, or other facilities that
18 provide either medical or personal supervision.

19 (g)(1) Placement under this section does not replace commitment of a
20 person in need of:

21 (A) Acute psychiatric treatment;

22 (B) ~~Casework supervision by mental health professionals~~
23 Chronic mental health treatment; or

24 (C) Alcohol or drug abuse treatment.

25 (2) Placement under this section does not apply to domestic
26 abuse of mentally competent persons or persons needing casework supervision
27 by mental health professionals.

28 (3) No adult shall be placed in the custody of the department
29 for the sole purpose of consenting to the adult's medical treatment.

30 (h) Any person aggrieved by any order for long-term protective custody
31 or for court-ordered services may appeal to a court of competent jurisdiction
32 in the manner and procedures now provided by law.

33
34 SECTION 5. Arkansas Code § 5-28-307 is amended to read as follows:

35 5-28-307. Protection of assets of a ~~person in the custody of the~~
36 ~~Department of Human Services~~ maltreated adult.

1 (a)(1) The court shall have the authority to enter orders, as needed,
 2 to identify, secure, and protect the assets of any person in the custody of
 3 the Department of Human Services or any maltreated adult receiving court
 4 ordered protective services from the department.

5 (2) The court may, after review of the assets, order the sale of
 6 any assets, if it is in the best interests of the maltreated adult.

7 (b) The court shall also have the authority to direct payment from the
 8 assets of the person in department custody or receiving protective services
 9 from the department for services rendered or goods purchased by or for the
 10 person in the custody of the department or receiving services from the
 11 department.

12 (c)(1) The court may appoint only the department as custodian of the
 13 person, and not the estate of the person.

14 (2) The court has jurisdiction in this matter to hear and grant
 15 a petition for guardianship of the estate of a person in the custody of the
 16 department.

17
 18 SECTION 6. Arkansas Code § 5-28-308 is amended to read as follows:
 19 5-28-308. Jurisdiction - Custody proceedings.

20 The probate division of circuit court shall have jurisdiction over
 21 proceedings for temporary and long-term protective custody, for court-ordered
 22 protective services, or for an order of investigation pursuant to this
 23 chapter.

24
 25 SECTION 7. Arkansas Code Title 5, Chapter 28, Subchapter 3 is amended
 26 to add additional sections to read as follows:

27 5-28-309. Duties and responsibilities of custodian.

28 (a)(1) If the court appoints the Department of Human Services as the
 29 legal custodian of a maltreated adult, the department shall:

30 (A) Secure care and maintenance for the person;

31 (B) Honor any advance directives, such as living wills, if
 32 the legal documents were executed in conformity with applicable laws; and

33 (C) Find a person to be guardian of the estate of the
 34 person if a guardian of the estate is needed.

35 (2) If the court appoints the department as the legal custodian
 36 of a maltreated adult, the department may:

- 1 (A) Consent to medical care for the person;
- 2 (B) Obtain physical or psychological evaluations; and
- 3 (C) Obtain medical, financial, and other records of the
- 4 person.

5 (b) The department, as custodian, may not make any of the following
6 decisions without receiving express court approval:

- 7 (1) Consent to abortion, sterilization, psychosurgery, or
- 8 removal of bodily organs except when necessary in a situation threatening the
- 9 life of the incapacitated person;
- 10 (2) Consent to withholding life-saving treatment;
- 11 (3) Authorize experimental medical procedures;
- 12 (4) Authorize termination of parental rights;
- 13 (5) Prohibit the person from voting;
- 14 (6) Prohibit the person from obtaining a driver's license;
- 15 (7) Consent to a settlement or compromise of any claim by or
- 16 against the person or his or her estate; or
- 17 (8) Consent to the liquidation of assets of the person, such as
- 18 an estate sale.

19

20 5-28-310. Availability of custody and protective services records.

21 (a) Reports, correspondence, memoranda, case histories, medical
22 records, or other materials compiled or gathered by the department regarding
23 a maltreated adult in the custody of the department or receiving services
24 from the department shall be confidential and shall not be released or
25 otherwise made available except:

- 26 (1) To the maltreated person;
- 27 (2) To the attorney representing the maltreated person in the
- 28 custody or protective services case;
- 29 (3) For any audit or similar activity conducted with the
- 30 administration of any plan or program by any governmental agency which is
- 31 authorized by law to conduct the audit or activity;
- 32 (4) To law enforcement agencies, the prosecuting attorney, or
- 33 the Attorney General;
- 34 (5) To any licensing or registering authority to the extent
- 35 necessary to carry out its official responsibilities, but the information
- 36 shall be maintained as confidential;

- 1 (6) To the circuit court under this chapter;
- 2 (7) To a grand jury or court, upon a finding that information in
- 3 the record is necessary for the determination of an issue before the court or
- 4 grand jury;
- 5 (8) To the person or provider currently providing care or
- 6 services to the maltreated adult; and
- 7 (9)(A) To individual federal and state representatives and
- 8 senators with no redisclosure of information; and
- 9 (B) No disclosure shall be made to any committee or
- 10 legislative body of any information that identifies by name or address any
- 11 recipient of services.
- 12 (b)(1) No person or agency to whom disclosure is made may disclose to
- 13 any other person reports or other information obtained under this section.
- 14 (2) A disclosure of information in violation of this section
- 15 shall be a Class C misdemeanor.

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