

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

As Engrossed: H3/24/03

A Bill

Act 1046 of 2003
HOUSE BILL 2579

5 By: Representative Dees
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING ADULT ABUSE;
10 AND FOR OTHER PURPOSES.

Subtitle

11 AN ACT TO AMEND THE LAW REGARDING ADULT
12 ABUSE.
13
14
15
16

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

19 SECTION 1. Arkansas Code § 5-28-101 is amended to read as follows:
20 5-28-101. Definitions.

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

22 (1) "Abuse" means:

23 (A) Any intentional and unnecessary physical act which inflicts
24 pain on or causes injury to an endangered or impaired adult, including sexual
25 abuse; ~~or~~

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

29 (C) With regard to any adult resident of a long-term care
30 facility by a caregiver, any willful infliction of injury, unreasonable
31 confinement, intimidation, or punishment with resulting physical harm, pain
32 or mental anguish.

33 (2) "Adult maltreatment" means adult abuse, exploitation, neglect,
34 physical abuse, or sexual abuse.

35 ~~(2)~~(3) "Caregiver" means a related or unrelated person, owner, agent,
36 high managerial agent of a public or private organization, or a public or



1 private organization that has the responsibility for the protection, care, or
 2 custody of an endangered or impaired adult as a result of assuming the
 3 responsibility voluntarily, by contract, through employment, or by order of
 4 the court;

5 ~~(3)~~(4)(A) "Department" means the Department of Human Services.

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

11 ~~(4)~~(5) "Endangered adult" means:

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

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

24 ~~(5)~~(6) "Exploitation" means:

25 (A) ~~the~~ The illegal use or management of an endangered or
 26 impaired adult's funds, assets, or property, or the use of an endangered or
 27 impaired adult's person, power of attorney, or guardianship for the profit or
 28 advantage of himself, herself, or another; or

29 (B) Misappropriation of property of an adult resident of a long-
 30 term care facility which means the deliberate misplacement, exploitation, or
 31 wrongful, temporary or permanent use of a resident's belongings or money
 32 without the resident's consent.

33 ~~(6)~~(7)(A) "Imminent danger to health or safety" means a situation in
 34 which death or severe bodily injury could reasonably be expected to occur
 35 without intervention.

36 (B) The burden of proof shall be upon the department to show by

1 clear and convincing evidence that such imminent danger exists;

2 ~~(7)~~(8)(A) "Impaired adult" means a person eighteen (18) years or older
3 who, as a result of mental or physical impairment, is unable to protect
4 himself or herself from abuse, sexual abuse, neglect, or exploitation, and as
5 a consequence thereof is endangered.

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

8 (9) "Long-term care facility" has the same meaning as in § 20-10-101;

9 ~~(8)~~(10) "Neglect" means acts or omissions by an endangered adult; for
10 example, self-neglect or intentional acts or omissions by a caregiver
11 responsible for the care and supervision of an endangered or impaired adult
12 constituting:

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

16 (B) Negligently failing to report health problems or changes in
17 health problems or changes in the health condition of an endangered or
18 impaired adult to the appropriate medical personnel; ~~or~~

19 (C) Negligently failing to carry out a prescribed treatment
20 plan; or

21 (D) Failing to provide goods and services necessary to avoid
22 physical harm, mental anguish, or mental illness as defined in regulations
23 promulgated by the Office of Long-Term Care to an adult resident of a long-
24 term care facility;

25 ~~(9)~~(11) (A) "Physical injury" means the impairment of a physical
26 condition or the infliction of substantial pain.

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

30 ~~(10)~~(12)(A) "Protective services" means services to protect the
31 endangered or impaired adult from:

32 (i) Self-neglect or self-abuse; and

33 (ii) Abuse or neglect by others.

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

35 (i) Evaluation of the need for services;

36 (ii) Arrangements for appropriate services;

1 (iii) Assistance in obtaining financial benefits to which
2 the person is entitled; or

3 (iv) Securing medical and legal services.

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

5 (a) Referrals for services available in the
6 community;

7 (b) Seeking protective custody or court-ordered
8 services for endangered adults; or

9 (c) In appropriate cases, assistance in locating an
10 appropriate person or entity interested in and able to assume guardianship
11 over an endangered adult.

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

16 (a) Referrals for legal assistance;

17 (b) Referrals, as appropriate, to law enforcement or
18 prosecutors; or

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

21 ~~(11)~~(13) "Serious bodily harm" means physical abuse, sexual abuse,
22 physical injury, or serious physical injury as defined in this chapter;

23 ~~(12)~~(14) "Serious physical injury" means physical injury to an
24 endangered or impaired adult that creates a substantial risk of death or that
25 causes protracted disfigurement, protracted impairment of health, or loss or
26 protracted impairment of the function of any bodily member or organ;

27 ~~(13)~~(15) "Sexual abuse" means deviate sexual activity, sexual contact,
28 or sexual intercourse, as those terms are defined in § 5-14-101, with another
29 person who is not the actor's spouse and who is incapable of consent because
30 he or she is mentally defective, mentally incapacitated, or physically
31 helpless, as those terms are defined in § 5-14-101; and

32 ~~(14)~~(16) "Subject of the report" means the endangered or impaired
33 adult, the adult's guardian, and the offender.

34
35 SECTION 2. Arkansas Code is amended to read as follows:

36 5-28-102. Legislative intent.

1 ~~(a) The General Assembly recognizes that rehabilitative and~~
2 ~~ameliorative services are needed to provide for the detection and correction~~
3 ~~of the abuse, maltreatment, or exploitation of adults who are unable to~~
4 ~~protect themselves the state must provide for the detection, correction, and~~
5 ~~prosecution of the maltreatment of adults.~~

6 ~~(b) "Abuse, maltreatment, or exploitation" includes any willful or~~
7 ~~negligent acts which result in neglect, malnutrition, sexual abuse,~~
8 ~~unreasonable physical injury, material endangerment to mental health, unjust~~
9 ~~or improper use of an adult for one's own advantage, and failure to provide~~
10 ~~necessary treatment, attention, sustenance, clothing, shelter, or medical~~
11 ~~services by a caretaker or by the impaired individual.~~

12
13 SECTION 3. Arkansas Code § 5-28-107 is amended to read as follows:

14 5-28-107. Investigation by Attorney General ~~and Department of Human~~
15 ~~Services.~~

16 ~~(a) The Department of Human Services shall have jurisdiction to~~
17 ~~investigate cases of suspected abuse, neglect, or exploitation of an~~
18 ~~endangered or impaired adult.~~

19 ~~(b)(a)~~ The Office of the Attorney General shall have concurrent
20 jurisdiction with the Department of Human Services to investigate cases of
21 suspected abuse, neglect, or exploitation adult maltreatment of an endangered
22 or impaired adult in a long-term care facility certified pursuant to Title
23 XIX of the Social Security Act.

24 (b) If requested by the office of Attorney General, law enforcement
25 agencies shall assist in the investigation of any case of suspected adult
26 maltreatment.

27 ~~(c) After a thorough investigation, the Attorney General may make a~~
28 ~~referral to the prosecuting attorney having criminal jurisdiction in the~~
29 ~~matter, or take appropriate civil action as provided in this chapter.~~

30
31 SECTION 4. Arkansas Code Title 5, Chapter 28, Subchapter 1 is
32 amended to add an additional section to read as follows:

33 5-28-109. Investigative Powers of the Attorney General.

34 (a) The primary purposes of an investigation are to:

35 (1) Protect maltreated adults; and

36 (2) Refer for prosecution those persons maltreating any

1 endangered or impaired adult.

2 (b) The Attorney General shall conduct a thorough investigation that
3 may include a medical, psychological, social, vocational, financial, and
4 educational evaluation and review.

5 (c)(1) Upon request, the medical, mental health, or other records
6 regarding the maltreated adult maintained by any facility or maintained by
7 any person required by this chapter to report suspected maltreatment, shall
8 be made available to the Attorney General for the purposes of conducting an
9 investigation under this chapter.

10 (2) Upon request, financial records regarding the subject of the
11 investigation maintained by a bank or similar institution shall be made
12 available to the Attorney General for the purpose of conducting an
13 investigation under this chapter.

14 (d)(1) A subpoena requiring the production of documents or the
15 attendance of a witness at an interview, trial, or hearing conducted pursuant
16 to the jurisdiction of the Office of the Attorney General, Medicaid Fraud
17 Control Unit may be served by the Attorney General or any law enforcement
18 officer in the state of Arkansas personally, by telephone, or by registered
19 or certified mail.

20 (2) If service is by registered or certified mail, the return
21 shall be accompanied by the return post office receipt of delivery of the
22 demand.

23 (e)(1) If a facility or person objects to, or otherwise fails to
24 comply with the Attorney General's request for records, the Attorney General
25 may file an action in circuit court for an order to enforce the request.

26 (2) Venue for the action to enforce the request shall be in
27 Pulaski County.

28 (f) The circuit court, upon good cause shown, shall order the facility
29 or person who maintains medical, mental health, or other records regarding
30 the maltreated adult to tender records to the Attorney General for the
31 purpose of conducting an investigation under this chapter.

32 (g)(1) Records obtained by the Attorney General under this subchapter
33 shall be classified as confidential information and shall not be subject to
34 outside review or release by an individual unless the records are used or
35 potentially to be used by any governmental entity in any legal,
36 administrative, or judicial proceeding.

1 (2) Notwithstanding any other law to the contrary, no person
 2 shall be subject to any civil or criminal liability for providing access to
 3 records to the Attorney General or to the prosecuting attorneys.
 4
 5

6 SECTION 5. Arkansas Code § 5-28-201 is amended to read as follows:

7 5-28-201. ~~Central~~ Adult maltreatment central registry.

8 (a)(1) Pursuant to this chapter, there shall be established within the
 9 department a statewide central registry for ~~abuse, neglect, and exploitation~~
 10 adult maltreatment.

11 (2) The adult maltreatment central registry shall contain
 12 investigative determinations made by the department on all founded
 13 allegations of adult maltreatment.

14 (3) The offender's name shall be placed in the central registry,
 15 if:

16 (A) After notice, the offender does not timely appeal for
 17 an administrative hearing; or

18 (B) Upon completion of the administrative hearing process,
 19 the department's investigative determination of founded is upheld.

20 (C) The offender's name shall remain in the central registry
 21 unless:

22 (i) Removed pursuant to another statute;

23 (ii) Removed pursuant to regulation; or

24 (iii) The offender prevails upon appeal.

25 (b) The central registry may adopt such rules and regulations which
 26 may be necessary to encourage cooperation with other states in exchanging
 27 reports to effect a national registry system of ~~abuse, neglect, and~~
 28 exploitation adult maltreatment.
 29

30 SECTION 6. Arkansas Code § 5-28-203 is amended to read as follows:

31 5-28-203. Persons required to report abuse.

32 (a)(1) Whenever any of the following has observed or has reasonable
 33 cause to suspect that an endangered or impaired adult has been subjected to
 34 conditions or circumstances which would reasonably result in ~~abuse, sexual~~
 35 abuse, neglect, or exploitation, adult maltreatment, as defined in this
 36 chapter, he or she shall immediately report or cause a report to be made in

1 accordance with the provisions of this section:

2 (A) A physician;

3 (B) A surgeon;

4 (C) A coroner;

5 (D) A dentist;

6 (E) An osteopath;

7 (F) A resident intern;

8 (G) A ~~registered~~ nurse;

9 (H) Hospital personnel who are engaged in the
10 administration, examination, care, or treatment of persons;

11 (I) Any social worker;

12 (J) A case manager;

13 (K) A case worker;

14 (L) A mental health professional;

15 (M) A peace officer;

16 (N) A law enforcement officer;

17 (O) A facility administrator;

18 (P) An employee in a facility;

19 (Q) An employee of the Department of Human Services;

20 (R) A firefighter; ~~or~~

21 (S) An emergency medical technician; or

22 (T) An employee of a bank or other financial institution.

23 (2) Whenever a person is required to report under this chapter
24 in his or her capacity as a member of the staff, an employee in a facility,
25 or an employee of the department, he or she shall immediately notify the
26 person in charge of the institution, facility, or agency, or that person's
27 designated agent, who shall then become responsible for making a report or
28 cause a report to be made.

29 (3) In addition to those persons and officials required to
30 report suspected adult ~~abuse, sexual abuse, or neglect,~~ maltreatment any
31 other person may make a report if the person has reasonable cause to suspect
32 that an adult has been ~~abused, neglected, or exploited~~ maltreated, as defined
33 in this chapter.

34 (b)(1) ~~A report required under this chapter shall be made to the~~
35 ~~central registry by the receiving agency for abused or neglected adults not~~
36 ~~residing in long-term care facilities.~~

1 ~~(2)~~ A report for ~~abused or neglected~~ maltreated adults residing
2 in a long-term care facility shall be made;

3 (A) ~~immediately~~ Immediately to the local law enforcement
4 agency for the jurisdiction in which the facility is located; and

5 (B) ~~to~~ To the Office of Long-Term Care of the Division of
6 Medical Services of the Department of Human Services, pursuant to regulations
7 of that office.

8 (2) Reports of maltreated adults who do not reside in a long-
9 term care facility shall be made to the adult maltreatment hotline.

10 ~~(3) The office shall notify the central registry and the office~~
11 ~~of the Attorney General.~~

12 (c) No privilege or contract shall relieve anyone required by this
13 subchapter to make notification of the requirement of making notification.

14
15 SECTION 7. Arkansas Code § 5-28-204 is amended to read as follows:

16 5-28-204. Report of death caused by ~~abuse~~ maltreatment.

17 (a)(1) Any person or official who is required to report cases of
18 suspected ~~abuse~~ maltreatment of adults under the provisions of this chapter
19 and who has reasonable cause to suspect that an adult has died as a result of
20 ~~abuse, sexual abuse, or negligence~~ maltreatment shall report that fact to the
21 appropriate medical examiner or coroner.

22 (2)(A) In all cases of the death of a long-term care facility
23 resident or a hospice facility resident, the long-term care facility or the
24 hospice facility shall immediately report the death to the appropriate
25 coroner.

26 (B) The report is required regardless of whether the
27 facility believes the death to be from natural causes or the result of ~~abuse,~~
28 ~~sexual abuse, negligence,~~ maltreatment or any other cause.

29 (3)(A) In all cases of the death of an individual in a hospital
30 who was a resident of a long-term care facility within five (5) days of
31 entering the hospital, the hospital shall immediately report the death to the
32 appropriate coroner.

33 (B) The report is required regardless of whether the
34 ~~facility~~ hospital believes the death to be from natural causes or the result
35 of ~~abuse, sexual abuse, negligence,~~ maltreatment or any other cause.

36 (b)(1) The medical examiner or coroner shall accept the report for

1 investigation and, upon finding reasonable cause to suspect that an adult has
 2 died as a result of ~~abuse, sexual abuse, or negligence,~~ maltreatment, shall
 3 report his findings to the police and the appropriate prosecuting attorney.

4 (2) If the institution making the report is a hospital or
 5 nursing home, the coroner shall report his findings to the hospital or
 6 nursing home unless the findings are part of a pending or ongoing law
 7 enforcement investigation.

8 (c) The medical examiner, coroner, or hospital shall also report the
 9 findings to the Department of Human Services when:

10 (1) Reasonable cause exists to believe the death resulted from
 11 ~~abuse, neglect, or exploitation~~ maltreatment of an adult; or

12 (2) There is a pending investigation concerning allegations of
 13 ~~abuse or neglect~~ maltreatment occurring prior to death, upon request of the
 14 department.

15
 16 SECTION 8. Arkansas Code § 5-28-206 through 5-28-209 are repealed:

17 ~~5-28-206. Reporting procedures generally.~~

18 ~~(a) A report of abuse, sexual abuse, neglect, or exploitation of an~~
 19 ~~adult may be made by telephone, pursuant to this chapter, and shall be~~
 20 ~~followed by a written report within forty eight (48) hours, if so requested~~
 21 ~~by the receiving agency or statewide central registry.~~

22 ~~(b) When a report is initially received by an agency other than the~~
 23 ~~central registry, the receiving agency shall immediately forward a copy of~~
 24 ~~the report to the central registry.~~

25 ~~(c) When appropriate, a copy of the initial report shall immediately~~
 26 ~~be made available to the appropriate law enforcement agency for its~~
 27 ~~consideration.~~

28
 29 ~~5-28-207. Contents of central registry.~~

30 ~~The central registry shall contain, but shall not be limited to:~~

31 ~~(1) Information contained in the initial written or telephone report;~~

32 ~~(2) Records of final disposition of the report and the investigation~~
 33 ~~thereof, including services offered and services accepted, and whether the~~
 34 ~~report is founded or unfounded;~~

35 ~~(3) The plan, if any, for rehabilitation, treatment, or preventive or~~
 36 ~~ameliorative services, or both;~~

1 ~~(4) The names and identifying data, dates, and circumstances of~~
2 ~~persons requesting or receiving information from the registry; and~~

3 ~~(5) Any other information which might be helpful in furthering the~~
4 ~~purposes of this chapter.~~

5
6 ~~5-28-208. Telephone reporting—Determination of prior records.~~

7 ~~(a) There shall be a single statewide telephone number that all~~
8 ~~persons, whether mandated by law or not, may use to report cases of suspected~~
9 ~~adult abuse, sexual abuse, exploitation, and neglect and that all persons so~~
10 ~~authorized by this chapter may use for determining the existence of prior~~
11 ~~records in order to evaluate the conditions or circumstances of the alleged~~
12 ~~abused, exploited, or neglected adult before them.~~

13 ~~(b) If the records indicate a previous report concerning the subject~~
14 ~~of the report or other pertinent information, the investigator or law~~
15 ~~enforcement, when appropriate, shall be notified of these facts.~~

16
17 ~~5-28-209. Contents of report.~~

18 ~~Reports shall include the following information:~~

19 ~~(1) The names and addresses of the next of kin or persons responsible~~
20 ~~for care, if known;~~

21 ~~(2) The victim's name, address, age, sex, and race;~~

22 ~~(3) The nature and extent of the injury, sexual abuse, neglect, or~~
23 ~~exploitation, including any evidence of previous injury, sexual abuse, or~~
24 ~~negligence to the person;~~

25 ~~(4) The names and addresses of the persons responsible for the injury,~~
26 ~~sexual abuse, neglect, or exploitation, if known;~~

27 ~~(5) Family composition;~~

28 ~~(6) The source of the report;~~

29 ~~(7) The person making the report;~~

30 ~~(8) Photographs, videos, and X rays with the identification of the~~
31 ~~photographer and date taken; and~~

32 ~~(9) Other information that the person making the report believes may~~
33 ~~be helpful in the furtherance of the purposes of this chapter.~~

34
35 SECTION 9. Arkansas Code § 5-28-210 is amended to read as follows:

36 5-28-210. Investigation by the Department of Human Services.

1 (a)(1)(A) ~~In cases involving an abused, neglected, or exploited adult~~
2 ~~residing in a long term care facility certified pursuant to Title XIX of the~~
3 ~~Social Security Act, the local law enforcement agency or the office of the~~
4 ~~Attorney General shall make a thorough investigation.~~

5 (B) ~~In all other cases involving abused, neglected, or~~
6 ~~exploited adults, the Department of Human Services shall make a thorough~~
7 ~~investigation.~~

8 (2) ~~Referrals may be made to local law enforcement during the~~
9 ~~pendency of the department's investigation where cause exists to believe that~~
10 ~~a crime may have occurred. The department shall conduct a thorough~~
11 investigation of all suspected adult maltreatment in accordance with §. 5-28-
12 218.

13 (b) ~~The primary purpose of an investigation is to protect the abused,~~
14 ~~neglected, or exploited adult purposes of the investigation are to protect~~
15 the maltreated adult and to refer for prosecution those persons who maltreat
16 any endangered or impaired adult.

17 (c)(1) The investigation shall be completed and ~~a~~ an investigative
18 determination entered within sixty (60) days.

19 (2) The investigation and written investigative report shall
20 include:

21 (A) The nature, extent, and cause of the ~~abuse, sexual~~
22 ~~abuse, neglect, or exploitation~~ maltreatment of the adult;

23 (B) The identity of the person responsible;

24 (C) The names and conditions of other adults in the home,
25 if the incident occurred in the home;

26 (D) The evaluation of the persons responsible for the care
27 of the ~~abused, neglected, or exploited~~ maltreated adult, if any;

28 (E) The home environment and relationship of the ~~abused,~~
29 ~~neglected, or exploited~~ maltreated adult to the next of kin or other person
30 responsible for his or her care, and all other pertinent data; and

31 (F)(i)(a) A visit to the ~~abused, neglected, or exploited~~
32 maltreated adult's home if the incident occurred in the home and an interview
33 with the ~~abused, neglected, or exploited~~ maltreated adult.

34 **(b)(ii)** The investigators shall interview the
35 ~~abused, neglected, or exploited~~ maltreated adult alone and out of the hearing
36 of any next of kin or other persons responsible for his or her care.

1 ~~(e)(iii)~~ An interpreter may be present during the
2 interview of the abused, neglected, or exploited maltreated adult, if
3 necessary.

4 ~~(ii)~~ If the admission to the home, institution, or
5 other place that the abused, neglected, or exploited adult may be, or
6 permission of the next of kin or other person responsible for the adult or in
7 charge of any place where the abused, neglected, or exploited adult may be,
8 cannot be obtained, then the probate court, upon cause shown, shall order the
9 next of kin or person responsible and in charge of any place where the
10 abused, neglected, or exploited adult may be to allow entrance for the
11 examination and investigation.

12 ~~(G)~~ Further, if admission to the home cannot be obtained
13 due to hospitalization or similar absence of the abused, neglected, or
14 exploited adult and admission to the home is necessary to complete the
15 investigation, then the probate court, upon cause shown, shall order and
16 authorize law enforcement to assist the department in obtaining entrance to
17 the home for the required investigation of the home environment.

18 ~~(d)(1)~~ The investigation may include a medical, psychological, social,
19 vocational, financial, and educational evaluation and review, where
20 necessary.

21 ~~(2)(A)~~ The medical, mental health, or other records regarding
22 the abused, neglected, or exploited adult maintained by any facility or
23 maintained by any person required by § 5-28-203 to report suspected abuse,
24 neglect, or exploitation shall be made available to the department for the
25 purposes of conducting an evaluation or review under this subsection.

26 ~~(B)~~ Financial records maintained by a bank or similar
27 institution shall be made available to the department for the purpose of
28 conducting an evaluation or review under this subsection.

29 ~~(3)~~ No privilege or contract shall relieve anyone required by
30 this subchapter to make notification of the requirement of making
31 notification.

32 ~~(e)(1)~~ If, before the investigation is completed, the opinion of the
33 investigators is that the immediate removal of the abused, neglected, or
34 exploited adult is necessary to protect him or her from further abuse, sexual
35 abuse, exploitation, or neglect, the investigators may petition the probate
36 court for an order of temporary custody or exercise a seventy-two hour hold

1 ~~pursuant to § 5-28-301.~~

2 ~~(2)(A) If, before the investigation is completed, the opinion of~~
3 ~~the investigators is that the abused, exploited, or neglected adult is in~~
4 ~~imminent danger of death or serious bodily harm, that available services have~~
5 ~~been offered to alleviate the danger and have been refused, and the abused,~~
6 ~~exploited, or neglected adult's capacity to comprehend the nature and~~
7 ~~consequences of remaining in the situation or condition cannot be adequately~~
8 ~~assessed in the home, the investigators may petition the probate court for an~~
9 ~~order of temporary protective custody for the purpose of having the adult~~
10 ~~evaluated.~~

11 ~~(B) The probate court, upon good cause being shown, may~~
12 ~~issue an order for temporary custody for the purpose of having the adult~~
13 ~~evaluated.~~

14 ~~(C) The petition shall be filed and the order issued in~~
15 ~~the manner and procedures provided in § 5-28-303.~~

16 ~~(f) The department shall make a written report or case summary,~~
17 ~~together with services offered and accepted, to the state central registry on~~
18 ~~forms supplied by the registry for the purpose.~~

19 ~~(g) Upon completion of the investigation, the investigating agency~~
20 ~~shall determine that the allegations of adult abuse, sexual abuse, neglect,~~
21 ~~or exploitation are either:~~

22 ~~(1)(A)(i) Unfounded, which shall be entered when the allegation~~
23 ~~is not supported by a preponderance of the evidence.~~

24 ~~(ii) Unfounded reports may be used within the~~
25 ~~department prior to expungement for purposes of danger assessment on future~~
26 ~~reports.~~

27 ~~(iii) There can be no disclosure outside the~~
28 ~~department of unfounded reports or information obtained during an unfounded~~
29 ~~investigation, except for release to:~~

30 ~~(a) The prosecutor for the limited purpose of~~
31 ~~prosecution of a person who willfully makes false notification pursuant to~~
32 ~~this subchapter;~~

33 ~~(b) A subject of the report, as limited by §~~
34 ~~5-28-212; or~~

35 ~~(c) A court if the information in the record~~
36 ~~is necessary for a determination of an issue before the court.~~

1 ~~(B)(i) This section shall not prevent the department,~~
2 ~~prior to completion of an investigation, from:~~

3 ~~(a) Offering services;~~

4 ~~(b) Petitioning the court for protective~~
5 ~~eustody; or~~

6 ~~(c) Petitioning the probate court for an order~~
7 ~~of investigation.~~

8 ~~(ii) Further, this section shall not prohibit~~
9 ~~sharing of information prior to investigative determination, as discussed~~
10 ~~elsewhere in this chapter, with:~~

11 ~~(a) Law enforcement;~~

12 ~~(b) Coroners or medical examiners; or~~

13 ~~(c) Prosecutors.~~

14 ~~(C)(i) If the investigation cannot be completed, the~~
15 ~~investigation shall be determined incomplete and placed in inactive status~~
16 ~~for one (1) year, at which time it will be expunged.~~

17 ~~(ii) The report shall include documentation~~
18 ~~indicating why the investigation could not be completed.~~

19 ~~(D) For purposes of disclosure, pending or inactive~~
20 ~~reports shall be treated as unfounded; and~~

21 ~~(2)(A) Founded, which shall be entered when the allegation is~~
22 ~~supported by a preponderance of the evidence.~~

23 ~~(B) A determination of founded shall not be entered solely~~
24 ~~because an adult practicing his or her religious beliefs is receiving~~
25 ~~spiritual treatment as indicated in § 5-28-105.~~

26 ~~(h) The founded investigative reports maintained in the department's~~
27 ~~central registry shall be made available to the probate court upon request.~~

29 SECTION 10. Arkansas Code § 5-28-211 and 5-28-212 are repealed:

30 ~~5-28-211. Rights of subject of report—Notice of finding—Amendment~~
31 ~~and appeal.~~

32 ~~(a)(1)(A) At any time, the subject of a report may receive, upon~~
33 ~~request, a report of all information contained in the central registry~~
34 ~~concerning completed founded investigations of which he or she is a subject.~~

35 ~~(B) However, the director of the department or his authorized~~
36 ~~agent is authorized to prohibit the release of data that would identify the~~

1 ~~person who made the report or who cooperated in a subsequent investigation if~~
2 ~~the director reasonably finds the data to be detrimental to the interest or~~
3 ~~safety of the person.~~

4 ~~(2)(A) With respect to pending or inactive investigations, the~~
5 ~~subject may only be advised that the investigation is pending or inactive.~~

6 ~~(B) With respect to unfounded investigations, the subject~~
7 ~~may only be advised that a report was unfounded and of the date the~~
8 ~~determination was made.~~

9 ~~(b)(1)(A) Following completion of the investigation, the department~~
10 ~~shall notify each known subject of the report of the determination within~~
11 ~~thirty (30) days after completion of the investigation.~~

12 ~~(ii) In cases of unfounded self neglect, no~~
13 ~~notification to the subject of the report is required.~~

14 ~~(B) If the report is determined to be founded,~~
15 ~~notification shall be by hand delivery or by certified mail, restricted~~
16 ~~delivery.~~

17 ~~(2) Such notification shall include the following:~~

18 ~~(A) The investigative determination, exclusive of the~~
19 ~~source of the notification;~~

20 ~~(B) A statement that a subject of a founded report may~~
21 ~~request an administrative hearing;~~

22 ~~(C) A statement that such request must be made to the~~
23 ~~department within thirty (30) days of receipt of the notice of determination;~~
24 ~~and~~

25 ~~(D) The name of the person making notification, his~~
26 ~~occupation, and where he can be reached.~~

27 ~~(e) The administrative hearing process must be completed within one~~
28 ~~hundred eighty (180) days from the date of the receipt of the request for a~~
29 ~~hearing unless the person appealing waives the time limit.~~

30 ~~(d)(1) When the department conducts such administrative hearings, the~~
31 ~~chief counsel of the department is authorized to require the attendance of~~
32 ~~witnesses and the production of books, records, or other documents through~~
33 ~~the issuance of subpoenas when such testimony or information is necessary to~~
34 ~~adequately present the position of the Department of Human Services, law~~
35 ~~enforcement, the Attorney General's office, or the alleged offender in a~~
36 ~~report.~~

1 ~~(2) Failure to obey the subpoena may be deemed a contempt,~~
2 ~~punishable accordingly.~~

3 ~~(e) No action by appeal from a determination that a report is founded~~
4 ~~shall be brought more than two (2) years after the completion of the~~
5 ~~investigation.~~

6
7 ~~5-28-212. Expungement of information.~~

8 ~~Unless an investigation of a report conducted pursuant to this chapter~~
9 ~~determines that a preponderance of the evidence exists of alleged abuse,~~
10 ~~sexual abuse, or neglect of an endangered adult, all information identifying~~
11 ~~the subject of the report shall be expunged from the central registry one (1)~~
12 ~~year after the report was filed with the Department of Human Services.~~

13
14 SECTION 11. Arkansas Code § 5-28-213. is amended to read as follows:

15 5-28-213. Availability of founded reports of adult ~~abuse~~ maltreatment.

16 (a) Reports made pursuant to this chapter which are determined to be
17 founded, as well as any other information obtained, and reports written or
18 photographs taken concerning founded reports in the possession of the
19 Department of Human Services shall be confidential and shall be made
20 available only to:

21 (1) A physician who has before him an endangered or impaired
22 adult whom he reasonably believes may have been ~~abused, sexually abused,~~
23 ~~exploited, or neglected~~ maltreated;

24 (2) A person authorized to place the adult in protective custody
25 when such a person has before him an adult whom he reasonably believes may
26 have been ~~abused, sexually abused, exploited, or neglected~~ maltreated, and
27 the person requires the information to determine whether to place the adult
28 in protective custody;

29 (3) An authorized agency having responsibility for the care or
30 supervision of an endangered or impaired adult;

31 (4) Any person who is the subject of a report;

32 (5) A grand jury or court, where it determines that such
33 information is necessary for the determination of an issue before the grand
34 jury or court;

35 (6)(A) A prosecuting attorney, law enforcement official, or
36 coroner ~~conducting a criminal investigation or investigating a death;~~ or

1 (B) The Attorney General or his designated investigator
2 ~~when conducting an investigation of abuse, exploitation, or neglect;~~

3 (7)(A) A mandated reporter who has made a report of suspected
4 ~~abuse, neglect, or exploitation~~ maltreatment, only to the extent that he or
5 she may be informed after completion and closure of the investigation whether
6 legal action was taken, services were provided, or no action was taken.

7 (B) No further information shall be released and the
8 person shall be informed of the confidentiality of the information and the
9 penalties for disclosure; ~~and~~

10 (8)(A) ~~Agencies employing personal care assistants~~ Employers or
11 volunteer agencies for purposes of screening employees, applicants, or
12 volunteers upon submission of a signed, notarized release from the employee,
13 applicant, or volunteer.

14 (B) The only information released to the employer or
15 agency will be whether or not the registry contains any founded reports
16 naming the employee, applicant, or volunteer as an offender; ~~;~~

17 (9) The Department of Human Services Death Review Committee;

18 (10) The current administrator of the facility, if the incident
19 occurred in a long-term care facility; and

20 (11) The administrator of the facility that currently employs
21 the offender, if different from the facility in which the incident occurred.

22 (b)(1) Under no circumstances shall the information contained in the
23 statewide central registry be released unless the person's or official's
24 capacity is confirmed by the department ~~and the released information states~~
25 ~~whether or not the report is founded or unfounded.~~

26 (2) No person or agency, except the subject of the report, to
27 whom disclosure is made may disclose to any other person reports or other
28 information obtained under this section.

29 (c)(1) ~~A person given access to names or other information identifying~~
30 ~~a subject of a report, except the subject of a report, shall not divulge or~~
31 ~~make public identifying information unless he or she is an agent of the~~
32 ~~department, the prosecuting attorney, or other law enforcement official and~~
33 ~~the purpose is to initiate or provide evidence in a court action. The~~
34 department shall not release data that would identify the person who made the
35 report except to law enforcement, the prosecuting attorney, or the Office of
36 the Attorney General.

1 (2) A court of competent jurisdiction may order release of data
2 that would identify the person who made the report after the court has
3 reviewed, in camera, the record related to the report and has found that
4 disclosure is needed to prevent execution of a crime or for prosecution of a
5 crime.

6 (d) However, information contained in the ~~statewide central registry~~
7 adult maltreatment central registry for ~~abused~~ maltreated adults may be made
8 available to bona fide and approved research groups solely for the purpose of
9 scientific research, but in no event shall the names of individuals be
10 released, nor shall specific circumstances or facts related to a specific
11 individual be utilized in any research report which might be identifiable
12 with such individual.

13 (e) Any person who willfully permits and any other person who
14 encourages the release of data or information contained in the central
15 registry to persons not permitted by this chapter shall be guilty of a Class
16 A misdemeanor.

17
18 SECTION 12. Arkansas Code Title 5, Chapter 28, Subchapter 2 is amended
19 to add additional sections to read as follows:

20 5-28-217. Adult maltreatment hotline.

21 (a) The Department of Human Services shall maintain a single statewide
22 telephone number that all persons, whether mandated by law or not, may use to
23 report cases of suspected adult maltreatment.

24 (b) The hotline shall, if possible, obtain the following information
25 from the person making the report:

26 (1) The names, phone numbers, and addresses of the next of kin
27 or persons responsible for care of the endangered or impaired adult, if
28 known;

29 (2) The victim's name, address, phone number, age, sex, and
30 race;

31 (3) The nature and extent of maltreatment, including any
32 evidence of previous maltreatment to the person;

33 (4) The names and addresses of the persons suspected to be
34 responsible for the maltreatment, if known;

35 (5) Family composition;

36 (6) The source of the report;

1 (7) The person making the report;

2 (8) Whether or not any photographs, videos, or X rays exist that
3 are probative as to the existence of maltreatment, including the location of
4 the item;

5 (9) The identity of any individual who witnessed, or may have
6 witnessed, the event being reported, and the identity of any individuals who
7 know, or may know, any facts concerning the event being reported; and

8 (10) Other information that the person making the report
9 believes may be helpful in the furtherance of the purposes of this chapter.

10 (c) When appropriate, a copy of the initial report shall immediately
11 be made available to the appropriate law enforcement agency for its
12 consideration.

13 (d)(1)(A) The department shall not release data that would identify
14 the person who made the report unless a court of competent jurisdiction
15 orders release of the information after the court has reviewed, in camera,
16 the record related to the report and has found that disclosure is needed to
17 prevent execution of a crime or disclosure is necessary for prosecution of a
18 crime;

19 (B) However, any person to whom the name of the reporter
20 is disclosed, is prohibited from redisclosing this information, except as
21 outlined in subdivision (d)(2) of this section.

22 (2)(A) The information shall be disclosed to the Attorney
23 General, prosecuting attorney, or law enforcement officers upon request;

24 (B) However, the information remains confidential until
25 criminal charges are filed.

26 (e) An allegation of suspected adult maltreatment shall be accepted if
27 the allegations, if true, would constitute adult maltreatment and as long as
28 sufficient identifying information is provided to identify and locate the
29 victim.

30 (f)(1) The hotline shall accept a report if the victim or offender is
31 present in Arkansas or if the incident occurred in Arkansas.

32 (2) If the incident occurred in another state, the hotline shall
33 screen out the report and transfer the report to the hotline of the state in
34 which the incident occurred.

35 (3) Upon request from adult maltreatment investigators in other
36 states, the department shall complete courtesy interviews with the victim,

1 offender, or witnesses of adult maltreatment who resides in Arkansas.

2 (g) Upon registration of a hotline report of suspected adult
3 maltreatment, the hotline shall refer the matter immediately to the
4 appropriate investigating agency as outlined in §§ 5-28-107 and 5-28-218.

5
6 5-28-218. Investigation by Department of Human Services.

7 The Department of Human Services shall have jurisdiction to investigate
8 all cases of suspected maltreatment of an endangered or impaired adult, as
9 follows:

10 (1) The Department of Human Services Adult Protective Services Unit
11 shall investigate:

12 (A) All cases of suspected maltreatment of an endangered or
13 impaired adult when the act or omission occurs in a place other than a long-
14 term care facility; and

15 (B) All cases of suspected maltreatment of an endangered or
16 impaired adult if a family member is named as the suspected offender,
17 regardless of whether or not the endangered or impaired adult resides in a
18 long-term care facility.

19 (2) The Office of Long Term Care of the Department of Human Services
20 shall investigate all cases of suspected maltreatment of an endangered or
21 impaired adult occurring in a long-term care facility.

22 (3) If requested by the Department of Human Services law enforcement
23 agencies shall assist in the investigation of any case of suspected adult
24 maltreatment.

25
26 5-28-219. Investigative powers of the Department of Human Services.

27 (a) If admission cannot be obtained to the home, institution, or other
28 place in which an allegedly maltreated adult may be present, the circuit
29 court, upon good cause shown, shall order the person responsible for or in
30 charge of the place to allow entrance for the examination and investigation.

31 (b) Further, if admission to the home cannot be obtained due to
32 hospitalization or similar absence of the maltreated adult and admission to
33 the home is necessary to complete the investigation, the circuit court, upon
34 good cause shown, shall order law enforcement to assist the Department of
35 Human Services to obtain entrance to the home for the required investigation
36 of the home environment.

1 (c)(1) Upon request, the medical, mental health, or other records
2 regarding the maltreated adult maintained by any facility or maintained by
3 any person required by this chapter to report suspected adult maltreatment,
4 shall be made available to the department for the purpose of conducting an
5 investigation under this subsection.

6 (2) Upon request, financial records regarding the maltreated
7 adult maintained by a bank or similar institution shall be made available to
8 the department for the purpose of conducting an investigation under this
9 subsection.

10 (3) The circuit court, upon good cause shown, shall order any
11 facility or person who maintains medical, mental health, or other records
12 regarding the maltreated adult to tender records to the department for the
13 purpose of conducting an investigation under this subsection.

14 (d) The investigation may include a medical, psychological, social,
15 vocational, financial, and educational evaluation and review, if necessary.

16 (e)(1) If, before the investigation is completed, the *Adult Protective*
17 *Services Unit* determines that the immediate removal of the maltreated adult
18 is necessary to protect him or her from further maltreatment, the *Adult*
19 *Protective Services Unit* may petition the probate division of circuit court
20 for an order of temporary custody or may exercise a seventy-two (72) hour
21 hold pursuant to § 5-28-301.

22 (2)(A) The *Adult Protective Services Unit* may petition the
23 probate division of circuit court for an order of temporary custody for the
24 purpose of having the adult evaluated, if, before the investigation is
25 completed, the *Adult Protective Services Unit* determines that:

26 (i) The maltreated adult is in imminent danger of
27 death or serious bodily harm;

28 (ii) Available protective services have been offered
29 to alleviate the danger and have been refused; and

30 (iii) The maltreated adult's capacity to comprehend
31 the nature and consequences of remaining in the situation or condition cannot
32 be adequately assessed in the home.

33 (B) The probate division of circuit court, upon good cause
34 being shown, may issue an order for temporary custody for the purpose of
35 having the adult evaluated.

36 (C) The petition shall be filed and the order issued in

1 the manner and procedures provided in § 5-28-303.

2
3 5-28-220. Rights of subject of report - Investigative determination of
4 the department - Notice of finding - Appeal.

5 (a) Upon completion of an investigation, the department shall
6 determine that the allegations of adult maltreatment are either:

7 (1)(A) Unfounded, a finding that shall be entered if the
8 allegation is not supported by a preponderance of the evidence.

9 (B) All information identifying the subject of the report
10 shall be expunged one (1) year after completion of the investigation; or

11 (2)(A) Founded, a finding that shall be entered if the
12 allegation is supported by a preponderance of the evidence.

13 (B) A determination of founded shall not be entered solely
14 because an adult, practicing his or her religious beliefs, is receiving
15 spiritual treatment under § 5-28-105.

16 (b)(1)(A) After making an investigative determination, the department
17 shall, within ten (10) business days, notify in writing:

18 (i) The person identified as the offender;

19 (ii) The person identified as the maltreated adult,
20 except that in cases of unfounded self-neglect no notice is required;

21 (iii) The legal guardian of the maltreated adult;

22 and

23 (iv) The current administrator of the facility if
24 the incident occurred in a long-term care facility.

25 (B) If the investigation determines that the report is
26 founded, notification to the offender shall be by process server or by
27 certified mail, restricted delivery.

28 (2) The notification shall include the following:

29 (A) The investigative determination, exclusive of the
30 source of the notification, including the nature of the allegation and the
31 date and time of occurrence;

32 (B) A statement that an offender of a founded report has
33 the right to an administrative hearing upon a timely request;

34 (C) A statement that the request must be made to the
35 department within thirty (30) days of receipt of the notice of determination;

36 (D) A statement of intent to report in writing the founded

1 investigative determination, once the offender has had an opportunity for a
2 hearing, to:

3 (i) The adult maltreatment central registry; and

4 (ii) Any applicable licensing authority;

5 (E) A statement that the offender's failure to request a
6 hearing in writing within thirty (30) days from the date of receipt of the
7 notice, will result in submission of the investigative report, including the
8 investigative determination, to:

9 (i) The adult maltreatment central registry; and

10 (ii) Any applicable licensing authority;

11 (F) The consequences of waiving the right to an
12 administrative hearing;

13 (G) The consequences of a finding, by a preponderance of
14 the evidence, through the administrative hearing process that the
15 maltreatment occurred;

16 (H) The fact that the offender has the right to be
17 represented by an attorney at the offender's own expense; and

18 (I) The name of the person making notification, his or her
19 occupation, and the location at which he or she can be reached.

20 (c)(1) The administrative hearing process shall be completed within
21 one hundred twenty (120) days from the date of the receipt of the request for
22 a hearing unless waived by the petitioner.

23 (2) The department shall hold the administrative hearing at a
24 reasonable place and time.

25 (3) For incidents occurring in long-term care facilities, the
26 department may not make a finding that an offender has neglected a resident
27 if the offender demonstrates that the neglect was caused by factors beyond
28 the control of the offender.

29 (4) Delays in completing the hearing that are attributable to
30 the petitioner shall not count against the time limit.

31 (5) Failure to complete the hearing process in a timely fashion
32 shall not prevent the department or a court reviewing the investigative
33 determination of jurisdiction from making a final agency determination or
34 reviewing a final agency determination under the Arkansas Administrative
35 Procedure Act, § 25-15-201 et seq.

36 (d)(1) When the department conducts such administrative hearings, the

1 chief counsel of the department is authorized to require the attendance of
 2 witnesses and the production of books, records, or other documents through
 3 the issuance of subpoenas when such testimony or information is necessary to
 4 adequately present the position of the Department of Human Services or the
 5 alleged offender in a report.

6 (2) Failure to obey the subpoena may be deemed a contempt,
 7 punishable accordingly.

8 (e) If the department's investigative determination of founded is
 9 upheld during the administrative hearing process or if the offender does not
 10 timely appeal for or waives the right to an administrative hearing, the
 11 department shall report the investigative determination in writing within ten
 12 (10) working days to:

13 (1) The offender;

14 (2) The current administrator of the facility if the incident
 15 occurred in a long-term care facility;

16 (3) The administrator of the facility that currently employs the
 17 offender, if different from the facility in which the incident occurred;

18 (4) The appropriate licensing authority;

19 (5) The adult maltreatment central registry; and

20 (6) The legal guardian of the maltreated adult.

21 (7) The maltreated adult.

22
 23 5-28-221. Availability of pending and unfounded reports.

24 (a)(1) Pending reports shall be confidential and shall be made
 25 available only to:

26 (A) The Department of Human Services, including the Death
 27 Review Committee created by the director of the department;

28 (B) Law enforcement agencies;

29 (C) Prosecutors;

30 (D) The Office of the Attorney General;

31 (E) A circuit court having jurisdiction pursuant to a
 32 petition for emergency, temporary, long-term protective custody, or for
 33 protective services; and

34 (F) A grand jury or court, upon a finding that the
 35 information in the record is necessary for the determination of an issue
 36 before the court or grand jury;

1
2 (2) The subject of the report may only be advised that a report
3 is pending.

4 (b) Upon completion of the administrative hearing process, if the
5 allegation was determined to be unfounded, the investigative report shall be
6 confidential and shall be made available only to:

7 (1) The Department of Human Services, including the Death Review
8 Committee created by the director of the department;

9 (2) Law enforcement agencies;

10 (3) Prosecutors;

11 (4) The Office of the Attorney General;

12 (5) Any licensing or registering authority;

13 (6) Any person named as a subject of the report;

14 (7) A circuit court having jurisdiction pursuant to a petition
15 for emergency, temporary, long-term protective custody, or for protective
16 services; and

17 (8) A grand jury or court, upon a finding that the information
18 in the record is necessary for the determination of an issue before the court
19 or grand jury;

20
21
22 SECTION 13. Arkansas Code 5-28-202 is amended as to read as follows:

23 5-28-202 Penalties ~~for failure to report abuse.~~

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

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

31 (c) Any person, official, or institution willfully making false
32 notification under this subchapter, knowing the allegations to be false,
33 shall be guilty of a Class A misdemeanor.

34 (d) Any person, official, or institution willfully making false
35 notification under this subchapter, knowing the allegations to be false, and
36 who has been previously convicted of making false allegations shall be guilty

1 of a Class D felony.

2 (e) Any person who willfully permits, and any other person who
3 encourages, the release of data or information contained in the central
4 registry to persons to whom disclosure is not permitted under this subchapter
5 shall be guilty of a Class A misdemeanor.

6

7

/s/ Dee

APPROVED: 4/2/2003s