

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.

Act 525 of the Regular Session

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/13/09

**A Bill**

HOUSE BILL 1568

5 By: Representative Hobbs  
6 By: Senator Bledsoe  
7  
8

**For An Act To Be Entitled**

10 AN ACT TO AMEND VARIOUS PROVISIONS OF THE ADULT  
11 AND LONG-TERM CARE FACILITY RESIDENT MALTREATMENT  
12 ACT; AND FOR OTHER PURPOSES.  
13

**Subtitle**

14 AN ACT TO AMEND VARIOUS PROVISIONS OF  
15 THE ADULT AND LONG-TERM CARE FACILITY  
16 RESIDENT MALTREATMENT ACT.  
17  
18  
19

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

22 SECTION 1. Arkansas Code § 12-12-1703 is amended to read as follows:  
23 12-12-1703. Definitions.

24 As used in this subchapter:

25 (1)(A) "Abuse" means with regard to any long-term care facility  
26 resident or any patient at the Arkansas State Hospital by a caregiver:

27 (i) Any intentional and unnecessary physical act  
28 that inflicts pain on or causes injury to an endangered person or an impaired  
29 person, excluding court-ordered medical care or medical care requested by the  
30 patient or long-term care facility resident or a person legally authorized to  
31 make medical decisions on behalf of the patient or long-term care facility  
32 resident;

33 (ii) Any intentional act that a reasonable person  
34 would believe subjects an endangered person or an impaired person, regardless  
35 of age, ability to comprehend, or disability, to ridicule or psychological



1 injury in a manner likely to provoke fear or alarm, excluding necessary care  
2 and treatment provided in accordance with generally recognized professional  
3 standards of care;

4 (iii) Any intentional threat that a reasonable  
5 person would find credible and nonfrivolous to inflict pain on or cause  
6 injury to an endangered person or an impaired person except in the course of  
7 medical treatment or for justifiable cause; or

8 (iv) Any willful infliction of injury, unreasonable  
9 confinement, intimidation, or punishment with resulting physical harm, pain,  
10 or mental anguish.

11 (B) "Abuse" means with regard to any person who is not a  
12 long-term care facility resident or a patient at the Arkansas State Hospital:

13 (i) Any intentional and unnecessary physical act  
14 that inflicts pain on or causes injury to an endangered person or an impaired  
15 person;

16 (ii) Any intentional act that a reasonable person  
17 would believe subjects an endangered person or an impaired person, regardless  
18 of age, ability to comprehend, or disability, to ridicule or psychological  
19 injury in a manner likely to provoke fear or alarm; or

20 (iii) Any intentional threat that a reasonable  
21 person would find credible and nonfrivolous to inflict pain on or cause  
22 injury to an endangered person or an impaired person except in the course of  
23 medical treatment or for justifiable cause;

24 (2) "Adult maltreatment" means abuse, exploitation, neglect, or  
25 sexual abuse of an adult;

26 (3) "Caregiver" means a related person or an unrelated person,  
27 an owner, an agent, a high managerial agent of a public or private  
28 organization, or a public or private organization that has the responsibility  
29 for the protection, care, or custody of an endangered person or an impaired  
30 person as a result of assuming the responsibility voluntarily, by contract,  
31 through employment, or by order of a court;

32 (4) "Department" means the Department of Human Services;

33 (5) "Endangered person" means:

34 (A) A person eighteen (18) years of age or older who:

35 (i) Is found to be in a situation or condition that  
36 poses a danger to himself or herself; and

1 (ii) Demonstrates a lack of capacity to comprehend  
2 the nature and consequences of remaining in that situation or condition; or

3 (B) A long-term care facility resident who:

4 (i) Is found to be in a situation or condition that  
5 poses an imminent risk of death or serious bodily harm to the long-term care  
6 facility resident; and

7 (ii) Demonstrates a lack of capacity to comprehend  
8 the nature and consequences of remaining in that situation or condition;

9 (6) "Exploitation" means the:

10 (A) Illegal or unauthorized use or management of an  
11 endangered person's or an impaired person's funds, assets, or property;

12 (B) Use of an adult endangered person's or an adult  
13 impaired person's power of attorney or guardianship for the profit or  
14 advantage of one's own self or another; ~~or~~

15 (C) The fraudulent or otherwise illegal, unauthorized, or  
16 improper act or process of a person, including a caregiver or fiduciary, that  
17 uses the resources of an endangered person or impaired person, or long-term  
18 care facility resident for monetary or personal benefit, profit, or gain, or  
19 that results in depriving the endangered person or impaired person, or long-  
20 term care facility resident of rightful access to, or use of, benefits,  
21 resources, belongings, or assets; or

22 ~~(C)(D)~~ Misappropriation of property of a long-term care  
23 facility resident, that is, the deliberate misplacement, exploitation, or  
24 wrongful, temporary, or permanent use of a long-term care facility resident's  
25 belongings or money without the long-term care facility resident's consent;

26 (7)(A) "Fiduciary" means a person or entity with the legal  
27 responsibility to:

28 (i) Make decisions on behalf of and for the benefit  
29 of another person; and

30 (ii) Act in good faith and with fairness;

31 (B) "Fiduciary" includes without limitation:

32 (i) A trustee;

33 (ii) A guardian;

34 (iii) A conservator;

35 (iv) An executor;

36 (v) An agent under financial power of attorney or

1 health care power of attorney; or

2 (vi) A representative payee;

3 ~~(7)~~(8) “Imminent danger to health or safety” means a situation in  
4 which death or serious bodily harm could reasonably be expected to occur  
5 without intervention;

6 ~~(8)~~(A)(9)(A) “Impaired person” means a person eighteen (18)  
7 years of age or older who as a result of mental or physical impairment is  
8 unable to protect himself or herself from abuse, sexual abuse, neglect, or  
9 exploitation.

10 (B) For purposes of this subchapter, a long-term care  
11 facility resident is presumed to be an impaired person;

12 ~~(9)~~(10) “Long-term care facility” means:

13 (A) A nursing home;

14 (B) A residential care facility;

15 (C) A post-acute head injury retraining and residential  
16 facility;

17 (D) An assisted living facility;

18 (E) An intermediate care facility for individuals with  
19 mental retardation; or

20 (F) Any facility that provides long-term medical or  
21 personal care;

22 ~~(10)~~(11) “Long-term care facility resident” means a person,  
23 regardless of age, living in a long-term care facility;

24 ~~(11)~~(12) “Long-term care facility resident maltreatment” means  
25 abuse, exploitation, neglect, or sexual abuse of a long-term care facility  
26 resident;

27 ~~(12)~~(13) “Maltreated adult” means an adult who has been abused,  
28 exploited, neglected, physically abused, or sexually abused;

29 ~~(13)~~(14) “Maltreated person” means a person, regardless of age,  
30 who has been abused, exploited, neglected, physically abused, or sexually  
31 abused;

32 ~~(14)~~(15) “Neglect” means:

33 (A) An act or omission by an endangered person or an  
34 impaired person, for example, self-neglect; or

35 (B) An act or omission by a caregiver responsible for the  
36 care and supervision of an endangered person or an impaired person

1 constituting:

2 (i) Negligently failing to provide necessary  
3 treatment, rehabilitation, care, food, clothing, shelter, supervision, or  
4 medical services to an endangered person or an impaired person;

5 (ii) Negligently failing to report health problems  
6 or changes in health problems or changes in the health condition of an  
7 endangered person or an impaired person to the appropriate medical personnel;

8 (iii) Negligently failing to carry out a prescribed  
9 treatment plan; or

10 (iv) Negligently failing to provide goods or  
11 services to a long-term care facility resident necessary to avoid physical  
12 harm, mental anguish, or mental illness as defined in regulations promulgated  
13 by the Office of Long-Term Care;

14 ~~(15)(A)~~(16)(A) "Physical injury" means the impairment of a  
15 physical condition or the infliction of substantial pain on a person.

16 (B) If the person is an endangered person or an impaired  
17 person, there ~~shall be~~ is a presumption that any physical injury resulted in  
18 the infliction of substantial pain;

19 ~~(16)~~(17) "Serious bodily harm" means sexual abuse, physical  
20 injury, or serious physical injury;

21 ~~(17)~~(18) "Serious physical injury" means physical injury to an  
22 endangered person or an impaired person that creates a substantial risk of  
23 death or that causes protracted disfigurement, protracted impairment of  
24 health, or loss or protracted impairment of the function of any bodily member  
25 or organ;

26 ~~(18)~~(19) "Sexual abuse" means deviate sexual activity, sexual  
27 contact, or sexual intercourse, as those terms are defined in § 5-14-101,  
28 with another person who is not the actor's spouse and who is incapable of  
29 consent because he or she is mentally defective, mentally incapacitated, or  
30 physically helpless; and

31 ~~(19)~~(20) "Subject of the report" means:

32 (A) The endangered person or impaired person;

33 (B) The adult's legal guardian;

34 (C) The natural or legal guardian of a long-term care  
35 facility resident under eighteen (18) years of age; and

36 (D) The offender.

1  
2 SECTION 2. Arkansas Code § 12-12-1714(d)(6) concerning appointed  
3 counsel during investigations by the Department of Human Services, is amended  
4 to read as follows:

5 (6)(A) The allegedly maltreated adult has a right to counsel,  
6 including appointed counsel if indigent, and a right to a hearing within five  
7 (5) business days after ~~issuance of an~~ the allegedly maltreated adult is  
8 served with the ex parte order of investigation.

9 (B) If the allegedly maltreated adult is not indigent, the  
10 circuit court has the authority to appoint counsel to represent the allegedly  
11 maltreated adult and to direct payment from the assets of the adult for legal  
12 services received by the adult.

13 (C) If the department determines the allegedly maltreated  
14 adult is not endangered or impaired and releases the allegedly maltreated  
15 adult or ceases any assessment, a hearing under subdivision (b)(6)(A) is not  
16 required.

17  
18 SECTION 3. Arkansas Code § 12-12-1715 is amended to read as follows:  
19 12-12-1715. Rights of subject of report – Investigative determination  
20 of the Department of Human Services – Notice of finding – Appeal.

21 (a) Upon completion of an investigation, the Department of Human  
22 Services shall determine that an allegation of adult maltreatment or long-  
23 term care facility maltreatment is either:

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

26 (B)(i) An unfounded report shall be expunged one (1) year  
27 after the completion of the investigation.

28 (ii) Demographic information may be retained for  
29 statistical purposes; or

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

32 (B) A determination of founded but exempt shall ~~not~~ be  
33 entered ~~solely because~~ on a report if an adult practicing his or her  
34 religious beliefs is receiving spiritual treatment under § 5-28-105 or § 12-  
35 12-1704.

36 (b)(1)(A) After making an investigative

1 determination, the department shall notify in writing within ten (10)  
2 business days:

3 (i)(a) The person identified as the offender.

4 (b) However, in cases of unfounded self-  
5 neglect, no notice is required;

6 (ii) Either the:

7 (a) Person identified as the maltreated  
8 person;

9 (b) Legal guardian of the maltreated person;

10 or

11 (c) Natural or legal guardian of a long-term  
12 care facility resident under eighteen (18) years of age;

13 (iii) The current administrator of the long-term  
14 care facility if the incident occurred in a long-term care facility; and

15 (iv) If known by the Office of Long-term Care, the  
16 administrator of the long-term care facility that currently employs the  
17 offender if different from the long-term care facility in which the incident  
18 occurred.

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

22 (2) The notification under subdivision (b)(1) of this section  
23 shall include the following:

24 (A) The investigative determination, exclusive of the  
25 source of the notification, including the nature of the allegation and the  
26 date and time of occurrence;

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

29 (C) A statement that the request for an administrative  
30 hearing shall be made to the department within thirty (30) days of receipt of  
31 the notice of determination;

32 (D) A statement that the administrative hearing will be by  
33 telephone hearing unless the offender requests an in-person hearing within  
34 thirty (30) days after the date of receipt of notice of the determination;

35 ~~(D)~~(E) A statement of intent to report in writing after  
36 the offender has had an opportunity for an administrative hearing the founded

1 investigative determination to:

2 (i) The adult and long-term care facility resident  
3 maltreatment central registry; and

4 (ii) Any applicable licensing authority;

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

9 (i) The registry; and

10 (ii) Any applicable licensing authority;

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

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

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

18 ~~(I)~~(J) The name of the person making the notification, his  
19 or her 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 offender.

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

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

29 (4) A delay in completing the administrative hearing process  
30 that is attributable to the offender shall not count against the time limit  
31 in subdivision (c)(1) of this section.

32 (5) Failure to complete the administrative hearing process in a  
33 timely fashion shall not prevent the department or a court from:

34 (A) Reviewing the investigative determination of  
35 jurisdiction;

36 (B) Making a final agency determination; or



1 (C) Reviewing a final agency determination under the  
2 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

3 (6) If any party timely requests an in-person administrative  
4 hearing, the hearing officer may notify the parties that the hearing will be  
5 conducted by video conference.

6 (d)(1) When the department conducts an administrative hearing, the  
7 chief counsel of the department may require the attendance of witnesses and  
8 the production of books, records, or other documents through the issuance of  
9 a subpoena if the testimony or information is necessary to adequately present  
10 the position of the department or the alleged offender in a report.

11 (2) Failure to obey the subpoena may be deemed a contempt and  
12 ~~shall be~~ is punishable accordingly.

13 (e) If the department's investigative determination of founded is  
14 upheld during the administrative hearing process or if the offender does not  
15 timely appeal for or waives the right to an administrative hearing, the  
16 department shall report the investigative determination in writing within ten  
17 (10) business days to:

18 (1) The offender;

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

21 (3) The administrator of the long-term care facility that  
22 currently employs the offender if different from the long-term care facility  
23 in which the incident occurred;

24 (4) The appropriate licensing authority;

25 (5) The adult and long-term care facility resident maltreatment  
26 central registry; ~~and~~

27 (6) The maltreated person or the legal guardian of the  
28 maltreated person; and

29 (7) If required under § 21-15-110, the employer of any offender  
30 if the offender is in a designated position with a state agency.

31  
32 SECTION 4. Arkansas Code § 12-12-1716(a)(2), concerning the adult and  
33 long-term care facility resident maltreatment central registry, is amended to  
34 read as follows:

35 (2) The central registry shall contain investigative  
36 determinations made by the department on all founded ~~allegations~~ reports of

1 adult maltreatment and long-term care facility resident maltreatment.

2  
3 SECTION 5. Arkansas Code § 12-12-1718 is amended to read as follows:  
4 12-12-1718. Availability of screened out, pending, and unfounded  
5 reports.

6 (a) A record of a screened-out report of adult maltreatment or long-  
7 term care facility resident maltreatment shall not be disclosed except to the  
8 Office of the Attorney General, the prosecuting attorney, and an appropriate  
9 law enforcement agency and may be used only within the Department of Human  
10 Services for purposes of administration of the program.

11 ~~(a)(1)~~(b)(1) A ~~screened-out report or a~~ pending report, including  
12 protected health information, ~~shall be~~ is confidential and shall be made  
13 available only to:

14 (A) The Department of Human Services, including the Death  
15 Review Committee of the Department of Human Services;

16 (B) A law enforcement agency;

17 (C) A prosecuting attorney;

18 (D) The office of the Attorney General;

19 (E) A circuit court having jurisdiction pursuant to a  
20 petition for emergency, temporary, long-term protective custody, or  
21 protective services;

22 (F) A grand jury or court, upon a finding that the  
23 information in the report is necessary for the determination of an issue  
24 before the grand jury or court;

25 (G) A person or provider identified by the department as  
26 having services needed by the maltreated person;

27 (H) Any applicable licensing or registering authority;

28 (I) Any employer, legal entity, or board responsible for  
29 the person named as the offender;

30 (J) Any legal entity or board responsible for the  
31 maltreated person; and

32 (K) The Division of Developmental Disabilities Services  
33 and the Division of Aging and Adult Services as to participants of the waiver  
34 program.

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

1       ~~(b)(c)~~ Upon ~~completion of the administrative hearing process~~  
2 satisfaction of due process and if an allegation was determined to be  
3 unfounded, the investigative report, including protected health information,  
4 ~~shall be~~ is confidential and shall be made available only to:

- 5           (1) The department, including the committee;
- 6           (2) A law enforcement agency;
- 7           (3) A prosecuting attorney;
- 8           (4) The office of the Attorney General;
- 9           (5) Any applicable licensing or registering authority;
- 10          (6) Any person named as a subject of the report or that person's  
11 legal guardian;
- 12          (7) A circuit court having jurisdiction pursuant to a petition  
13 for emergency, temporary, long-term protective custody, or protective  
14 services;
- 15          (8) A grand jury or court, upon a finding that the information  
16 in the record is necessary for the determination of an issue before the grand  
17 jury or court;
- 18          (9) A person or provider identified by the department as having  
19 services needed by the person;
- 20          (10) Any employer, legal entity, or board responsible for the  
21 person named as the offender;
- 22          (11) Any legal entity or board responsible for the maltreated  
23 person; and
- 24          (12) The Division of Developmental Disabilities Services and the  
25 Division of Aging and Adult Services as to participants of the waiver  
26 program.

27       ~~(e)(1)~~(d)(1) An unfounded report shall be expunged one (1) year after  
28 completion of the investigation.

29           (2) However, demographic information may be retained for  
30 statistical purposes.

31       ~~(d)(1)~~(e)(1) Except for the subject of the report, no person or agency  
32 to which disclosure is made may disclose to any other person a report or  
33 other information obtained under this section.

34           (2) Upon conviction, any person disclosing information in  
35 violation of this subsection is guilty of a Class C misdemeanor.

36       (f)(1) The department may not release data that would identify the

1 person who made a report except to law enforcement, a prosecuting attorney,  
2 or the office of the Attorney General.

3 (2) A court of competent jurisdiction may order release of data  
4 that would identify the person who made a report after the court has reviewed  
5 in camera the record related to the report and has found that disclosure is  
6 needed:

7 (A) To prevent commission of a crime; or

8 (B) For prosecution of a crime.

9  
10 SECTION 6. Arkansas Code § 12-12-1720 is amended to read as follows:  
11 12-12-1720. Penalties.

12 ~~(a)(1) Any person or caregiver required by this subchapter to report a~~  
13 ~~ease of suspected adult maltreatment or long-term care facility resident~~  
14 ~~maltreatment who purposely fails to do so shall be guilty of a Class B~~  
15 ~~misdemeanor. A person commits the offense of failure to report under this~~  
16 ~~subchapter in the first degree if he or she:~~

17 (A) Is a mandated reporter under § 12-12-1708;

18 (B) Has observed or has reasonable cause to suspect that  
19 an endangered person or impaired person has been subjected to conditions or  
20 circumstances that constitute adult maltreatment or long-term care facility  
21 resident maltreatment; and

22 (C) Knowingly fails to report or cause a report to be made  
23 to the adult and long-term care facility resident maltreatment hotline.

24 (2) Failure to report under this subchapter in the first degree  
25 is a Class B misdemeanor.

26 (b)(1) A person commits the offense of failure to report in the second  
27 degree if he or she:

28 (A) Is a mandated reporter under § 12-12-1708;

29 (B) Has observed or has reasonable cause to suspect that  
30 an endangered person or impaired person has been subjected to conditions or  
31 circumstances that constitute adult maltreatment or long-term care facility  
32 resident maltreatment; and

33 C)(i) Knowingly fails to make a report in the manner and  
34 time provided in this subchapter to the adult and long-term care facility  
35 resident maltreatment hotline.

36 (ii) Knowingly fails to cause a report to be made in

1 the manner and time provided in this subchapter to the adult and long-term  
2 care facility resident maltreatment hotline

3 (2) Failure to report in the second degree is a Class C  
4 misdemeanor.

5 ~~(b)(c)~~ Any person or caregiver required by this subchapter to report a  
6 case of suspected adult maltreatment or long-term care facility resident  
7 maltreatment who purposely fails to do so ~~shall be~~ is civilly liable for  
8 damages proximately caused by the failure.

9 ~~(e) Any person, official, or institution willfully making false~~  
10 ~~notification under this subchapter knowing the allegations to be false shall~~  
11 ~~be guilty of a Class A misdemeanor.~~

12 ~~(d)(1) Any person, official, or institution willfully making false~~  
13 ~~notification under this subchapter knowing the allegations to be false and~~  
14 ~~who has been previously convicted of making false allegations shall be guilty~~  
15 ~~of a Class D felony. A person commits the offense of false reporting of~~  
16 adult abuse if he or she purposely makes a false report to the adult and  
17 long-term care facility resident maltreatment hotline knowing the allegation  
18 in the false report to be false.

19 (2) For a first offense, false reporting of adult abuse is a  
20 Class A misdemeanor.

21 (3) For a subsequent offense, false reporting of adult abuse is  
22 a Class D felony.

23 ~~(e)(1) Any person who willfully permits and any other person who~~  
24 ~~encourages the release of data or information contained in the adult and~~  
25 ~~long-term care facility resident maltreatment central registry to a person to~~  
26 ~~whom disclosure is not permitted under this subchapter shall be guilty of a~~  
27 ~~Class A misdemeanor. A person commits the offense of unlawful disclosure of~~  
28 data or information under this subchapter if:

29 (A) He or she purposely discloses data or information to a  
30 person to whom disclosure is not permitted under § 12-12-1717 or § 12-12-  
31 1718; or

32 (B) He or she purposely encourages or permits the release  
33 of data or information to a person to whom disclosure is not permitted under  
34 § 12-12-1717 or § 12-12-1718.

35 (2) Unlawful disclosure of data or information under this  
36 subchapter is a Class A misdemeanor.

