

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 526 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 1569

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

For An Act To Be Entitled

10 AN ACT TO AMEND VARIOUS SECTIONS OF THE ADULT
11 MALTREATMENT CUSTODY ACT; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO AMEND VARIOUS SECTIONS OF THE
15 ADULT MALTREATMENT CUSTODY ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 9-20-103 is amended to read as follows:

21 9-20-103. Definitions.

22 As used in this chapter:

23 (1)(A) "Abuse" means with regard to any long-term care facility
24 resident or any person who is at the Arkansas State Hospital an act by a
25 caregiver that falls into any of the following categories:

26 (i) Any intentional and unnecessary physical act
27 that inflicts pain on or causes injury to an endangered adult or an impaired
28 adult, excluding court-ordered medical care or medical care requested by an
29 endangered adult, an impaired adult, or a person who is legally authorized to
30 make a medical decision on behalf of an endangered adult or an impaired
31 adult;

32 (ii) Any intentional act that a reasonable person
33 would believe subjects an endangered adult or impaired adult, regardless of
34 age, ability to comprehend, or disability, to ridicule or psychological
35 injury in a manner likely to provoke fear or alarm, excluding necessary care



1 and treatment provided in accordance with generally recognized professional
2 standards of care;

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

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

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

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

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

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

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

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

31 (4) "Custodian" means the Department of Human Services while the
32 department is exercising a seventy-two hour hold on an endangered or
33 impaired person or during the effective dates of an order granting custody to
34 the department;

35 ~~(4)~~(5) "Department" means the Department of Human Services;

36 ~~(5)~~(6) "Endangered adult" means:

1 (A) An adult eighteen (18) years of age or older who:
 2 (i) Is found to be in a situation or condition that
 3 poses a danger to himself or herself; and

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

6 (B) An adult resident of a long-term care facility who:
 7 (i) Is found to be in a situation or condition that
 8 poses an imminent risk of death or serious bodily harm to that person; and

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

11 ~~(6)-(7)~~ "Exploitation" means the:

12 ~~(A) The illegal or unauthorized use or management of an~~
 13 ~~endangered or impaired adult's funds, assets, or property or the use of an~~
 14 ~~endangered or impaired adult's person, power of attorney, or guardianship for~~
 15 ~~the profit or advantage of oneself or another; or~~

16 ~~(B) Misappropriation of property of an adult resident of a~~
 17 ~~long-term care facility, that is, the deliberate misplacement, exploitation,~~
 18 ~~or wrongful, temporary, or permanent use of a resident's belongings or money~~
 19 ~~without the resident's consent;~~

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

22 (B) Use of an adult endangered person's or an adult
 23 impaired person's power of attorney or guardianship for the profit or
 24 advantage of one's own self or another;

25 (C) The fraudulent or otherwise illegal, unauthorized, or
 26 improper act or process of an individual, including a caregiver or fiduciary,
 27 that uses the resources of an endangered or impaired person or long-term care
 28 facility resident for monetary or personal benefit, profit, or gain or that
 29 results in depriving the person or resident of rightful access to or use of
 30 benefits, resources, belongings, or assets; or

31 (D) Misappropriation of property of a long-term care
 32 facility resident;

33 (8)(A) "Fiduciary" means a person or entity with the legal
 34 responsibility to:

35 (i) Make decisions on behalf of and for the benefit
 36 of another person; and

1 (ii) Act in good faith and with fairness.

2 (B) "Fiduciary" includes without limitation, a trustee, a
3 guardian, a conservator, an executor, an agent under financial power of
4 attorney or health care power of attorney, or a representative payee;

5 ~~(7)~~(9) "Imminent danger to health or safety" means a situation
6 in which death or serious bodily harm could reasonably be expected to occur
7 without intervention;

8 ~~(8)(A)~~(10)(A) "Impaired adult" means a person eighteen (18)
9 years of age or older who, as a result of mental or physical impairment, is
10 unable to protect himself or herself from abuse, sexual abuse, neglect, or
11 exploitation.

12 (B) For purposes of this chapter, residents of a long-term
13 care facility are presumed to be impaired persons.

14 (C) For purposes of this chapter, a person with a mental
15 impairment does not include a person who is in need of acute psychiatric
16 treatment, chronic mental health treatment, alcohol or drug abuse treatment
17 or casework supervision by mental health professionals;

18 ~~(9)~~(11) "Long-term care facility" means:

19 (A) A nursing home;

20 (B) A residential care facility;

21 (C) A post-acute head injury retraining and residential
22 facility;

23 (D) An assisted living facility;

24 (E) An intermediate care facility for individuals with
25 mental retardation; or

26 (F) Any facility that provides long-term medical or
27 personal care;

28 ~~(10)~~(12) "Long-term care facility resident" means a person
29 eighteen (18) years of age or older living in a long-term care facility;

30 ~~(11)~~(13) "Long-term care facility resident maltreatment" means
31 abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult
32 resident of a long-term care facility;

33 ~~(12)~~(14) "Maltreated adult" means an adult who has been abused,
34 exploited, neglected, physically abused, or sexually abused;

35 (15) "Misappropriation of property of a long-term care facility
36 resident" means the deliberate misplacement, exploitation, or wrongful,

1 temporary, or permanent use of a long-term care facility resident's
2 belongings or money without the long-term care facility resident's consent;

3 ~~(13)~~(16) "Neglect" means:

4 (A) An act or omission by an endangered or impaired adult,
5 for example, self-neglect; or

6 (B) An act or omission by a caregiver responsible for the
7 care and supervision of an endangered or impaired adult constituting
8 negligent failure to:

9 (i) Provide necessary treatment, rehabilitation,
10 care, food, clothing, shelter, supervision, or medical services to an
11 endangered or impaired adult;

12 (ii) Report health problems or changes in health
13 problems or changes in the health condition of an endangered or impaired
14 adult to the appropriate medical personnel;

15 (iii) Carry out a prescribed treatment plan; or

16 (iv) Provide to an adult resident of a long-term
17 care facility goods or services necessary to avoid physical harm, mental
18 anguish, or mental illness as defined in regulations promulgated by the
19 Office of Long-Term Care of the Division of Medical Services of the
20 Department of Human Services;

21 ~~(14)(A)~~(17)(A) "Physical injury" means the impairment of a
22 physical condition or the infliction of substantial pain.

23 (B) If the person is an endangered or impaired adult,
24 there is a presumption that any physical injury resulted in the infliction of
25 substantial pain;

26 ~~(15)(A)~~(18)(A) "Protective services" means services to protect
27 an endangered or impaired adult from:

28 (i) Self-neglect or self-abuse; or

29 (ii) Abuse or neglect by others.

30 (B) Protective services may include:

31 (i) Evaluation of the need for services;

32 (ii) Arrangements or referrals for appropriate
33 services available in the community;

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

36 (iv) As appropriate, referrals to law enforcement or

1 prosecutors;

2 ~~(16)~~(19) "Resident of a long-term care facility" means a person
3 eighteen (18) years of age or older living in a long-term care facility;

4 ~~(17)~~(20) "Serious bodily harm" means physical abuse, sexual
5 abuse, physical injury, or serious physical injury;

6 ~~(18)~~(21) "Serious physical injury" means physical injury to an
7 endangered or impaired adult that:

8 (A) Creates a substantial risk of death; or

9 (B) Causes protracted disfigurement, protracted impairment
10 of health, or loss or protracted impairment of the function of any bodily
11 member or organ;

12 ~~(19)~~(22) "Sexual abuse" means deviate sexual activity, sexual
13 contact, or sexual intercourse, as those terms are defined in § 5-14-101,
14 with another person who is not the actor's spouse and who is incapable of
15 consent because he or she is mentally defective, mentally incapacitated, or
16 physically helpless; and

17 ~~(20)~~(23) "Subject of the report" means:

18 (A) The endangered or impaired adult;

19 (B) The adult's legal guardian; and

20 (C) The offender.
21

22 SECTION 2. Arkansas Code § 9-20-107, concerning reports of adult
23 maltreatment as evidence, is amended to add an additional subsection to read
24 as follows:

25 (c)(1) The court may seal any records or parts of records containing
26 protected health information as defined by Health Insurance Portability and
27 Accountability Act.

28 (2) If a court seals any records or parts of records under
29 subdivision (c)(1) of this section, the sealed records or parts of records
30 become confidential and shall not be released to nonparties without a written
31 order of the court.
32

33 SECTION 3. Arkansas Code § 9-20-108 is amended to read as follows:
34 9-20-108. Jurisdiction – Venue – Eligibility.

35 (a)(1) The probate division of circuit court shall have jurisdiction
36 over proceedings for:

- 1 (A) Custody;
- 2 (B) Temporary custody for purposes of evaluation;
- 3 (C) Court-ordered protective services; or
- 4 (D) An order of investigation pursuant to this chapter.

5 (2) The probate division of circuit court shall retain
 6 jurisdiction for one hundred eighty (180) days after the death of an adult in
 7 the custody of the Department of Human Services to enter orders concerning
 8 disposition of the body of the adult as well as any assets of the adult,
 9 including the ability to order payment for services rendered or goods
 10 purchased by or for the adult while in the custody of the department before
 11 the death of the adult.

12 (b)(1) A proceeding under this chapter shall be commenced in the
 13 probate division of the circuit court of the county where:

- 14 ~~(1)(A)~~ The maltreated adult resides; or
- 15 ~~(2)(B)~~ The maltreatment occurred.

16 (2)(A) An adult custody proceeding shall not be dismissed if a
 17 proceeding is filed in the incorrect county.

18 (B) If the proceeding is filed in the incorrect county,
 19 the adult custody proceeding shall be transferred to the proper county upon
 20 discovery of the proper county for venue.

21 (C) Following the long-term custody hearing, the court may
 22 on its own motion or on motion of any party transfer the case to another
 23 county if the judge in the other venue agrees to accept the transfer.

24 (c) Eligibility for services from the department, including custody,
 25 for aliens and nonaliens shall be the same eligibility requirements for the
 26 Arkansas Medical Assistance Program.

27 (d) No person may be taken into custody or placed in the custody of
 28 the department under this section if that person is in need of:

- 29 (1) Acute psychiatric treatment;
- 30 (2) Chronic mental health treatment;
- 31 (3) Alcohol or drug abuse treatment;
- 32 (4) Protection from domestic abuse if that person is mentally
 33 competent; or
- 34 (5) Casework supervision by mental health professionals.

35 (e) No adult may be taken into custody or placed in the custody of the
 36 department for the sole purpose of consenting to the adult's medical

1 treatment.

2 (f)(1) If the maltreated adult is found to be indigent and the court
3 appoints the Arkansas Public Defender Commission as counsel for the
4 maltreated adult, the commission shall represent the maltreated adult as to
5 the issue of deprivation of liberty, but not with respect to issues involving
6 property, money, investments, or other fiscal issues.

7 (2)(A) As to issues requiring court approval under § 9-20-
8 120(b), the commission's role shall be to ensure that qualified medical
9 personnel provide testimony or an affidavit with clear and convincing
10 evidence to support the proposed medical action or inaction.

11 (B) A hearing is not required if counsel for both parties
12 agree to waive the hearing or if an emergency exists for entry of an order.

13 (3) If the court appoints the public defender as counsel for the
14 maltreated adult and assets are later identified for the maltreated adult,
15 the court may award an attorney's fee to the commission.

16
17 SECTION 4. Arkansas Code § 9-20-109 is amended to read as follows:

18 9-20-109. Commencement of proceedings.

19 (a) Proceedings shall be commenced by filing a petition with the clerk
20 of the probate division of circuit court ~~or by transfer by another court.~~

21 (b) Only the Department of Human Services may file a petition seeking
22 ex parte emergency relief.

23 (c) No fees may be charged or collected by the clerk in cases brought
24 by the department, including, but not limited to:

25 (1) Fees for filing;

26 (2) Summons; or

27 (3) Subpoenas.

28 (d) The court shall immediately appoint the Arkansas Public Defender
29 Commission to represent the maltreated adult if:

30 (1) There is reasonable cause to believe the maltreated adult is
31 indigent; or

32 (2) The maltreated adult's liberty interest is in jeopardy and
33 the financial condition of the maltreated adult is undetermined.

34
35 SECTION 5. Arkansas Code § 9-20-111(c), concerning notification of the
36 filing of a petition regarding adult maltreatment, is amended to read as

1 follows:

2 (c) The pleadings served on the respondent shall include a statement
3 of the right to:

4 (1)(A) ~~Effective assistance of counsel~~ Have an attorney
5 represent him or her in this matter.

6 (B) If the respondent desires an attorney to represent him
7 or her but the respondent cannot afford to hire an attorney, an attorney will
8 be appointed to represent the respondent by the court at no cost to the
9 respondent;

10 (2) Be present at the hearing;

11 (3) Present evidence on the respondent's own behalf;

12 (4) Cross-examine witnesses who testify against him or her;

13 (5) Present witnesses in the respondent's own behalf;

14 (6) Remain silent; and

15 (7) View and copy all petitions, reports, and documents retained
16 in the court file.

17
18 SECTION 6. Arkansas Code § 9-20-117(c), concerning long-term custody
19 of a maltreated adult, is amended to read as follows:

20 (c) The court may order long-term custody with the Department of Human
21 Services if the court determines that:

22 (1) The adult has a mental or physical impairment or lacks the
23 capacity to comprehend the nature and consequences of remaining in a
24 *situation that presents an imminent danger to his or her health or safety;*
25 and

26 (2) The adult is unable to provide for his or her own protection
27 from maltreatment; and

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

30
31 SECTION 7. Arkansas Code § 9-20-118, concerning review hearings
32 regarding maltreated adults, is amended to add an additional subsection to
33 read as follows:

34 (d)(1) Upon presentation of a statement under oath by a medical doctor
35 that attendance at the hearing is not in the best interest of the adult based
36 on the adult's mental incapacity or physical health, the court shall waive

1 the presence of the adult at a review hearing unless there is a showing by
2 the adult's attorney that the adult's attendance at the court hearing is
3 necessary.

4 (2) If it is not in the adult's best interest to appear at court
5 under subdivision (d)(1) of this section, the adult may submit a written
6 statement or an audio or video statement for consideration by the court.

7
8 SECTION 8. Arkansas Code § 9-20-119(c)(1), concerning the assets of a
9 maltreated adult, is amended to read as follows:

10 (c)(1) The court may appoint the department only as custodian of the
11 adult and not as guardian of the person or of the estate of the adult.

12
13 SECTION 9. Arkansas Code § 9-20-120, is amended to read as follows:
14 9-20-120. Duties and responsibilities of custodian.

15 (a)(1) If the probate division of circuit court appoints the
16 Department of Human Services as the legal custodian of a maltreated adult,
17 the department shall:

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

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

21 (C) Find a person to be guardian of the estate of the
22 adult if a guardian of the estate is needed.

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

25 (A) Consent to medical care for the adult;

26 (B) Obtain physical or psychological evaluations; and

27 (C) Obtain medical, financial, and other records of the
28 adult.

29 (b) The department as custodian shall not make any of the following
30 decisions without receiving express court approval:

31 (1) Consent to abortion, sterilization, psychosurgery, or
32 removal of bodily organs unless a procedure is necessary in a situation
33 threatening the life of the maltreated adult;

34 (2) Consent to withholding life-saving treatment;

35 (3) Authorize experimental medical procedures;

36 (4) Authorize termination of parental rights;

- 1 (5) Prohibit the adult from voting;
- 2 (6) Prohibit the adult from obtaining a driver's license;
- 3 (7) Consent to a settlement or compromise of any claim by or
- 4 against the adult or his or her estate;
- 5 (8) Consent to the liquidation of assets of the adult through
- 6 such activities as an estate sale; ~~or~~
- 7 (9) Amputation of any part of the body; or
- 8 (10) Consent to withholding life-sustaining treatment.

9 (c)(1) Upon the death of a person in the custody of the department,
10 the department shall abide by a prior arrangement made by the person for the
11 disposition of the person's body.

12 (2) If prior arrangements were not made:

13 (A)(1) The department may request the court to grant
14 authority to the department to use funds or resources of the deceased person
15 as to disposition of the body; or

16 (B) Upon consent from the person's closest family
17 member or after notice and the opportunity to be heard by the court, the
18 department may consent to donate the person's body to medical science.

19 (3) The department is not responsible for any costs related to
20 disposition of the person's body.

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/s/ Hobbs

APPROVED: 3/24/2009