

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Wallis**

A Bill

ACT 1338 OF 1995
HOUSE BILL 1928

For An Act To Be Entitled

8 *"AN ACT TO AMEND ARKANSAS CODE TITLE 5, CHAPTERS 13 AND*
9 *28, TO MAKE BATTERY OF AN INCOMPETENT A CRIME, TO PROVIDE*
10 *THAT COURTS MAY ORDER IN-HOME SERVICES, TO PROVIDE*
11 *PROTECTION FOR PEOPLE UNABLE TO PROTECT THEMSELVES; AND*
12 *FOR OTHER PURPOSES."*

Subtitle

15 *"AN ACT TO AMEND ARKANSAS LAW RELATING*
16 *TO THE PROTECTION OF ADULTS."*

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

20 *SECTION 1. Arkansas Code Annotated 5-13-202(a)(4) is amended by adding*
21 *the following new subparagraph:*

22 *"(E) An individual who is incompetent as defined by § 5-25-101(3)."*

24 *SECTION 2. Arkansas Code Annotated Title 5, Section 28, Subchapters 1,*
25 *2, and 3 are amended to read as follows:*

26 *"5-28-101. Definitions.*

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

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

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

34 *(B) A resident eighteen (18) years of age or older of a long-term*
35 *care facility which is required to be licensed under § 20-10-224 who is found*
36 *to be in a situation or condition which poses an imminent risk of death or*

1 serious bodily harm to such person and who demonstrates the lack of capacity
2 to comprehend the nature and consequences of remaining in that situation or
3 condition;

4 (2) 'Abuse' means:

5 (A) Any intentional and unnecessary physical act which inflicts
6 pain on or causes injury to an endangered or impaired adult, including sexual
7 abuse;

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

11 (3) 'Neglect' means:

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

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

18 (C) Negligently failing to carry out a prescribed treatment plan;

19 (4) 'Exploitation' means the illegal use or management of an endangered
20 or impaired adult's funds, assets, or property, or the use of an endangered or
21 impaired adult's power of attorney or guardianship or person for the profit or
22 advantage of himself or another;

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

28 (6) (A) 'Physical injury' means the impairment of physical condition or
29 the infliction of substantial pain.

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

33 (7) 'Serious physical injury' means physical injury that creates a
34 substantial risk of death or that causes protracted disfigurement, protracted
35 impairment of health, or loss or protracted impairment of the function of any

1 bodily member or organ;

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

6 (9) 'Protective services' means services to protect the endangered
7 adult from himself and others. Protective services shall include, but not be
8 limited to, evaluation of the need for services, arrangements for appropriate
9 services, assistance in obtaining financial benefit to which the person is
10 entitled, or securing medical and legal services. In situations where
11 exploitation, prevention of injury, and protection of the person and his
12 property are at issue, protective services shall include seeking the
13 appointment of a guardian or seeking protective custody;

14 (10) 'Department' means the Department of Human Services. The director
15 of the department may assign responsibilities for administering the various
16 duties imposed upon the department under this chapter to respective divisions
17 of the department which, in his opinion, are best able to render service or
18 administer the provisions of this chapter;

19 (11) 'Impaired adult' means an adult eighteen (18) years or older who
20 suffers from mental or physical disease or defect and as a consequence thereof
21 is unable to protect himself from abuse, neglect, or exploitation.

22 5-28-102. Legislative intent.

23 (a) The General Assembly recognizes that rehabilitative and
24 ameliorative services are needed to provide for the detection and correction
25 of the abuse, maltreatment, or exploitation of adults who are unable to
26 protect themselves.

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

33 5-28-103. Criminal penalties for adult abuse.

34 (a) It shall be unlawful for any person or caregiver to abuse, neglect,
35 or exploit any person subject to protection under the provisions of this

1 chapter.

2 (b) (1) Any person or caregiver who purposely abuses an endangered or
3 impaired adult in violation of the provisions of this chapter, if the abuse
4 causes serious physical injury or substantial risk of death, shall be guilty
5 of a Class B felony and shall be punished as provided by law.

6 (2) Any person or caregiver who purposely abuses an endangered or
7 impaired adult in violation of the provisions of this chapter, if such abuse
8 causes physical injury, shall be guilty of a Class D felony and shall be
9 punished as provided by law.

10 (c) (1) Any person or caregiver who neglects an endangered or impaired
11 adult in violation of the provisions of this chapter, causing serious physical
12 injury or substantial risk of death, shall be guilty of a Class D felony and
13 shall be punished as provided by law.

14 (2) Any person or caregiver who neglects an endangered or
15 impaired adult in violation of the provisions of this chapter, causing
16 physical injury, shall be guilty of a Class B misdemeanor and shall be
17 punished as provided by law.

18 (d) Any person or caregiver who abuses an endangered or impaired adult
19 shall be guilty of a Class B misdemeanor and shall be punished as provided by
20 law.

21 (e) (1) Any person or caregiver who exploits a person in violation of
22 the provisions of this chapter shall be guilty of a Class B felony and shall
23 be punished as provided by law, where the value of the property, assets, or
24 resources is two thousand five hundred dollars (\$2,500) or more.

25 (2) Any person or caregiver who exploits a person in violation of
26 the provisions of this chapter shall be guilty of a Class C felony and shall
27 be punished as provided by law, where the value of the property, assets, or
28 resources is less than two thousand five hundred dollars (\$2,500) but more
29 than two hundred dollars (\$200).

30 (3) Any person or caregiver who exploits a person in violation of
31 the provisions of this chapter shall be guilty of a Class A misdemeanor and
32 shall be punished as provided by law, where the value of the property, assets,
33 or resources is two hundred dollars (\$200) or less.

34 5-28-104. Privilege not grounds for exclusion of evidence.

35 Any privilege between husband and wife or between any professional

1 person, except lawyer and client, including, but not limited to, physicians,
2 members of the clergy, counselors, hospitals, clinics, rest homes, nursing
3 homes, and their clients shall not constitute grounds for excluding evidence
4 at any proceedings regarding adult abuse, sexual abuse or neglect of an
5 endangered or impaired adult, or the cause thereof.

6 5-28-105. Spiritual treatment alone not abusive.

7 Nothing in this chapter shall be construed to imply that a reported
8 endangered or impaired adult, who is being furnished with treatment by
9 spiritual means alone through prayer in accordance with the tenets and
10 practices of a recognized church or religious denomination by an accredited
11 practitioner thereof, is for this reason alone an endangered, abused,
12 neglected, maltreated, or exploited person.

13 5-28-106. Civil penalties.

14 (a) (1) The State of Arkansas and the Attorney General may institute a
15 civil action against any long-term care facility caregiver necessary to
16 enforce any provision of this chapter.

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

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

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

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

1 court determines have been necessarily incurred in the enforcement of this
2 chapter.

3 5-28-107. Investigation by Attorney General and Department of Human
4 Services.

5 (a) The Department of Human Services shall have jurisdiction to
6 investigate cases of suspected abuse, neglect, or exploitation of an
7 endangered or impaired adult.

8 (b) The Office of the Attorney General shall have concurrent
9 jurisdiction to investigate cases of suspected abuse, neglect, or exploitation
10 of an endangered or impaired adult in a long-term care facility certified
11 pursuant to Title XIX of the Social Security Act.

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

15

16 5-28-201. Central registry.

17 (a) Pursuant to this chapter, there shall be established within the
18 department a statewide central registry for abuse, neglect, and exploitation.

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

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

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

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

30 5-28-203. Persons required to report abuse.

31 (a)(1) Whenever any physician, surgeon, coroner, dentist, osteopath,
32 resident intern, registered nurse, hospital personnel who are engaged in the
33 administration, examination, care, or treatment of persons, social worker,
34 case manager, case worker, mental health professional, peace officer, law
35 enforcement officer, facility administrator, employee in a facility, or

1 employee of the Department of Human Services has reasonable cause to suspect
2 that an adult has been subjected to conditions or circumstances which would
3 reasonably result in abuse, neglect, or exploitation as defined in this
4 chapter he shall immediately report or cause a report to be made in accordance
5 with the provisions of this section.

6 (2) Whenever a person is required to report under this chapter in
7 his capacity as a member of the staff, an employee in a facility, or an
8 employee of the Department of Human Services, he shall immediately notify the
9 person in charge of the institution, facility, or agency, or his designated
10 agent, who shall then become responsible for making a report or cause a report
11 to be made.

12 (3) In addition to those persons and officials required to report
13 suspected adult abuse, sexual abuse, or neglect, any other person may make a
14 report if the person has reasonable cause to suspect that an adult has been
15 abused, neglected, or exploited as defined in this chapter.

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

19 (2) A report for abused or neglected adults residing in a
20 long-term care facility shall be made immediately to the local law enforcement
21 agency in which the facility is located, and to the Office of Long-Term Care
22 of the Department of Human Services pursuant to regulations of that office.

23 (3) The Office of Long-Term Care shall notify the central
24 registry and the Office of the Attorney General.

25 5-28-204. Report of death caused by abuse.

26 (a) Any person or official who is required to report cases of suspected
27 abuse of adults under the provisions of this chapter, who has reasonable cause
28 to suspect that an adult has died as a result of abuse, sexual abuse, or
29 negligence, shall report that fact to the appropriate medical examiner or
30 coroner.

31 (b) The medical examiner or coroner shall accept the report for
32 investigation and shall report his findings to the police, the appropriate
33 prosecuting attorney, and, if the institution making the report is a hospital,
34 to the hospital.

35 5-28-205. Photographs and X rays.

1 (a) Any person who is required to report cases of adult abuse, sexual
2 abuse, or negligence may take or cause to be taken, at public expense, color
3 photographs of the area of trauma visible on the adult and, if medically
4 indicated, cause to be performed radiological examination of the adult.

5 (b) Any photographs or X rays taken shall be sent to the department as
6 soon as possible.

7 (c) Whenever a person is required to report under this chapter in his
8 capacity as a member of the staff of any private or public institution or
9 agency, he shall immediately notify the person in charge of the institution or
10 agency or his designated delegate, who shall then take or cause to be taken,
11 at public expense, color photographs of physical trauma and shall, if
12 medically indicated, cause to be performed radiological examination of the
13 adult.

14 5-28-206. Reporting procedures generally.

15 (a) A report of abuse, sexual abuse, or negligence of an abused or
16 neglected adult may, pursuant to this chapter, be made by telephone and shall
17 be followed by a written report within forty-eight (48) hours, if so requested
18 by the receiving agency.

19 (b) The receiving agency shall immediately forward a copy of the report
20 to the statewide central registry on forms supplied by the registry.

21 (c) When appropriate, a copy of this report shall immediately be made
22 available to the appropriate law enforcement agency for its consideration.

23 5-28-207. Contents of central registry.

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

25 (1) Information in the written report;

26 (2) Records of final disposition of the report, including services
27 offered and services accepted;

28 (3) The plan for rehabilitation treatment;

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

31 (5) Any other information which might be helpful in furthering the
32 purposes of the chapter.

33 5-28-208. Telephone reporting - Determination of prior records.

34 (a) There shall be a single statewide telephone number that all
35 persons, whether mandated by law or not, may use to report cases of suspected

1 adult abuse, sexual abuse, and neglect and that all persons so authorized by
2 this chapter may use for determining the existence of prior records in order
3 to evaluate the conditions or circumstances of the abused adult before them.

4 (b) The oral telephone report shall immediately be transmitted by the
5 central registry to the local adult protective services agency.

6 (c) If the records indicate a previous report concerning the subject of
7 the report or other pertinent information, the appropriate local protective
8 agency shall be notified of these facts.

9 5-28-209. Contents of report.

10 Reports shall include the following information:

11 (1) Names and addresses of the next of kin or persons responsible for
12 care, if known;

13 (2) The person's age, sex, and race;

14 (3) The nature and extent of the injury, sexual abuse, or negligence,
15 including any evidence of previous injury, sexual abuse, or negligence to the
16 person;

17 (4) The names and addresses of persons responsible for injury, sexual
18 abuse, or negligence, if known;

19 (5) Family composition;

20 (6) The source of the report;

21 (7) The person making the report;

22 (8) His reporting source, including the taking of photographs and X
23 rays, removal or keeping of the person of the abused adult, or notifying the
24 coroner or medical examiner; and

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

27 5-28-210. Investigation.

28 (a) (1) In cases involving an endangered adult residing in a long-term
29 care facility certified pursuant to Title XIX of the Social Security Act, the
30 local law enforcement agency or the Office of the Attorney General shall make
31 a thorough investigation.

32 (2) In all other cases involving endangered adults, the
33 department shall make a thorough investigation.

34 (b) The primary purpose of such investigation is to protect the abused
35 adult.

1 (c) The investigation shall include:

2 (1) The nature, extent, and cause of the abuse, sexual abuse, or
3 negligence of the endangered adult;

4 (2) The identity of the person responsible;

5 (3) The names and conditions of other adults in the home;

6 (4) The evaluation of the persons responsible for the care of the
7 abused adult, if any;

8 (5) The home environment and relationship of the adult to the
9 next of kin or other person responsible for his care, and all other pertinent
10 data; and

11 (6) (A) A visit to the abused adult's home and an interview with
12 the abused adult.

13 (B) If the admission to the home, institution, or other
14 place that the abused adult may be, or permission of the next of kin or other
15 person responsible for the adult or in charge of any place where the abused
16 adult may be, cannot be obtained, then the probate court, upon cause shown,
17 shall order the next of kin or person responsible and in charge of any place
18 where the abused adult may be to allow entrance for the examination and
19 investigation.

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

22 (e) (1) If, before the examination is completed, the opinion of the
23 investigators is that the immediate removal of the endangered adult is
24 necessary to protect him from further abuse or neglect, the probate court, on
25 petition by the investigators, and good cause being shown, may issue an order
26 for temporary protective custody in the manner and procedures provided in
27 § 5-28-303.

28 (2) The investigative reports of the department shall be made
29 available to the probate court upon request.

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

33 5-28-211. Rights of subject of report.

34 (a) At any time, the subject of a report may receive, upon request, a
35 report of all information contained in the central registry. However, the

1 director of the department or his authorized agent is authorized to prohibit
2 the release of data that would identify the person who made the report or who
3 cooperated in a subsequent investigation if the director reasonably finds the
4 data to be detrimental to the interest or safety of the person.

5 (b) (1) At any time subsequent to the completion of the investigation,
6 but in no event later than ninety (90) days after the receipt of a report, a
7 subject of the report may request the director of the department to amend,
8 seal, or expunge the record of the report.

9 (2) If the director refuses or does not act within a reasonable
10 time, but in no event later than thirty (30) days after such request, the
11 subject shall have the right to a fair hearing to determine whether the record
12 of the report in the central registry should be amended or expunged on the
13 grounds that it is inaccurate or it is being maintained in a manner
14 inconsistent with this chapter.

15 (3) The burden, in such a hearing, shall be on the department and
16 appropriate adult protective services.

17 (4) Notice shall be given to all parties concerned, and in the
18 hearings the fact that there was a finding of adult abuse, sexual abuse, or
19 negligence shall be presumptive evidence that the report was substantiated.

20 (c) (1) Written notice of any amendment or expungement made pursuant to
21 the provisions of this chapter shall be served on each subject of such report
22 and to the appropriate local adult protective service.

23 (2) The latter, upon receipt of this notice, shall take similar
24 action regarding any central registry for adult abuse, sexual abuse, or
25 negligence.

26 5-28-212. Expungement of information.

27 Unless an investigation of a report conducted pursuant to this chapter
28 determines that some credible evidence exists of alleged abuse, sexual abuse,
29 or neglect of an endangered adult, all information identifying the subject of
30 the report shall be expunged from the central registry forthwith.

31 5-28-213. Availability of reports, etc.

32 (a) Reports made pursuant to this chapter, as well as any other
33 information obtained, and reports written or photographs taken concerning
34 reports in the possession of the department shall be confidential and shall be
35 made available to:

1 (1) A physician who has before him an endangered adult whom he
2 reasonably believes may have been abused, sexually abused, or neglected;

3 (2) A person authorized to place the adult in protective custody
4 when such a person has before him an adult whom he reasonably believes may
5 have been abused, sexually abused, or neglected, and such person requires the
6 information to determine whether to place the adult in protective custody;

7 (3) An authorized agency having responsibility for the care or
8 supervision of a subject of a report;

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

10 (5) A court where it determines that such information is
11 necessary for the determination of an issue before the court.

12 (b) Under no circumstances shall the information contained in the
13 statewide central registry be released unless the person's or official's
14 capacity is confirmed by the department and the released information states
15 whether or not the report is founded or unfounded.

16 (c) A person given access to names or other information identifying a
17 subject of the report, except the subject of a report, shall not divulge or
18 make public identifying information unless he is the prosecuting attorney or
19 other law enforcement official and the purpose is to initiate court action.

20 (d) However, information contained in the statewide central registry
21 for abused adults may be made available to bona fide and approved research
22 groups solely for the purpose of scientific research, but in no event shall
23 the names of individuals be released, nor shall specific circumstances or
24 facts related to a specific individual be utilized in any research report
25 which might be identifiable with such individual.

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

30 5-28-214. Reports as evidence.

31 A written report from persons or officials required by this chapter to
32 report shall be admissible in evidence in any proceeding relating to adult
33 abuse, sexual abuse, or negligence.

34 5-28-215. Immunity for investigation participants.

35 (a) Any person, official, or institution participating in good faith in

1 the making of a report, the taking of photographs, or the removal of an abused
2 adult pursuant to this chapter shall have immunity from liability and suit for
3 damages, civil or criminal, that otherwise might result by reason of such
4 actions.

5 (b) The good faith of any person required to report cases of adult
6 abuse, sexual abuse, or neglect shall be presumed.

7

8 5-28-301. Emergency custody.

9 (a) (1) The department, a police officer, a law enforcement official, or
10 a designated employee of a city or county department or office of social
11 service may take an endangered adult into emergency protective custody or any
12 person in charge of a hospital or similar institution or any physician
13 treating any such adult may keep that adult in his custody, whether or not
14 medical treatment is required, if the circumstances or condition of the adult
15 are such that continuing at his place of residence or in the care or custody
16 of a parent, guardian, or other person responsible for the adult's care
17 presents imminent danger to that adult's health or safety and the adult lacks
18 the capacity to comprehend the nature and consequences of remaining in a
19 situation that presents imminent danger to his health or safety.

20 (2) However, emergency protective custody shall not exceed three
21 (3) working days, and the probate court and the department shall be notified
22 immediately upon taking such adult into emergency protective custody, in order
23 that adult protective proceedings may be initiated.

24 (b) When action is taken under subsection (a) of this section for
25 emergency protective custody, a preliminary hearing shall be held within two
26 (2) working days to establish probable cause for grounds for protective
27 custody.

28 (c) Upon a finding of probable cause, the court may order temporary
29 protective custody for up to fourteen (14) days, pending the hearing for
30 long-term protective custody.

31 5-28-302. Voluntary placement.

32 (a) Any person may request voluntary protective placement under this
33 chapter.

34 (b) No civil rights are relinquished as a result of such placement.

35 5-28-303. Temporary custody.

1 The Department may file a petition requesting the probate court to find
2 that there is probable cause to place an endangered adult in temporary custody
3 for a period of up to fourteen (14) days. During the period the endangered
4 adult is in temporary custody the Court may order the Department to obtain
5 medical treatment, physical or psychological evaluations, or investigate the
6 endangered adult_s financial affairs or simply to order a hearing for
7 long-term protective custody be held within fourteen (14) days..

8 5-28-304. Long-term custody - Notice.

9 (a) The Department may file a petition requesting that an endangered
10 adult be placed in the Department_s long-term protective custody. The
11 petition requesting long-term protective custody may be combined with the
12 petition requesting temporary protective custody.

13 (b) Notice of petition for long-term protective custody shall be served
14 upon the respondent at least ten (10) days prior to the time set for a
15 hearing.

16 (c) Upon service of the notice, the respondent will be given notice of
17 the long-term hearing, a copy of the petition, and a copy of the order for the
18 hearing.

19 (d) In addition, the respondent will be advised of the following
20 rights:

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

29 (e) The persons serving the notice shall return the certificate of
30 notice to the probate court verifying that the petition and copy of rights has
31 been delivered and notice given.

32 (f) Additionally, notice shall be given to:

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

1 (3) The person having physical custody of the respondent;

2 (4) Any person named in the petition;

3 (5) The department of any governmental agency or private group
4 from whom the respondent is known to be receiving aid; and

5 (6) Such other persons or entities as the court may require.

6 (g) The Probate Clerk shall not charge or collect a filing fee from the
7 Department when it files a petition for temporary or long-term protective
8 custody.

9 5-28-305 Contents of Petition.

10 (a) The petition shall set forth the following:

11 (1) The name, address, and date of birth of the endangered adult;

12 (2) The endangered adult_s current location;

13 (3) The name and address of the endangered adult_s closest adult
14 relative, if known;

15 (4) The facts which, if proven, cause the person to be an
16 endangered adult. The facts may be set out in an affidavit attached to the
17 petition and incorporated therein; and

18 (5) The relief requested by the petitioner.

19 5-28-306. Long-term custody - Hearing - Placement - Appeal.

20 (a) A hearing for long-term protective custody shall be no later than
21 fourteen (14) days from the date the order for temporary protective custody
22 was signed.

23 (b) The court shall make a finding in connection with the determination
24 of the least drastic alternative to be considered proper under the
25 circumstances, including the finding for noninstitutional care wherever
26 possible. Where there are services available to remedy the imminent danger to
27 the endangered adult, the court may order the endangered adult or the
28 caregiver for the adult to accept the services in lieu of placing the
29 endangered adult in protective custody.

30 (c) In the order, the court shall specify:

31 (1) The placement or care plan to be followed;

32 (2) The reason for the placement or care to be given;

33 (3) The scope and duration of the order;

34 (4) That the department periodically review the case every six
35 (6) months, or more frequently if warranted;

1 (5) That the department monitor the services being received in
2 lieu of protective custody as often as is necessary to prevent the recurrence
3 of the danger.

4 (6) The requirement of judicial court review of the case, either
5 formal or informal as determined by the court, at least once a year.

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

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

11 (2) The individual is unable to provide for his own protection
12 from abuse or neglect;

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

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

18 (f) Placement under this section does not replace commitment of a
19 person in need of acute psychiatric treatment.

20 (g) Any person aggrieved by any order for long-term protective custody
21 may appeal to a court of competent jurisdiction in the manner and procedures
22 now provided by law."
23

24 SECTION 3. All provisions of this act of a general and permanent nature
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
26 Revision Commission shall incorporate the same in the Code.
27

28 SECTION 4. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.
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34 SECTION 5. All laws and parts of laws in conflict with this act are
35 hereby repealed.

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/s/Rep. Wallis

APPROVED: 4-17-95