

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 283 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/1/07

A Bill

SENATE BILL 300

5 By: Senator Salmon
6 By: Representative S. Prater
7
8

For An Act To Be Entitled

10 AN ACT TO IMPROVE THE ENFORCEMENT OF ADULT
11 MALTREATMENT PROTECTION LAWS BY AMENDING THE
12 ADULT MALTREATMENT CUSTODY ACT REGARDING THE
13 DEFINITION OF ABUSE AND PROVISIONS REGARD
14 EMERGENCY CUSTODY, PROBABLE CAUSE HEARINGS, AND
15 THE AVAILABILITY OF CUSTODY AND PROTECTIVE
16 SERVICES RECORDS; TO AMEND THE ADULT AND LONG-
17 TERM CARE FACILITY RESIDENT MALTREATMENT ACT; AND
18 FOR OTHER PURPOSES.

Subtitle

20 TO IMPROVE THE ENFORCEMENT OF ADULT
21 PROTECTION LAWS BY AMENDING THE ADULT
22 MALTREATMENT CUSTODY ACT AND THE ADULT
23 AND LONG-TERM CARE FACILITY RESIDENT
24 MALTREATMENT ACT.
25
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 9-20-103 is amended to read as follows:
31 9-20-103. Definitions.

32 As used in this chapter:

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



1 ~~(A)(i)~~ Any intentional and unnecessary physical act
 2 that inflicts pain on or causes injury to an endangered adult or an impaired
 3 adult, excluding court ordered medical care or medical care requested by an
 4 endangered adult, an impaired adult, or a person who is legally authorized to
 5 make a medical decision on behalf of an endangered adult or an impaired
 6 adult;

7 ~~(B)(ii)~~ Any intentional ~~or demeaning~~ act that a
 8 reasonable person would believe subjects an endangered adult or impaired
 9 ~~person~~ adult, regardless of age, ability to comprehend, or disability, to
 10 ridicule or psychological injury in a manner likely to provoke fear or
 11 alarm, excluding necessary care and treatment provided in accordance with
 12 generally recognized professional standards of care;

13 ~~(C)(iii)~~ Any intentional threat that a reasonable
 14 person would find credible and nonfrivolous to inflict pain on or cause
 15 injury to an endangered adult or an impaired ~~person~~ adult except in the
 16 course of medical treatment or for justifiable cause; or

17 ~~(D)(iv)~~ ~~With regard to any adult resident of a long-~~
 18 ~~term care facility, any~~ Any willful infliction of injury, unreasonable
 19 confinement, intimidation, or punishment with resulting physical harm, pain,
 20 or mental anguish.

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

23 (i) Any intentional and unnecessary physical act
 24 that inflicts pain on or causes injury to an endangered adult or an impaired
 25 adult;

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

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

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

36 (3) "Caregiver" means a related person or an unrelated person,

1 an owner, an agent, a high managerial agent of a public or private
2 organization, or a public or private organization that has the responsibility
3 for the protection, care, or custody of an endangered adult or impaired
4 ~~person~~ adult as a result of assuming the responsibility voluntarily, by
5 contract, through employment, or by order of the circuit court;

6 (4) "Department" means the Department of Health and Human
7 Services;

8 (5) "Endangered adult" means:

9 (A) An adult eighteen (18) years of age or older who:

10 (i) Is found to be in a situation or condition that
11 poses an imminent risk of death or serious bodily harm to that person; and

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

14 (B) An adult resident of a long-term care facility who:

15 (i) Is found to be in a situation or condition that
16 poses an imminent risk of death or serious bodily harm to that person; and

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

19 (6) "Exploitation" means:

20 (A) The illegal or unauthorized use or management of an
21 endangered or impaired adult's funds, assets, or property or the use of an
22 endangered or impaired adult's person, power of attorney, or guardianship for
23 the profit or advantage of oneself or another; or

24 (B) Misappropriation of property of an adult resident of a
25 long-term care facility, that is, the deliberate misplacement, exploitation,
26 or wrongful, temporary, or permanent use of a resident's belongings or money
27 without the resident's consent;

28 (7) "Imminent danger to health or safety" means a situation in
29 which death or ~~severe bodily injury~~ serious bodily harm could reasonably be
30 expected to occur without intervention;

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

35 (B) For purposes of this chapter, residents of a long-term
36 care facility are presumed to be impaired persons;

- 1 (9) "Long-term care facility" means:
2 (A) A nursing home;
3 (B) A residential care facility;
4 (C) A post-acute head injury retraining and residential
5 facility;
6 (D) An assisted living facility;
7 (E) An intermediate care facility for the mentally
8 retarded; or
9 (F) Any facility that provides long-term medical or
10 personal care;
11 (10) "Long-term care facility resident" means a person eighteen
12 (18) years of age or older living in a long-term care facility;
13 (11) "Long-term care facility resident maltreatment" means
14 abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult
15 resident of a long-term care facility;
16 (12) "Maltreated adult" means an adult who has been abused,
17 exploited, neglected, physically abused, or sexually abused;
18 (13) "Neglect" means:
19 (A) An act or omission by an endangered or impaired adult,
20 for example, self-neglect; or
21 (B) An act or omission by a caregiver responsible for the
22 care and supervision of an endangered or impaired adult constituting
23 negligent failure to:
24 (i) Provide necessary treatment, rehabilitation,
25 care, food, clothing, shelter, supervision, or medical services to an
26 endangered or impaired adult;
27 (ii) Report health problems or changes in health
28 problems or changes in the health condition of an endangered or impaired
29 adult to the appropriate medical personnel;
30 (iii) Carry out a prescribed treatment plan; or
31 (iv) Provide to an adult resident of a long-term
32 care facility goods or services necessary to avoid physical harm, mental
33 anguish, or mental illness as defined in regulations promulgated by the
34 Office of Long-Term Care of the Division of Medical Services of the
35 Department of Health and Human Services;
36 (14)(A) "Physical injury" means the impairment of a physical

1 condition or the infliction of substantial pain.

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

5 (15)(A) "Protective services" means services to protect an
6 endangered or impaired adult from:

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

8 (ii) Abuse or neglect by others.

9 (B) Protective services may include:

10 (i) Evaluation of the need for services;

11 (ii) Arrangements or referrals for appropriate
12 services available in the community;

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

15 (iv) As appropriate, referrals to law enforcement or
16 prosecutors;

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

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

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

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

24 (B) Causes protracted disfigurement, protracted impairment
25 of health, or loss or protracted impairment of the function of any bodily
26 member or organ;

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

32 (20) "Subject of the report" means:

33 (A) The endangered or impaired adult;

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

35 (C) The offender.

36

1 SECTION 2. Arkansas Code § 9-20-114(a), concerning emergency custody
2 of a maltreated adult, is amended to read as follows:

3 (a) The Department of Health and Human Services or a law enforcement
4 official may take a maltreated adult into emergency custody, or any person in
5 charge of a hospital or similar institution or any physician treating any
6 maltreated adult may keep the maltreated adult in custody, whether or not
7 medical treatment is required if the circumstances or condition of the
8 maltreated adult are such that returning to or continuing at the maltreated
9 adult's place of residence or in the care or custody of a parent, guardian,
10 or other person responsible for the maltreated adult's care presents imminent
11 danger to the maltreated adult's health or safety and the maltreated adult
12 either:

13 (1) ~~lacks~~ Lacks the capacity to comprehend the nature and
14 consequences of remaining in a situation that presents imminent danger to his
15 or her health or safety; or

16 (2) Has a mental impairment or a physical impairment that
17 prevents the maltreated adult from protecting himself or herself from
18 imminent danger to his or her health or safety.

19
20 SECTION 3. Arkansas Code § 9-20-116(a), concerning the probable cause
21 hearing regarding the emergency order, is amended to read as follows:

22 (a)(1) Following issuance of an emergency order, the probate division
23 of circuit court shall hold a hearing within five (5) business days to
24 determine whether probable cause to issue the emergency order continues to
25 exist.

26 (2) The court may hold a probable cause hearing anywhere in the
27 judicial district.

28
29 SECTION 4. Arkansas Code § 9-20-117, concerning long-term custody and
30 court-ordered protective services hearings, is amended to add an additional
31 subsection to read as follows:

32 (f) The court may order that social security, retirement, or other
33 sources of income be redirected on behalf of the maltreated adult.

34
35 SECTION 5. Arkansas Code § 9-20-121 is amended to read as follows:
36 9-20-121. Availability of custody and protective services records.

1 (a) Reports, correspondence, memoranda, case histories, medical
2 records, or other materials, including protected health information, compiled
3 or gathered by the Department of Health and Human Services regarding a
4 maltreated adult in the custody of the department or receiving protective
5 services from the department shall be confidential and shall not be released
6 or otherwise made available except:

7 (1) To the maltreated adult;

8 (2) To the attorney representing the maltreated adult in a
9 custody or protective services case;

10 (3) For any audit or similar activity conducted with the
11 administration of any plan or program by any governmental agency that is
12 authorized by law to conduct the audit or activity;

13 (4) To law enforcement agencies, a prosecuting attorney, or the
14 Attorney General;

15 (5)(A) To any licensing or registering authority to the extent
16 necessary to carry out its official responsibilities.

17 (B) Information released under subdivision (5)(A) of this
18 section shall be maintained as confidential;

19 (6) To a circuit court under this chapter;

20 (7) To a grand jury or court upon a finding that information in
21 the record is necessary for the determination of an issue before the court or
22 grand jury;

23 (8) To a person or provider currently providing care or services
24 to the adult;

25 (9) To a person or provider identified by the department as
26 having services needed by the adult;

27 (10)(A) To individual federal and state representatives and
28 senators in their official capacity who shall not redisclose the information.

29 (B) No disclosure may be made to any committee or
30 legislative body of any information that identifies by name or address any
31 recipient of services; and

32 (11) In the discretion of the department, with family members if
33 the adult is in the custody of the department.

34 (b) ~~No~~ Except for the maltreated adult, no person or agency to whom
35 disclosure is made may disclose to any other person reports or other
36 information obtained under this section.

1 (c) A disclosure of information in violation of this section shall be
2 a Class C misdemeanor.

3
4 SECTION 6. Arkansas Code § 12-12-1702 is amended to read as follows:
5 12-12-1702. Purpose.

6 The purpose of this subchapter is to:

7 (1) Provide a system for the reporting of known or suspected
8 adult and long-term care facility resident maltreatment;

9 (2) Ensure the screening, safety assessment, and prompt
10 investigation of reports of known or suspected adult and long-term care
11 facility resident maltreatment;

12 (3) Provide for a civil action, if appropriate, to protect
13 maltreated adults and long-term care facility residents; and

14 (4) Encourage the cooperation of state law enforcement
15 officials, courts, and state agencies in the investigation, and assessment,
16 ~~and prosecution~~ of maltreated adults and long-term care facility residents
17 and prosecution of offenders.

18
19 SECTION 7. Arkansas Code § 12-12-1703 is amended to read as follows:
20 12-12-1703. Definitions.

21 As used in this subchapter:

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

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

30 ~~(B)(ii)~~ Any intentional ~~or demeaning~~ act that a
31 reasonable person would believe subjects an endangered person or an impaired
32 person, regardless of age, ability to comprehend, or disability, to ridicule
33 or psychological injury in a manner likely to provoke fear or alarm,
34 excluding necessary care and treatment provided in accordance with generally
35 recognized professional standards of care;

36 ~~(C)(iii)~~ Any intentional threat that a reasonable

1 person would find credible and nonfrivolous to inflict pain on or cause
 2 injury to an endangered person or an impaired person except in the course of
 3 medical treatment or for justifiable cause; or

4 ~~(D)(iv) With regard to any long-term care facility~~
 5 ~~resident, any~~ Any willful infliction of injury, unreasonable confinement,
 6 intimidation, or punishment with resulting physical harm, pain, or mental
 7 anguish; and

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

10 (i) Any intentional and unnecessary physical act
 11 that inflicts pain on or causes injury to an endangered person or an impaired
 12 person;

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

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

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

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

29 (4) "Department" means the Department of Health and Human
 30 Services;

31 (5) "Endangered person" means:

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

33 (i) Is found to be in a situation or condition that
 34 poses an imminent risk of death or serious bodily harm to that person; and

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

- 1 (B) A long-term care facility resident who:
- 2 (i) Is found to be in a situation or condition that
- 3 poses an imminent risk of death or serious bodily harm to the long-term care
- 4 facility resident; and
- 5 (ii) Demonstrates a lack of capacity to comprehend
- 6 the nature and consequences of remaining in that situation or condition;
- 7 (6) "Exploitation" means the:
- 8 (A) Illegal or unauthorized use or management of an
- 9 endangered person's or an impaired person's funds, assets, or property;
- 10 (B) Use of an adult endangered person's or an adult
- 11 impaired person's, power of attorney or guardianship for the profit or
- 12 advantage of one's own self or another; or
- 13 (C) Misappropriation of property of a long-term care
- 14 facility resident, that is, the deliberate misplacement, exploitation, or
- 15 wrongful, temporary, or permanent use of a long-term care facility resident's
- 16 belongings or money without the long-term care facility resident's consent;
- 17 (7) "Imminent danger to health or safety" means a situation in
- 18 which death or ~~severe bodily injury~~ serious bodily harm could reasonably be
- 19 expected to occur without intervention;
- 20 (8)(A) "Impaired person" means a person eighteen (18) years of
- 21 age or older who as a result of mental or physical impairment is unable to
- 22 protect himself or herself from abuse, sexual abuse, neglect, or
- 23 exploitation.
- 24 (B) For purposes of this subchapter, a long-term care
- 25 facility resident is presumed to be an impaired person;
- 26 (9) "Long-term care facility" means:
- 27 (A) A nursing home;
- 28 (B) A residential care facility;
- 29 (C) A post-acute head injury retraining and residential
- 30 facility;
- 31 (D) An assisted living facility;
- 32 (E) An intermediate care facility for the mentally
- 33 retarded; or
- 34 (F) Any facility that provides long-term medical or
- 35 personal care;
- 36 (10) "Long-term care facility resident" means a person,

1 regardless of age, living in a long-term care facility;

2 (11) "Long-term care facility resident maltreatment" means
3 abuse, exploitation, neglect, or sexual abuse of a long-term care facility
4 resident;

5 (12) "Maltreated adult" means an adult who has been abused,
6 exploited, neglected, physically abused, or sexually abused;

7 (13) "Maltreated person" means a person, regardless of age, who
8 has been abused, exploited, neglected, physically abused, or sexually abused;

9 (14) "Neglect" means:

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

12 (B) An act or omission by a caregiver responsible for the
13 care and supervision of an endangered person or an impaired person
14 constituting:

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

18 (ii) Negligently failing to report health problems
19 or changes in health problems or changes in the health condition of an
20 endangered person or an impaired person to the appropriate medical personnel;

21 (iii) Negligently failing to carry out a prescribed
22 treatment plan; or

23 (iv) Negligently failing to provide goods or
24 services to a long-term care facility resident necessary to avoid physical
25 harm, mental anguish, or mental illness as defined in regulations promulgated
26 by the Office of Long-Term Care of the Division of Medical Services of the
27 Department of Health and Human Services;

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

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

33 (16) "Serious bodily harm" means sexual abuse, physical injury,
34 or serious physical injury;

35 (17) "Serious physical injury" means physical injury to an
36 endangered person or an impaired person that creates a substantial risk of

1 death or that causes protracted disfigurement, protracted impairment of
2 health, or loss or protracted impairment of the function of any bodily member
3 or organ;

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

9 (19) "Subject of the report" means:

- 10 (A) The endangered person or impaired person;
11 (B) The adult's legal guardian;
12 (C) The natural or legal guardian of a long-term care
13 facility resident under eighteen (18) years of age; and
14 (D) The offender.

15
16 SECTION 8. Arkansas Code § 12-12-1714 is amended to read as follows:
17 12-12-1714. Investigative powers of the Department of Health and Human
18 Services.

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

24 (b) If admission to a home cannot be obtained due to hospitalization
25 or similar absence of the maltreated person and admission to the home is
26 necessary to complete an investigation, a circuit court, upon good cause
27 shown, shall order a law enforcement agency to assist the Department of
28 Health and Human Services to obtain entrance to the home for the required
29 investigation of the home environment.

30 (c)(1) Upon request, the medical, mental health, or other records
31 regarding the maltreated person, including protected health information,
32 maintained by any facility or maintained by any person required by this
33 subchapter to report suspected adult maltreatment or long-term care facility
34 resident maltreatment, shall be made available to the department for the
35 purpose of conducting an investigation under this subchapter.

36 (2) Upon request, financial records maintained by a bank or

1 similar institution regarding a maltreated person shall be made available to
2 the department for the purpose of conducting an investigation under this
3 subchapter.

4 (3) A circuit court, upon good cause shown, shall order any
5 facility or person that maintains medical, mental health, or other records,
6 including protected health information, regarding a maltreated person to
7 tender the records to the department for the purpose of conducting an
8 investigation under this subchapter.

9 (d) An investigation under this subchapter may include a medical,
10 psychological, social, vocational, financial, and educational evaluation and
11 review, if necessary.

12 (e) If before an investigation under this subchapter is completed, the
13 Adult Protective Services Unit of the Department of Health and Human Services
14 determines that the immediate removal of a maltreated adult is necessary to
15 protect the maltreated adult from imminent danger to his or her health or
16 safety, the unit may:

17 (1) Petition a circuit court for an order of temporary custody;
18 or

19 (2) Exercise a seventy-two-hour hold under the Adult
20 Maltreatment Custody Act, § 9-20-101 et seq.

21 (f) Upon petition by the Department of Health and Human Services, the
22 court may direct payment from the assets of the allegedly maltreated adult
23 for services rendered or goods purchased by or for the allegedly maltreated
24 adult during the course of the investigation.

25
26 SECTION 9. Arkansas Code § 12-12-1717 is amended to read as follows:

27 12-12-1717. Availability of founded reports of adult or long-term care
28 facility resident maltreatment.

29 (a) A report made under this subchapter that is determined to be
30 founded, as well as any other information obtained, including protected
31 health information, and a report written or photograph taken concerning a
32 founded report in the possession of the Department of Health and Human
33 Services shall be confidential and shall be made available only to:

34 (1) A physician who has before him or her an endangered person
35 or an impaired person the physician reasonably believes may have been
36 maltreated;

1 (2) A person authorized to place the adult in protective custody
2 if the person:

3 (A) Has before him or her an adult the person reasonably
4 believes may have been maltreated; and

5 (B) Requires the information to determine whether to place
6 the adult in protective custody;

7 (3) An authorized agency having responsibility for the care or
8 supervision of an endangered person or an impaired person;

9 (4) Any person who is the subject of a report or that person's
10 legal guardian;

11 (5) A grand jury or court, if the grand jury or court determines
12 that the information is necessary for the determination of an issue before
13 the grand jury or court;

14 (6) A prosecuting attorney, law enforcement official, coroner,
15 or the Attorney General or his or her designated investigator;

16 (7)(A) A mandated reporter who has made a report of suspected
17 maltreatment.

18 (B) However, a mandated reporter shall receive the
19 information only to the extent that he or she may be informed after
20 completion and closure of the investigation whether:

21 (i) Legal action was taken;

22 (ii) Services were provided; or

23 (iii) No action was taken.

24 (C) No further information shall be released to a mandated
25 reporter, and the mandated reporter shall be informed of the confidentiality
26 of the information and the penalties for disclosure;

27 (8)(A) An employer or volunteer agency for the purpose of
28 screening an employee, applicant, or volunteer upon submission of a signed,
29 notarized release from the employee, applicant, or volunteer.

30 (B) The only information released to the employer or
31 volunteer agency shall be whether or not the adult and long-term care
32 facility resident maltreatment central registry contains any founded reports
33 naming the employee, applicant, or volunteer as an offender;

34 (9) The Death Review Committee of the Department of Health and
35 Human Services;

36 (10) The current administrator of the long-term care facility,

1 if the incident occurred in a long-term care facility;

2 (11) The administrator of the long-term care facility that
3 currently employs the offender, if different from the long-term care facility
4 in which the incident occurred;

5 (12) A person or provider identified by the department as having
6 services needed by the maltreated person; ~~and~~

7 (13) Any applicable licensing or registering authority;

8 (14) Any employer, legal entity, or board responsible for the
9 person named as the offender;

10 (15) Any legal entity or board responsible for the maltreated
11 person; and

12 (16) The Division of Developmental Disabilities Services and the
13 Division of Aging and Adult Services as to participants of the waiver
14 program.

15 (b)(1) Under no circumstances may the information contained in the
16 registry be released to a person unless the person's capacity is confirmed by
17 the department.

18 (2) Except for the subject of the report, no person or agency to
19 whom disclosure is made may disclose to any other person a report or other
20 information obtained under this section.

21 (c)(1) The department may not release data that would identify the
22 person who made a report except to law enforcement, a prosecuting attorney,
23 or the office of the Attorney General.

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

28 (A) To prevent execution of a crime; or

29 (B) For prosecution of a crime.

30 (d) However, information contained in the registry may be made
31 available to bona fide and approved research groups solely for the purpose of
32 scientific research, but in no event shall the name of a person be released,
33 nor shall specific circumstances or facts related to a specific person be
34 used in any research report that might be identifiable with the person.

35 (e) Any person who willfully permits and any other person who
36 encourages the release of data or information contained in the registry to a

1 person not permitted by this subchapter to receive the data or information is
2 guilty of a Class A misdemeanor.

3
4 SECTION 10. Arkansas Code § 12-12-1718 is amended to read as follows:
5 12-12-1718. Availability of screened out, pending, and unfounded
6 reports.

7 (a)(1) A screened out report or a pending report, including protected
8 health information, shall be confidential and shall be made available only
9 to:

10 (A) The Department of Health and Human Services, including
11 the Death Review Committee of the Department of Health and Human Services;

12 (B) A law enforcement agency;

13 (C) A prosecuting attorney;

14 (D) The office of the Attorney General;

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

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

21 (G) A person or provider identified by the department as
22 having services needed by the maltreated person; ~~and~~

23 (H) Any applicable licensing or registering authority;

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

26 (J) Any legal entity or board responsible for the
27 maltreated person; and

28 (K) The Division of Developmental Disabilities Services
29 and the Division of Aging and Adult Services as to participants of the waiver
30 program.

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

33 (b) Upon completion of the administrative hearing process and if an
34 allegation was determined to be unfounded, the investigative report,
35 including protected health information, shall be confidential and shall be
36 made available only to:

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

23 (c)(1) An unfounded report shall be expunged one (1) year after
 24 completion of the investigation.

25 (2) However, demographic information may be retained for
 26 statistical purposes.

27 (d)(1) Except for the subject of the report, no person or agency to
 28 which disclosure is made may disclose to any other person a report or other
 29 information obtained under this section.

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

32
 33 /s/ Salmon

34
 35 APPROVED: 3/16/2007