

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: S3/19/15*  
**A Bill**

SENATE BILL 808

5 By: Senator J. Woods  
6 By: Representative D. Whitaker  
7

**For An Act To Be Entitled**

9 AN ACT TO AMEND THE LAW CONCERNING ADULT MALTREATMENT  
10 AND PROTECTED HEALTH INFORMATION OF A MALTREATED  
11 ADULT OR INDIVIDUAL RESIDING IN A LONG-TERM CARE  
12 FACILITY; AND FOR OTHER PURPOSES.  
13

**Subtitle**

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16 TO AMEND THE LAW CONCERNING ADULT  
17 MALTREATMENT AND PROTECTED HEALTH  
18 INFORMATION OF A MALTREATED ADULT OR  
19 INDIVIDUAL RESIDING IN A LONG-TERM CARE  
20 FACILITY.  
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22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 9-20-116(c)(2), concerning emergency  
26 custody of a maltreated adult, is amended to add an additional subdivision to  
27 read as follows:

28 (2)(A) Still exists to protect the maltreated adult.

29 (B) If the maltreated adult has a physical impairment but  
30 does not have a mental impairment, the court shall determine whether the  
31 maltreated adult shall remain in the custody of the Department of human  
32 Services by specifically addressing these issues:

33 (i) The current risk to the maltreated adult if  
34 removed from the custody of the department and returned to the home or  
35 situation from which the maltreated adult was removed;

36 (ii) Whether the maltreated adult has a mental



1 impairment and if not, inquiry of the maltreated adult whether the maltreated  
2 adult wants to remain in the custody of the department; and

3 (iii) If the maltreated adult does not want to  
4 remain in the custody of the department, is the request of the maltreated  
5 adult made intelligently, with full knowledge of the risk if custody is  
6 dismissed and the request is unequivocal.

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8 SECTION 2. Arkansas Code § 9-20-121 is amended to read as follows:

9 9-20-121. Availability of custody and protective services records.

10 (a) Reports, correspondence, memoranda, case histories, medical  
11 records, or other materials, including protected health information, compiled  
12 or gathered by the Department of Human Services regarding a maltreated adult  
13 in the custody of the department or receiving protective services from the  
14 department shall be confidential and shall not be released or otherwise made  
15 available except:

16 (1) To the maltreated adult;

17 (2) To the attorney representing the maltreated adult in a  
18 custody or protective services case when the disclosure is authorized in a  
19 court order or an authorization form that complies with the Health Insurance  
20 Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by  
21 the maltreated adult;

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

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

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

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

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

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

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

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

3 (10)(A)(i) To individual federal and state representatives and  
4 senators in their official capacity when the disclosure is authorized in a  
5 court order or an authorization form that complies with the Health Insurance  
6 Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by  
7 the maltreated adult.

8 (ii) ~~who~~ Federal and state representatives and  
9 senators shall not redisclose the information.

10 (B) No disclosure may be made to any committee or  
11 legislative body of any information that identifies by name or address any  
12 recipient of services; ~~and~~

13 (11) In the discretion of the department, ~~with family members~~ if  
14 the adult is in the custody of the department, the department may share:

15 (A) Information as permitted by the Health Insurance  
16 Portability and Accountability Act of 1996, Pub. L. No. 104-191, when the  
17 disclosure of information is:

18 (i) To family, friends, or anyone else authorized by  
19 the maltreated adult;

20 (ii) Needed to assist with the care of the  
21 maltreated adult;

22 (iii) Needed to notify a person of the maltreated  
23 adult's location and general condition; and

24 (iv) Not objected to by the maltreated adult;

25 (B) Appropriate information when the maltreated adult is  
26 incapacitated when it is in the best interest of the maltreated adult;

27 (12) To the Office of Medicaid Inspector General; and

28 (13) To an individual authorized by the maltreated adult in an  
29 executed authorization form that complies with the Health Insurance  
30 Portability and Accountability Act of 1996, Pub. L. No. 104-191, or valid  
31 court order.

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

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

1           (d)(1) Data, records, reports, or documents released under this  
2 section to a law enforcement agency, the prosecuting attorney, or a court by  
3 the Department of Human Services:

4                   (A) Are confidential;

5                   (B) Shall be sealed; and

6                   (C) Shall not be redisclosed without a protective order.

7           (2) Data, records, reports, or documents released under this  
8 section are confidential and are items of evidence for which there is a  
9 reasonable expectation of privacy that the items will not be distributed to  
10 persons or institutions without a legitimate interest in the evidence.

11           (3) This chapter does not contain language that is deemed to  
12 abrogate the right of discovery in a criminal case under the Arkansas Rules  
13 of Criminal Procedure or other applicable law.

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15           SECTION 3. Arkansas Code § 12-12-1703(9), concerning the defined terms  
16 used in the Adult and Long-Term Care Facility Resident Maltreatment Act, is  
17 amended to read as follows:

18                   (9)(A) “Impaired person” means a person:

19                           (i) ~~eighteen~~ Eighteen (18) years of age or older who  
20 as a result of mental or physical impairment is unable to protect himself or  
21 herself from abuse, sexual abuse, neglect, or exploitation; or

22                           (ii) Who is a long-term care facility resident and  
23 who as a result of mental or physical impairment is unable to protect himself  
24 or herself from abuse, sexual abuse, neglect, or exploitation.

25                   (B) For purposes of this subchapter, a long-term care  
26 facility resident is presumed to be an impaired person.

27                   (C) For purposes of this subchapter, a person who has a  
28 representative payee appointed for the person by the Social Security  
29 Administration or another authorized agency is presumed to be an impaired  
30 person in relation to adult maltreatment through financial exploitation;

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32           SECTION 4. Arkansas Code § 12-12-1703, concerning the defined terms  
33 used in the Adult and Long-Term Care Facility Resident Maltreatment Act is  
34 amended to add an additional subdivision to read as follows:

35                   (21) “Negligently” means a person’s failure to exercise the  
36 degree of care that a person of ordinary prudence would have exercised in the

1 same circumstances.

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3 SECTION 5. Arkansas Code § 12-12-1717(a), concerning the release of  
4 information in a founded report of adult maltreatment or long-term care  
5 facility resident maltreatment, is amended to add an additional subdivision  
6 to read as follows:

7 (18) The Office of Medicaid Inspector General.

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9 SECTION 6. Arkansas Code § 12-12-1717, concerning the release of  
10 information in a founded report of adult maltreatment or long-term care  
11 facility resident maltreatment, is amended to add an additional subsection to  
12 read as follows:

13 (f)(1) Data, records, reports, or documents released under this  
14 section to a law enforcement agency, the prosecuting attorney, or a court by  
15 the Department of Human Services:

16 (A) Are confidential;

17 (B) Shall be sealed; and

18 (C) Shall not be redisclosed without a protective order.

19 (2) Data, records, reports, or documents released under this  
20 section are confidential and are items of evidence for which there is a  
21 reasonable expectation of privacy that the items will not be distributed to  
22 persons or institutions without a legitimate interest in the evidence.

23 (3) This subchapter does not abrogate the right of discovery in  
24 a criminal case under the Arkansas Rules of Criminal Procedure or other  
25 applicable law.

26

27 SECTION 7. Arkansas Code § 12-12-1718 is amended to read as follows:

28 12-12-1718. Availability of screened out, pending, and unfounded  
29 reports.

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

35 (b)(1) A pending report, including protected health information, is  
36 confidential and shall be made available only to:

1 (A) The department, including the Death Review Committee  
2 of the Department of Human Services;

3 (B) A law enforcement agency;

4 (C) A prosecuting attorney;

5 (D) The office of the Attorney General;

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

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

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

14 (H) Any applicable licensing or registering authority;

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

17 (J) Any legal entity or board responsible for the  
18 maltreated person; and

19 (K) ~~{Repealed.}~~ The Office of the Medicaid Inspector  
20 General.

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

23 (c) Upon satisfaction of due process and if an allegation was  
24 determined to be unfounded, the investigative report, including protected  
25 health information, is confidential and shall be made available only to:

26 (1) The department, including the committee;

27 (2) A law enforcement agency;

28 (3) A prosecuting attorney;

29 (4) The office of the Attorney General;

30 (5) Any applicable licensing or registering authority;

31 (6) Any person named as a subject of the report or that person's  
32 legal guardian;

33 (7) A circuit court having jurisdiction pursuant to a petition  
34 for emergency, temporary, long-term protective custody, or protective  
35 services;

36 (8) A grand jury or court, upon a finding that the information

1 in the record is necessary for the determination of an issue before the grand  
2 jury or court;

3 (9) A person or provider identified by the department as having  
4 services needed by the person;

5 (10) Any employer, legal entity, or board responsible for the  
6 person named as the offender;

7 (11) Any legal entity or board responsible for the maltreated  
8 person; and

9 (12) ~~{Repealed.}~~ The Office of the Medicaid Inspector General.

10 (d) The department may retain automated information on unfounded  
11 reports for statistical purposes, to assess future risk, and to identify  
12 false reporting.

13 (e)(1) Except for the subject of the report, no person or agency to  
14 which disclosure is made may disclose to any other person or agency a report  
15 or other information obtained under this section.

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

18 (f)(1) The department may not release data that would identify the  
19 person who made a report except to law enforcement, a prosecuting attorney,  
20 or the office of the Attorney General.

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

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

26 (B) For prosecution of a crime.

27 (g)(1) Data, records, reports, or documents released under this  
28 section to a law enforcement agency, the prosecuting attorney, or a court by  
29 the Department of Human Services:

30 (A) Are confidential;

31 (B) Shall be sealed; and

32 (C) Shall not be redisclosed without a protective order.

33 (2) Data, records, reports, or documents released under this  
34 section are confidential and are items of evidence for which there is a  
35 reasonable expectation of privacy that the items will not be distributed to  
36 persons or institutions without a legitimate interest in the evidence.

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(3) This subchapter does not abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

*/s/J. Woods*