

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/4/99

A Bill

Act 753 of 1999
HOUSE BILL 1385

5 By: Representative Ferrell
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF CHAPTER 5 OF
10 TITLE 28 OF THE ARKANSAS CODE TO REVISE THE
11 DEFINITIONS OF NEGLECT, PROTECTIVE SERVICES, AND
12 SUBJECT OF THE REPORT, TO MODIFY THE JURISDICTION IN
13 ADULT PROTECTIVE CUSTODY CASES; TO CLARIFY THE
14 PROVISIONS REGARDING NOTICE, EMERGENCY CUSTODY, AND
15 TEMPORARY CUSTODY AND THE TIME FOR LONG TERM CUSTODY
16 HEARINGS; TO CLARIFY PROVISIONS FOR SHARING OF
17 INFORMATION IN INVESTIGATIONS OF DEATHS AND OTHER
18 CASES; TO CLARIFY THE PROVISIONS REGARDING REPORTS,
19 NOTICE OF FINDINGS AND ADMINISTRATIVE PROCEEDINGS
20 RELATED TO THIS CHAPTER; TO PROVIDE FOR THE
21 IDENTIFICATION AND PROTECTION OF ASSETS OF ADULTS IN
22 PROTECTIVE CUSTODY; TO PROVIDE FOR PENALTIES FOR
23 MAKING OF INTENTIONAL FALSE REPORTS; AND FOR OTHER
24 PURPOSES. "

Subtitle

25
26
27 "TO AMEND ARKANSAS LAW RELATING TO THE
28 PROTECTION OF ADULTS. "

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

32
33 SECTION 1. Arkansas Code 5-28-101 is amended to read as follows:
34 "5-28-101. Definitions.
35 As used in this chapter, unless the context otherwise requires:
36 (1) 'Endangered adult' means:

1 (A) An adult eighteen (18) years of age or older who is found to
2 be in a situation or condition which poses an imminent risk of death or
3 serious bodily harm to that person and who demonstrates a lack of capacity to
4 comprehend the nature and consequences of remaining in that situation or
5 condition; or

6 (B) A resident eighteen (18) years of age or older of a long-term
7 care facility which is required to be licensed under Section 20-10-224 who is
8 found to be in a situation or condition which poses an imminent risk of death
9 or serious bodily harm to such person and who demonstrates the lack of
10 capacity to comprehend the nature and consequences of remaining in that
11 situation or condition;

12 (2) 'Abuse' means:

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

16 (B) Any intentional or demeaning act which subjects an endangered
17 or impaired adult to ridicule or psychological injury in a manner likely to
18 provoke fear or alarm; ~~or~~

19 (3) 'Neglect' means acts or omissions by the endangered or impaired
20 adult (self-neglect) and/or intentional acts or omissions by a caregiver
21 constituting:

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

25 (B) Negligently failing to report health problems or changes in
26 health problems or changes in the health condition of an endangered or
27 impaired adult to the appropriate medical personnel; or

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

29 (4) 'Exploitation' means the illegal use or management of an endangered
30 or impaired adult's funds, assets, or property, or the use of an endangered or
31 impaired adult's person, power of attorney, or guardianship ~~or person~~ for the
32 profit or advantage of himself or another;

33 (5) 'Caregiver' means a related or unrelated person, owner, agent, high
34 managerial agent of a public or private organization, or a public or private
35 organization that has the responsibility for the protection, care, or custody
36 of an endangered or impaired adult as a result of assuming the responsibility

1 voluntarily, by contract, through employment, or by order of the court;

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

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

7 (7) 'Serious physical injury' means physical injury to an endangered or
8 impaired adult that creates a substantial risk of death or that causes
9 protracted disfigurement, protracted impairment of health, or loss or
10 protracted impairment of the function of any bodily member or organ;

11 (8)(A) 'Imminent danger to health or safety' means a situation in which
12 death or severe bodily injury could reasonably be expected to occur without
13 intervention.

14 (B) The burden of proof shall be upon the department to show by
15 clear and convincing evidence that such imminent danger exists;

16 (9) (A) 'Protective services' means services to protect the endangered
17 or impaired adult from himself and others, self-neglect or self-abuse and to
18 protect the endangered or impaired adult from abuse or neglect by others;

19 (B) Protective services shall include, but not be limited to,
20 evaluation of the need for services, arrangements for appropriate services,
21 assistance in obtaining financial benefits to which the person is entitled, or
22 securing medical and legal services.

23 ~~(C) In situations where exploitation, prevention of injury, and~~
24 ~~protection of the person and his property are at issue, protective services~~
25 ~~shall include seeking the appointment of a guardian or seeking protective~~
26 ~~custody;~~

27 (i) Protective services may include referrals for services
28 available in the community, seeking protective custody or court-ordered
29 services for endangered adults, or in appropriate cases, assistance in
30 locating an appropriate person or entity interested and able to assume
31 guardianship over an endangered adult;

32 (ii) In situations involving exploitation of an endangered
33 or impaired adult not resulting in any imminent danger to health or safety, or
34 involving protection of the property of such an impaired adult, protective
35 services may include one or more of the following:

36 (a) referrals for legal assistance,

1 **(b) referrals as appropriate to law enforcement or**
2 **prosecutors,**

3 **(c) assistance in locating an appropriate person or**
4 **entity interested and able to assume guardianship;**

5 (10) (A) 'Department' means the Arkansas Department of Human Services~~;~~;

6 (B) The director of the department may assign responsibilities for
7 administering the various duties imposed upon the department under this
8 chapter to respective divisions of the department which, in his or her
9 opinion, are best able to render service or administer the provisions of this
10 chapter; ~~and~~

11 (11) 'Impaired adult' means an adult eighteen (18) years or older who
12 suffers from mental or physical disease or defect and as a consequence thereof
13 is unable to protect himself or herself from abuse, sexual abuse, neglect, or
14 exploitation. For purposes of this chapter, adult residents of a long-term
15 care facility are presumed to be impaired adults.

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

21 **(13) 'Serious bodily harm' means physical abuse, sexual abuse, physical**
22 **injury and/or serious physical injury as defined in this chapter;**

23 **(14) 'Subject of the report' means the endangered or impaired adult, the**
24 **adult's guardian and the offender."**

25
26 SECTION 2. Arkansas Code 5-28-203 is amended to read as follows:

27 "5-28-203. Persons required to report abuse.

28 (a) (1) Whenever any physician, surgeon, coroner, dentist, osteopath,
29 resident intern, registered nurse, hospital personnel who are engaged in the
30 administration, examination, care, or treatment of persons, any social worker,
31 case manager, case worker, mental health professional, peace officer, law
32 enforcement officer, facility administrator, employee in a facility, or
33 employee of the Department of Human Services has observed or has reasonable
34 cause to suspect that an endangered or impaired adult has been subjected to
35 conditions or circumstances which would reasonably result in abuse, sexual
36 abuse, neglect, or exploitation, as defined in this chapter, he shall

1 immediately report or cause a report to be made in accordance with the
2 provisions of this section.

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

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

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

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

21 (3) The Office of Long-Term Care shall notify the central registry
22 and the office of the Attorney General.

23 (c) No privilege or contract shall relieve anyone required by this
24 subchapter to make notification of the requirement of making notification."
25

26 SECTION 3. Arkansas Code 5-28-204 is amended to read as follows:

27 "5-28-204. Report of death caused by abuse.

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

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

1 (c) The medical examiner, coroner, or hospital shall also report the
2 findings to the Department when either:

3 (1) reasonable cause exists to believe the death resulted from
4 abuse, neglect, or exploitation of an adult; or

5 (2) upon request of the Department when there is a pending
6 investigation concerning allegations of abuse or neglect occurring prior to
7 death."

8
9 SECTION 4. Arkansas Code 5-28-206 is amended to read as follows:

10 "5-28-206. Reporting procedures generally.

11 (a) A report of abuse, sexual abuse, ~~or negligence~~ neglect, or
12 exploitation of an abused or neglected adult may, pursuant to this chapter, be
13 made by telephone and shall be followed by a written report within forty-eight
14 (48) hours, if so requested by the receiving agency or central registry.

15 (b) ~~The~~ When a report is initially received by an agency other than the
16 central registry, the receiving agency shall immediately forward a copy of the
17 report to the statewide central registry on forms supplied by the registry.

18 (c) When appropriate, a copy of ~~this~~ the initial report shall
19 immediately be made available to the appropriate law enforcement agency for
20 its consideration."

21
22 SECTION 5. Arkansas Code 5-28-207 is amended to read as follows:

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

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

25 (1) Information contained in the initial written or telephone report;

26 (2) Records of final disposition of the report and the investigation
27 thereof, including services offered and services accepted, and whether the
28 report is founded or unfounded.

29 (3) The plan, if any, for rehabilitation, treatment, or
30 preventive/ameliorative services;

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

33 (5) Any other information which might be helpful in furthering the
34 purposes of this chapter."

35
36 SECTION 6. Arkansas Code 5-28-208 is amended to read as follows:

1 "5-28-208. Telephone reporting -- Determination of prior records.

2 (a) There shall be a single statewide telephone number that all persons,
3 whether mandated by law or not, may use to report cases of suspected adult
4 abuse, sexual abuse, exploitation and neglect and that all persons so
5 authorized by this chapter may use for determining the existence of prior
6 records in order to evaluate the conditions or circumstances of the alleged
7 abused, exploited, or neglected adult before them.

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

10 ~~(c)~~ If the records indicate a previous report concerning the subject of
11 the report or other pertinent information, the investigator or law
12 enforcement, when appropriate ~~local protective agency~~ shall be notified of
13 these facts."
14

15 SECTION 7. Arkansas Code 5-28-209 is amended to read as follows:

16 "5-28-209. Contents of report.

17 Reports shall include the following information:

18 (1) The names and addresses of the next of kin or persons responsible
19 for care, if known;

20 (2) The ~~person's~~ victim's name, address, age, sex, and race;

21 (3) The nature and extent of the injury, sexual abuse, ~~or negligence~~
22 neglect, or exploitation, including any evidence of previous injury, sexual
23 abuse, or negligence to the person;

24 (4) The names and addresses of the persons responsible for the injury,
25 sexual abuse, ~~or negligence~~ neglect, or exploitation, if known;

26 (5) Family composition;

27 (6) The source of the report;

28 (7) The person making the report;

29 ~~(8) His reporting source, including the taking of photographs~~
30 Photographs, videos, and x rays with the identification of photographer and
31 date taken ~~removal or keeping of the person of the abused or notifying the~~
32 ~~coroner or medical examiner;~~ and

33 (9) Other information that the person making the report believes may be
34 helpful in the furtherance of the purposes of this chapter."
35

36 SECTION 8. Arkansas Code 5-28-210 is amended to read as follows:

1 "5-28-210. Investigation.

2 (a) (1) In cases involving ~~an endangered~~ an abused, neglected or
3 exploited adult residing in a long-term care facility certified pursuant to
4 Title XIX of the Social Security Act, the local law enforcement agency or the
5 office of the Attorney General shall make a thorough investigation.

6 (2) In all other cases involving ~~endangered~~ abused, neglected or
7 exploited adults, the department shall make a thorough investigation.
8 Referrals may be made to local law enforcement during the pendency of the
9 department's investigation where cause exists to believe that a crime may have
10 occurred.

11 (b) The primary purpose of such investigation is to protect the abused,
12 neglected, or exploited adult.

13 (c) The investigation shall be completed and a determination entered.
14 The investigation and investigative report shall include:

15 (1) The nature, extent, and cause of the abuse, sexual abuse, or
16 ~~negligence~~ neglect, or exploitation of the ~~endangered~~ adult;

17 (2) The identity of the person responsible;

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

19 (4) The evaluation of the persons responsible for the care of the
20 abused, neglected, or exploited adult, if any;

21 (5) The home environment and relationship of the abused, neglected
22 or exploited adult to the next of kin or other person responsible for his
23 care, and all other pertinent data; and

24 (6)(A) A visit to the abused, neglected or exploited adult's home
25 and an interview with the abused, neglected or exploited adult. The
26 investigators shall interview the abused, neglected or exploited adult alone
27 and out of hearing of any next of kin or other persons responsible for his or
28 her care. An interpreter may be present during the interview of the abused,
29 neglected or exploited adult, if necessary.

30 (B) If the admission to the home, institution, or other
31 place that the abused, neglected or exploited adult may be, or permission of
32 the next of kin or other person responsible for the adult or in charge of any
33 place where the abused, neglected or exploited adult may be, cannot be
34 obtained, then the probate court, upon cause shown, shall order the next of
35 kin or person responsible and in charge of any place where the abused,
36 neglected or exploited adult may be to allow entrance for the examination and

1 investigation.

2 (C) Further, if admission to the home cannot be obtained due to
3 hospitalization or similar absence of the abused, neglected or exploited adult
4 and admission to the home is necessary to complete the investigation, then the
5 probate court, upon cause shown, shall order and authorize law enforcement to
6 assist the department in obtaining entrance to the home for the required
7 investigation of the home environment.

8 (d) The investigation may include a medical, psychological, social,
9 vocational, financial, and educational evaluation and review, where necessary.
10 The medical, mental health, or other records regarding the abused, neglected
11 or exploited adult maintained by any facility ~~whose administrator is required~~
12 ~~by Section 5-28-203 to report suspected abuse, neglect, or exploitation~~ or
13 maintained by any person required by Section 5-28-203 to report suspected
14 abuse, neglect, or exploitation shall be made available to the department for
15 the purposes of conducting an evaluation or review under this subsection.

16 (e) (1) ~~(A)~~ If, before the investigation is completed, the opinion of
17 the investigators is that the immediate removal of the ~~endangered~~ abused,
18 neglected, or exploited adult is necessary to protect him or her from further
19 abuse, sexual abuse, exploitation or neglect, the investigators may petition
20 the probate court for an order of temporary protective custody. The probate
21 court, upon good cause being shown, may issue an order for temporary
22 protective custody in the manner and procedures provided in Section 5-28-303.

23 ~~(B)(2)~~ If, before the investigation is completed, the opinion of
24 the investigators is that the abused, exploited, or neglected adult is in
25 imminent danger of death or serious bodily harm, that available services have
26 been offered to alleviate the danger and have been refused, and the abused,
27 exploited or neglected adult's capacity to comprehend the nature and
28 consequences of remaining in the situation or condition cannot be adequately
29 assessed in the home, the investigators may petition the probate court for an
30 order of temporary protective custody for the purpose of having the adult
31 evaluated. The probate court, upon good cause being shown, may issue an order
32 for temporary custody for the purpose of having the adult evaluated. The
33 petition shall be filed and the order issued in the manner and procedures
34 provided in § 5-28-303.

35 ~~(2) The investigative reports of the department shall be made~~
36 ~~available to the probate court upon request.~~

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

4 (g) Upon completion of the investigation, the investigating agency shall
5 determine that the allegations of adult abuse, sexual abuse, neglect, or
6 exploitation are either:

7 (1) 'Unfounded' shall be entered when the allegation is not
8 supported by a preponderance of the evidence. Unfounded reports may be used
9 within the department prior to expungement for purposes of danger assessment
10 on future reports. There can be no disclosure outside the Department of
11 unfounded reports or information obtained during an unfounded investigation
12 except for release to the prosecutor for the limited purpose of prosecution of
13 a person who willfully makes false notification pursuant to this subchapter,
14 to a subject of the report, or to a court if the information in the record is
15 necessary for a determination of an issue before the court.

16 (A) This section shall not prevent the Department from
17 offering services, from petitioning the court for protective custody, or from
18 petitioning the probate court for an order of investigation prior to
19 completion of an investigation. Further, this section shall not prohibit
20 sharing of information with law enforcement, coroners or medical examiners, or
21 prosecutors prior to investigative determination as discussed elsewhere in
22 this chapter.

23 (B) If the investigation cannot be completed, the
24 investigation shall be determined incomplete and placed in inactive status for
25 one year, at which time it will be expunged. The report shall include
26 documentation indicating why the investigation could not be completed.

27 (C) For purposes of disclosure, pending or inactive reports
28 shall be treated as unfounded.

29 (2) 'Founded' shall be entered when the allegation is supported by
30 some credible evidence. A determination of founded shall not be entered
31 solely because an adult, practicing his or her religious beliefs, is receiving
32 spiritual treatment as indicated in Section 5-28-105.

33 (h) The founded investigative reports maintained in the department's
34 central registry shall be made available to the probate court upon request."

35
36 SECTION 9. Arkansas Code 5-28-211 is amended to read as follows:

1 "5-28-211. Rights of subject of report. Notice of finding - Amendment
2 and appeal.

3 (a) At any time, the subject of a report may receive, upon request, a
4 report of all information contained in the central registry concerning
5 completed founded investigations of which he or she is a subject. However,
6 the director of the department or his authorized agent is authorized to
7 prohibit the release of data that would identify the person who made the
8 report or who cooperated in a subsequent investigation if the director
9 reasonably finds the data to be detrimental to the interest or safety of the
10 person. With respect to pending or inactive investigations, the subject may
11 only be advised that the investigation is pending or inactive. With respect
12 to unfounded investigations, the subject may only be advised that a report was
13 unfounded and the date the determination was made.

14 ~~_____ (b)(1) At any time subsequent to the completion of the investigation,~~
15 ~~but in no event later than ninety (90) days after the receipt of a report, a~~
16 ~~subject of the report may request the director of the department to amend,~~
17 ~~seal, or expunge the record of the report.~~

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

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

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

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

32 ~~(2) The latter, upon receipt of this notice, shall take similar~~
33 ~~action regarding any central registry for adult abuse, sexual abuse, or~~
34 ~~negligence.~~

35 (b) (1) Following completion of the investigation, the department shall
36 notify each known subject of the report of the determination within 30 days

1 after completion of the investigation. If the report is determined to be
 2 founded, notification shall be by hand delivery or by certified mail,
 3 restricted delivery.

4 (2) Such notification shall include the following:

5 (i) The investigative determination, exclusive of the source
 6 of the notification;

7 (ii) A statement that a subject of a founded report may
 8 request an administrative hearing;

9 (iii) A statement that such request must be made to the
 10 department within thirty (30) days of receipt of the notice of determination;

11 (iv) The name of the person making notification, his
 12 occupation, and where he can be reached.

13 (c) The administrative hearing process must be completed within one
 14 hundred and eighty (180) days from the date of the receipt of the request for
 15 a hearing, unless the person appealing waives the time limit.

16 (d) When the department conducts such administrative hearings, the
 17 chief counsel of the department is authorized to require the attendance of
 18 witnesses and the production of books, records, or other documents through the
 19 issuance of subpoenas when such testimony or information is necessary to
 20 adequately present the position of the Department of Human Services, law
 21 enforcement or the Attorney General's office, or the alleged offender in a
 22 report. Failure to obey the subpoena may be deemed a contempt, punishable
 23 accordingly.

24 (e) No action by appeal from a determination that a report is founded
 25 shall be brought more than two (2) years after the completion of the
 26 investigation."

27
 28 SECTION 10. Arkansas Code 5-28-213 is amended to read as follows:

29 "5-28-213. Availability of reports of adult abuse.

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

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

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

6 (3) An authorized agency having responsibility for the care or
7 supervision of ~~a subject of a report~~ an endangered or impaired adult;

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

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

11 (6) A prosecuting attorney, law enforcement official, or coroner
12 conducting a criminal investigation or investigating a death or the Attorney
13 General or his designated investigator when conducting an investigation of
14 abuse, exploitation, or neglect;

15 (7) A person who has made a report of suspected abuse, neglect, or
16 exploitation only to the extent that he may be informed after completion and
17 closure of the investigation whether legal action was taken, services were
18 provided, or no action was taken. No further information shall be released
19 and the person shall be informed of the confidentiality of the information and
20 the penalties for disclosure.

21 (8) Agencies employing personal care assistants for purposes of
22 screening applicants upon submission of a signed, notarized release from said
23 applicant. The only information released to the agency will be whether or not
24 the registry contains any founded reports naming the applicant as an offender.

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

29 (c) A person given access to names or other information identifying a
30 subject of the report, except the subject of a report, shall not divulge or
31 make public identifying information unless he is an agent of the Department,
32 the prosecuting attorney or other law enforcement official and the purpose is
33 to initiate or provide evidence in a court action.

34 (d) However, information contained in the statewide central registry for
35 abused adults may be made available to bona fide and approved research groups
36 solely for the purpose of scientific research, but in no event shall the names

1 of individuals be released, nor shall specific circumstances or facts related
2 to a specific individual be utilized in any research report which might be
3 identifiable with such individual.

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

8
9 SECTION 11. Arkansas Code 5-28-214 is amended to read as follows:

10 "5-28-214. Reports as evidence.

11 A written report from persons or officials required by this chapter to
12 report shall be admissible in evidence in any proceeding relating to adult
13 abuse, sexual abuse, ~~or negligence.~~ neglect, or exploitation. The affidavit
14 of a physician, psychiatrist, psychologist, or licensed certified social
15 worker shall also be admissible in evidence in any proceeding relating to
16 adult abuse, sexual abuse, or neglect, or exploitation."

17
18 SECTION 12. Subchapter 2 of Chapter 28 of Title 5 of the Arkansas Code
19 is amended by adding a new section at the end to read as follows:

20 "5-28-216. Penalties

21 (a) (1) Any person, official, or institution negligently or willfully
22 failing to make notification when required by this subchapter shall be guilty
23 of a Class C misdemeanor.

24 (2) Any person, official, or institution willfully making false
25 notification pursuant to this subchapter, knowing such allegations to be
26 false, shall be guilty of a Class A misdemeanor.

27 (3) Any person, official, or institution willfully making false
28 notification pursuant to this subchapter, knowing such allegations to be
29 false, and who has been previously convicted of making willful false
30 allegations, shall be guilty of a Class D felony.

31 (b) Any person who willfully permits, and any other person who
32 encourages, the release of data or information contained in the central
33 registry to persons to whom disclosure is not permitted by this subchapter
34 shall be guilty of a Class A misdemeanor."

35
36 SECTION 13. Subchapter 3 of Chapter 28 of Title 5 of the Arkansas Code

1 is amended to read as follows:

2 "5-28-301. Emergency custody.

3 (a) (1) The department or a law enforcement official, ~~τ~~ may take an
4 abused, neglected or exploited ~~endangered~~ adult into emergency protective
5 custody, or any person in charge of a hospital or similar institution or any
6 physician treating any such adult may keep that adult in his custody, whether
7 or not medical treatment is required, if the circumstances or condition of the
8 adult are such that continuing at his place of residence or in the care or
9 custody of a parent, guardian, or other person responsible for the adult's
10 care presents imminent danger to that adult's health or safety and the adult
11 lacks the capacity to comprehend the nature and consequences of remaining in a
12 situation that presents imminent danger to his health or safety.

13 (2) However, emergency protective custody shall not exceed
14 seventy-two (72) hours, excluding weekends and holidays, ~~three (3) working~~
15 ~~days,~~ and ~~the probate court and~~ the department shall be notified immediately
16 upon taking such adult into emergency protective custody, ~~in order that adult~~
17 ~~protective proceedings may be initiated.~~ An emergency ex parte order of
18 custody shall be obtained on the abused, neglected, or exploited adult within
19 the seventy-two (72) hours.

20 (3) When emergency protective custody is exercised pursuant to
21 this section, the person exercising such custody or the department shall have
22 authority to consent to having the abused, neglected or exploited adult
23 transported by ambulance if medically appropriate, even if the adult objects.
24 No court order shall be required for such ambulance transport. When an
25 ambulance driver or company acts in good faith pursuant to this section, the
26 immunity provisions of Section 5-28-215 shall apply. Good faith of the
27 ambulance driver or company shall be presumed.

28 (b) ~~When action is taken under subsection (a) of this section for~~
29 ~~emergency protective custody,~~ If the court grants the ex parte order of
30 emergency custody, a preliminary hearing shall be held within ~~two (2)~~ five (5)
31 working days to establish probable cause for grounds for protective custody.

32

33 5-28-302. Voluntary placement.

34 (a) Any person may request voluntary protective placement under this
35 chapter.

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

1 (c) Procedures for hearings pursuant to Sections 5-28-303, 5-28-304, and
2 5-28-306 shall be followed.

3
4 5-28-303. Temporary custody.

5 (a) The Department may file a petition requesting the probate court to
6 find that there is probable cause to place an ~~endangered~~ abused, neglected or
7 exploited adult in temporary custody for a period of up to ~~fourteen (14) days~~
8 thirty (30) days.

9 (b) During the period the ~~endangered~~ abused, neglected or exploited
10 adult is in temporary custody the court may order or authorize the department
11 to obtain medical treatment or physical or psychological evaluations, or
12 investigate the ~~endangered~~ adult's financial affairs, or ~~simply~~ order a
13 hearing for long-term protective custody or court-ordered services be held
14 ~~within fourteen (14) days.~~

15
16 5-28-304. Long-term custody - Notice.

17 (a)(1) The department may file a petition requesting that an ~~endangered~~
18 abused, neglected or exploited adult be placed in the department's long-term
19 protective custody.

20 (2) Alternatively, or in combination with a petition for
21 protective custody, the department may file a petition for court-ordered
22 services requesting that the abused, neglected or exploited adult or the
23 primary caregiver of the adult be ordered to accept services in the adult's
24 home environment in lieu of being placed in protective custody.

25 ~~(2)(3)~~ (3) The petition requesting long-term protective custody or
26 court-ordered services may be combined with the petition requesting temporary
27 protective custody.

28 (b) Notice of a petition for long-term protective custody or court-
29 ordered services shall be served upon the respondent at least seven (7)
30 calendar days prior to the time set for a hearing.

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

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

35 (1) The right to effective assistance of counsel;

36 (2) The right to be present at the hearing;

- 1 (3) The right to present evidence on his own behalf;
- 2 (4) The right to cross-examine witnesses who testify against him;
- 3 (5) The right to present witnesses in his own behalf;
- 4 (6) The right to remain silent; and
- 5 (7) The right to view and copy all petitions, reports, and
- 6 documents retained in the court file.

7 (e) The ~~persons~~ person(s) serving the notice shall return the
 8 certificate of ~~notice~~ service to the ~~probate~~ court verifying that the
 9 petition, ~~and copy of~~ the order for hearing, and a statement of the above
 10 rights have been delivered and notice given.

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

- 12 (1) The legal counsel;
- 13 (2) The next of kin whose names and addresses are known to the
- 14 petitioner;
- 15 (3) The person having physical custody of the respondent;
- 16 (4) Any person named in the petition; and
- 17 ~~(5) The department of any governmental agency or private group~~
 18 ~~from whom the respondent is known to be receiving aid; and~~
- 19 ~~(6)~~(5) Such other persons or entities as the court may require.

20 (g) The probate clerk shall not charge or collect a filing fee from the
 21 department when it files a petition for temporary or long-term protective
 22 custody, for temporary custody for purposes of evaluation, for court-ordered
 23 services, or for order of investigation.

24
 25 5-28-305. Contents of petition.

26 The petition shall set forth the following:

- 27 (1) The name, address, and (if known) the date of birth of the
 28 endangered abused, neglected or exploited adult;
- 29 (2) The ~~endangered~~ abused, neglected or exploited adult's current
 30 location;
- 31 (3) The name and address of the ~~endangered~~ abused, neglected or
 32 exploited adult's closest adult relative, if known;
- 33 (4) The facts which, if proven, cause the person to be an ~~endangered~~
 34 abused, neglected or exploited adult. The facts may be set out in an
 35 affidavit attached to the petition and incorporated therein; and
- 36 (5) The relief requested by the petitioner.

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

(a) ~~(1)~~ A hearing for long-term protective custody or court-ordered services shall be no later than ~~fourteen (14)~~ thirty (30) days from the date the order for temporary protective custody was signed, unless the court extends the time in which the hearing must be held upon a finding that extenuating circumstances exist, ~~and that the hearing cannot be held within fourteen (14) days in accordance with Section 5-28-301(c).~~

~~(2) The court may continue the order for temporary protective custody and extend the time for holding the hearing for long-term protective custody upon agreement of the parties.~~

(b) The court may hold a hearing for long-term protective custody or court-ordered services anywhere in the judicial district ~~upon the agreement of the parties.~~

(1) The court shall make a finding in connection with the determination of the least ~~drastic~~ restrictive alternative to be considered proper under the circumstances, including the finding for noninstitutional care wherever possible.

(2) Where there are services available to remedy the imminent danger to the ~~endangered~~ abused, neglected or exploited adult, the court may order the ~~endangered~~ adult or the caregiver for the adult to accept the services in lieu of placing the ~~endangered~~ adult in protective custody.

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

- (1) The placement or care plan to be followed;
- (2) The reason for the placement or care to be given;
- (3) The scope and duration of the order;
- (4) That the department periodically review the case every six (6) months, or more frequently if warranted;
- (5) That the department monitor the services being received in lieu of protective custody as often as is necessary to prevent the recurrence of the danger; and
- (6) The requirement of judicial court review of the case, either formal or informal as determined by the court, at least once a year.

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

- (1) The person is lacking the capacity to comprehend the nature

1 and consequences of remaining in a situation that presents an imminent danger
2 to his health or safety;

3 (2) The individual is unable to provide for his own protection
4 from abuse or neglect; ~~or~~ and

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

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

10 (f) Placement under this section does not replace commitment of a
11 person in need of acute psychiatric treatment, or alcohol or drug abuse
12 treatment. Placement under this section does not apply to domestic abuse of
13 mentally competent persons. No adult shall be placed in the custody of the
14 department for the sole purpose of consenting to the adult's medical
15 treatment.

16 (g) Any person aggrieved by any order for long-term protective custody
17 or for court-ordered services may appeal to a court of competent jurisdiction
18 in the manner and procedures now provided by law.

19
20 5-28-307. Protection of Assets of Person in the Custody of the
21 Department.

22 The Court shall have the authority to enter orders, as needed, to
23 identify, secure and protect the assets of any person in the custody of the
24 department. The Court shall also have the authority to direct payment from
25 the assets of the person in department custody for services rendered or goods
26 purchased by or for the person in the custody of the department.

27
28 5-28-308. Jurisdiction - Custody Proceedings.

29 The probate court shall have jurisdiction over proceedings for temporary and
30 long term protective custody, for court-ordered services, or for an order of
31 investigation pursuant to this chapter.

32
33 SECTION 14. Arkansas Code 5-28-212 is amended to read as follows:

34 "Unless an investigation of a report conducted pursuant to this chapter
35 determines that ~~some credible~~ a preponderance of the evidence exists of
36 alleged abuse, sexual abuse, or neglect of an endangered adult, all

1 information identifying the subject of the report shall be expunged from the
2 central registry one (1) year after the report was filed with the Department
3 of Human Services. "

4

5 SECTION 15. All provisions of this act of a general and permanent
6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
7 Code Revision Commission shall incorporate the same in the Code.

8

9 SECTION 16. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

14

15 SECTION 17. All laws and parts of laws in conflict with this act are
16 hereby repealed.

17

/s/ Ferrell

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APPROVED: 3/22/1999

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