

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

# A Bill

HOUSE BILL 1928

## For An Act To Be Entitled

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

## Subtitle

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

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

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

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

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

*"5-28-101. Definitions.*

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

*(1) 'Endangered adult' means:*

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

*(B) A resident eighteen (18) years of age or older of a long-term care facility which is required to be licensed under § 20-10-224*

1 who is found to be in a situation or condition which poses an imminent risk  
2 of death or serious bodily harm to such person and who demonstrates the lack  
3 of capacity to comprehend the nature and consequences of remaining in that  
4 situation or condition;

5 (2) 'Abuse' means:

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

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

12 (3) 'Neglect' means:

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

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

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

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

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

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

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

1           (7) 'Serious physical injury' means physical injury that creates a  
2 substantial risk of death or that causes protracted disfigurement, protracted  
3 impairment of health, or loss or protracted impairment of the function of any  
4 bodily member or organ;

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

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

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

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

25           5-28-102. Legislative intent.

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

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

1           5-28-103. Criminal penalties for adult abuse.

2           (a) It shall be unlawful for any person or caregiver to abuse,  
3 neglect, or exploit any person subject to protection under the provisions of  
4 this chapter.

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

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

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

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

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

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

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

33           (3) Any person or caregiver who exploits a person in violation  
34 of the provisions of this chapter shall be guilty of a Class A misdemeanor  
35 and shall be punished as provided by law, where the value of the property,

1 assets, or resources is two hundred dollars (\$200) or less.

2 5-28-104. Privilege not grounds for exclusion of evidence.

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

9 5-28-105. Spiritual treatment alone not abusive.

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

16 5-28-106. Civil penalties.

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

20 (2) Notwithstanding any criminal penalties assessed under this  
21 chapter, any caregiver against whom any civil judgment is entered as the  
22 result of a civil action brought or threatened to be brought by the State of  
23 Arkansas through the Attorney General on a complaint alleging that caregiver  
24 to have abused, neglected, or exploited an endangered or impaired adult in a  
25 long-term care facility required to be licensed under § 20-10-224 shall be  
26 required to pay a civil penalty of not less than one thousand dollars  
27 (\$1,000) nor more than ten thousand dollars (\$10,000) for each violation  
28 judicially found to have occurred.

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

32 (c) Any penalty shall be paid into the Treasury of the State of  
33 Arkansas and credited to the General Revenue Fund Account of the State  
34 Apportionment Fund.

35 (d) Any caregiver against whom any civil judgment is entered as the

1 result of a civil action brought or threatened to be brought under this  
2 section by the State of Arkansas through the Attorney General shall be  
3 required to pay to the Attorney General all reasonable expenses which the  
4 court determines have been necessarily incurred in the enforcement of this  
5 chapter.

6 5-28-107. Investigation by Attorney General and Department of Human  
7 Services.

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

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

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

18

19 5-28-201. Central registry.

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

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

26 5-28-202. Penalties for failure to report abuse.

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

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

34 5-28-203. Persons required to report abuse.

35 (a)(1) Whenever any physician, surgeon, coroner, dentist, osteopath,

1 resident intern, registered nurse, hospital personnel who are engaged in the  
2 administration, examination, care, or treatment of persons, social worker,  
3 case manager, case worker, mental health professional, peace officer, law  
4 enforcement officer, facility administrator, employee in a facility, or  
5 employee of the Department of Human Services has reasonable cause to suspect  
6 that an adult has been subjected to conditions or circumstances which would  
7 reasonably result in abuse, neglect, or exploitation as defined in this  
8 chapter he shall immediately report or cause a report to be made in  
9 accordance with the provisions of this section.

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

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

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

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

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

30           5-28-204. Report of death caused by abuse.

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

1           (b) The medical examiner or coroner shall accept the report for  
2 investigation and shall report his findings to the police, the appropriate  
3 prosecuting attorney, and, if the institution making the report is a  
4 hospital, to the hospital.

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

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

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

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

19          5-28-206. Reporting procedures generally.

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

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

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

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

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

30           (1) Information in the written report;

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

33           (3) The plan for rehabilitation treatment;

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



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

3           5-28-208. Telephone reporting - Determination of prior records.

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

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

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

14           5-28-209. Contents of report.

15           Reports shall include the following information:

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

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

19           (3) The nature and extent of the injury, sexual abuse, or negligence,  
20 including any evidence of previous injury, sexual abuse, or negligence to the  
21 person;

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

24           (5) Family composition;

25           (6) The source of the report;

26           (7) The person making the report;

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

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

32           5-28-210. Investigation.

33           (a)(1) In cases involving an endangered adult residing in a long-term  
34 care facility certified pursuant to Title XIX of the Social Security Act, the  
35 local law enforcement agency or the Office of the Attorney General shall make

1 a thorough investigation.

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

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

6           (c) The investigation shall include:

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

9               (2) The identity of the person responsible;

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

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

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

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

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

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

28           (e)(1) If, before the examination is completed, the opinion of the  
29 investigators is that the immediate removal of the endangered adult is  
30 necessary to protect him from further abuse or neglect, the probate court, on  
31 petition by the investigators, and good cause being shown, may issue an order  
32 for temporary protective custody in the manner and procedures provided in  
33 § 5-28-303.

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

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

4           5-28-211. Rights of subject of report.

5           (a) At any time, the subject of a report may receive, upon request, a  
6 report of all information contained in the central registry. However, the  
7 director of the department or his authorized agent is authorized to prohibit  
8 the release of data that would identify the person who made the report or who  
9 cooperated in a subsequent investigation if the director reasonably finds the  
10 data to be detrimental to the interest or safety of the person.

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

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

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

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

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

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

32           5-28-212. Expungement of information.

33           Unless an investigation of a report conducted pursuant to this chapter  
34 determines that some credible evidence exists of alleged abuse, sexual abuse,  
35 or neglect of an endangered adult, all information identifying the subject of

1 the report shall be expunged from the central registry forthwith.

2 5-28-213. Availability of reports, etc.

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

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

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

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

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

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

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

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

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

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

1           5-28-214. Reports as evidence.

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

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

6           (a) Any person, official, or institution participating in good faith  
7 in the making of a report, the taking of photographs, or the removal of an  
8 abused adult pursuant to this chapter shall have immunity from liability and  
9 suit for damages, civil or criminal, that otherwise might result by reason of  
10 such actions.

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

13

14           5-28-301. Emergency custody.

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

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

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

34           (c) Upon a finding of probable cause, the court may order temporary  
35 protective custody for up to fourteen (14) days, pending the hearing for

1 long-term protective custody.

2 5-28-302. Voluntary placement.

3 (a) Any person may request voluntary protective placement under this  
4 chapter.

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

6 5-28-303. Temporary custody.

7 The Department may file a petition requesting the probate court to find  
8 that there is probable cause to place an endangered adult in temporary  
9 custody for a period of up to fourteen (14) days. During the period the  
10 endangered adult is in temporary custody the Court may order the Department  
11 to obtain medical treatment, physical or psychological evaluations, or  
12 investigate the endangered adult\_s financial affairs or simply to order a  
13 hearing for long-term protective custody be held within fourteen (14) days..

14 5-28-304. Long-term custody - Notice.

15 (a) The Department may file a petition requesting that an endangered  
16 adult be placed in the Department\_s long-term protective custody. The  
17 petition requesting long-term protective custody may be combined with the  
18 petition requesting temporary protective custody.

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

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

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

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

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

29 (3) The right to present evidence on his own behalf;

30 (4) The right to cross-examine witnesses who testify against  
31 him;

32 (5) The right to present witnesses in his own behalf;

33 (6) The right to remain silent;

34 (7) The right to view and copy all petitions, reports, and  
35 documents retained in the court file.

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

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

5                 (1) The legal counsel;

6                 (2) The next of kin whose names and addresses are known to the  
7 petitioner;

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

9                 (4) Any person named in the petition;

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

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

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

16           5-28-305 Contents of Petition.

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

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

20                (2) The endangered adult\_s current location;

21                (3) The name and address of the endangered adult\_s closest adult  
22 relative, if known;

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

26                (5) The relief requested by the petitioner.

27           5-28-306. Long-term custody - Hearing - Placement - Appeal.

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

31           (b) The court shall make a finding in connection with the  
32 determination of the least drastic alternative to be considered proper under  
33 the circumstances, including the finding for noninstitutional care wherever  
34 possible. Where there are services available to remedy the imminent danger  
35 to the endangered adult, the court may order the endangered adult or the

1 caregiver for the adult to accept the services in lieu of placing the  
2 endangered adult in protective custody.

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

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

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

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

7 (4) That the department periodically review the case every six

8 (6) months, or more frequently if warranted;

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

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

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

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

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

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

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

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

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

31

32 SECTION 3. All provisions of this act of a general and permanent  
33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
34 Code Revision Commission shall incorporate the same in the Code.

35



