

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/1/01

A Bill

HOUSE BILL 1764

5 By: Representatives Dees, *Borhauer*
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ADULT ABUSE ACT; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12 AN ACT TO AMEND THE ADULT ABUSE ACT.
13
14

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code 5-28-101 is amended to read as follows:
20 5-28-101. Definitions.

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

22 (1) "Abuse" means:

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

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

29 (2) "Caregiver" means a related or unrelated person, owner, agent, high
30 managerial agent of a public or private organization, or a public or private
31 organization that has the responsibility for the protection, care, or custody
32 of an endangered or impaired adult as a result of assuming the responsibility
33 voluntarily, by contract, through employment, or by order of the court;

34 (3)(A) "Department" means the Department of Human Services.

35 (B) The director of the department may assign responsibilities
36 for administering the various duties imposed upon the department under this

1 chapter to respective divisions of the department which, in his or her
2 opinion, are best able to render service or administer the provisions of this
3 chapter;

4 (4) "Endangered adult" means:

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

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

16 (5) "Exploitation" means the illegal use or management of an endangered
17 or impaired adult's funds, assets, or property, or the use of an endangered or
18 impaired adult's person, power of attorney, or guardianship for the profit or
19 advantage of himself or another;

20 (6)(A) "Imminent danger to health or safety" means a situation in which
21 death or severe bodily injury could reasonably be expected to occur without
22 intervention.

23 (B) The burden of proof shall be upon the Department of Human
24 Services to show by clear and convincing evidence that such imminent danger
25 exists;

26 (7)(A) "Impaired adult" means ~~an adult~~ a person eighteen (18) years or
27 older who ~~suffers from~~ as a result of mental or physical ~~disease or defect and~~
28 ~~as a consequence thereof~~ impairment is unable to protect himself or herself
29 from abuse, sexual abuse, neglect, or exploitation and as a consequence
30 thereof is endangered.

31 (B) For purposes of this chapter, adult residents of a long-term
32 care facility are presumed to be impaired adults;

33 (8) "Neglect" means acts or omissions by ~~the~~ an endangered ~~or impaired~~
34 adult, for example self-neglect, or intentional acts or omissions by a
35 caregiver responsible for the care and supervision of an endangered or
36 impaired adult constituting:

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

4 (B) Negligently failing to report health problems or changes in
5 health problems or changes in the health condition of an endangered or
6 impaired adult to the appropriate medical personnel; or

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

8 (9)(A) "Physical injury" means the impairment of physical condition or
9 the infliction of substantial pain.

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

13 (10)(A) "Protective services" means services to protect the endangered
14 or impaired adult from:

15 (i) Self-neglect or self-abuse; and

16 (ii) Abuse or neglect by others;

17 (B) Protective services shall include, but not be limited to:

18 (i) Evaluation of the need for services;

19 (ii) Arrangements for appropriate services;

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

22 (iv) Securing medical and legal services.

23 (C)(i) Protective services may include:

24 (a) Referrals for services available in the
25 community;

26 (b) Seeking protective custody or court-ordered
27 services for endangered adults; or

28 (c) In appropriate cases, assistance in locating an
29 appropriate person or entity interested in and able to assume guardianship
30 over an endangered adult;

31 (ii) In situations involving exploitation of an endangered
32 or impaired adult not resulting in any imminent danger to health or safety, or
33 involving protection of the property of such an impaired adult, protective
34 services may include one (1) or more of the following:

35 (a) Referrals for legal assistance;

36 (b) Referrals, as appropriate, to law enforcement or

1 prosecutors;

2 (c) Assistance in locating an appropriate person or
3 entity interested in and able to assume guardianship;

4 (11) "Serious bodily harm" means physical abuse, sexual abuse, physical
5 injury, or serious physical injury as defined in this chapter;

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

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

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

17

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

19 5-28-203. Persons required to report abuse.

20 (a)(1) Whenever any of the following has observed or has reasonable
21 cause to suspect that an endangered or impaired adult has been subjected to
22 conditions or circumstances which would reasonably result in abuse, sexual
23 abuse, neglect, or exploitation, as defined in this chapter, he or she shall
24 immediately report or cause a report to be made in accordance with the
25 provisions of this section:

26 (A) A physician;

27 (B) A surgeon;

28 (C) A coroner;

29 (D) A dentist;

30 (E) An osteopath;

31 (F) A resident intern;

32 (G) A registered nurse;

33 (H) Hospital personnel who are engaged in the
34 administration, examination, care, or treatment of persons;

35 (I) Any social worker;

36 (J) A case manager;

- 1 (K) A case worker;
- 2 (L) A mental health professional;
- 3 (M) A peace officer;
- 4 (N) A law enforcement officer;
- 5 (O) A facility administrator;
- 6 (P) An employee in a facility; ~~or~~
- 7 (Q) An employee of the Department of Human Services.
- 8 (R) A firefighter; or
- 9 (S) An emergency medical technician (EMT).

10 (2) Whenever a person is required to report under this chapter in
 11 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 report
 15 to be made.

16 (3) In addition to those persons and officials required to report
 17 suspected adult abuse, sexual abuse, or neglect, any other person may make a
 18 report if the person has reasonable cause to suspect that an adult has been
 19 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 long-
 24 term care facility shall be made immediately to the local law enforcement
 25 agency for the jurisdiction in which the facility is located, and to the
 26 Office of Long-Term Care of the Division of Medical Services of the Department
 27 of Human Services pursuant to regulations of that office.

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

30 (c) No privilege or contract shall relieve anyone required by this subchapter
 31 to make notification of the requirement of making notification.

32
 33 SECTION 3. Arkansas Code 5-28-206 is amended to read as follows:
 34 5-28-206. Reporting procedures generally.

35 (a) A report of abuse, sexual abuse, neglect, or exploitation of an
 36 adult may, pursuant to this chapter, be made by telephone and shall be

1 followed by a written report within forty-eight (48) hours, if so requested by
2 the receiving agency or central registry.

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

6 (c) When appropriate, a copy of the initial report shall immediately be
7 made available to the appropriate law enforcement agency for its
8 consideration.

9

10 SECTION 4. Arkansas Code 5-28-210 is amended to read as follows:

11 5-28-210. Investigation.

12 (a)(1)(A) In cases involving an abused, neglected or exploited adult
13 residing in a long-term care facility certified pursuant to Title XIX of the
14 Social Security Act, the local law enforcement agency or the office of the
15 Attorney General shall make a thorough investigation.

16 (B) In all other cases involving abused, neglected, or
17 exploited adults, the department shall make a thorough investigation.

18 (2) Referrals may be made to local law enforcement during the
19 pendency of the department's investigation where cause exists to believe that
20 a crime may have occurred.

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

23 (c)(1) The investigation shall be completed and a determination
24 entered.

25 (2) The investigation and investigative report shall include:

26 (A) The nature, extent, and cause of the abuse, sexual
27 abuse, neglect, or exploitation of the adult;

28 (B) The identity of the person responsible;

29 (C) The names and conditions of other adults in the home;

30 (D) The evaluation of the persons responsible for the care
31 of the abused, neglected, or exploited adult, if any;

32 (E) The home environment and relationship of the abused,
33 neglected, or exploited adult to the next of kin or other person responsible
34 for his care, and all other pertinent data; and

35 (F)(i)(a) A visit to the abused, neglected, or exploited
36 adult's home and an interview with the abused, neglected, or exploited adult.

1 (b) The investigators shall interview the
2 abused, neglected, or exploited adult alone and out of the hearing of any next
3 of kin or other persons responsible for his or her care.

4 (c) An interpreter may be present during the
5 interview of the abused, neglected, or exploited adult, if necessary.

6 (ii) If the admission to the home, institution, or
7 other place that the abused, neglected, or exploited adult may be, or
8 permission of the next of kin or other person responsible for the adult or in
9 charge of any place where the abused, neglected, or exploited adult may be,
10 cannot be obtained, then the probate court, upon cause shown, shall order the
11 next of kin or person responsible and in charge of any place where the abused,
12 neglected, or exploited adult may be to allow entrance for the examination and
13 investigation.

14 (G) Further, if admission to the home cannot be obtained
15 due to hospitalization or similar absence of the abused, neglected, or
16 exploited adult and admission to the home is necessary to complete the
17 investigation, then the probate court, upon cause shown, shall order and
18 authorize law enforcement to assist the department in obtaining entrance to
19 the home for the required investigation of the home environment.

20 (d)(1) The investigation may include a medical, psychological, social,
21 vocational, financial, and educational evaluation and review, where necessary.

22 (2)(A) The medical, mental health, or other records regarding the
23 abused, neglected, or exploited adult maintained by any facility or maintained
24 by any person required by § 5-28-203 to report suspected abuse, neglect, or
25 exploitation shall be made available to the department for the purposes of
26 conducting an evaluation or review under this subsection.

27 (B) Financial records maintained by a bank or similar
28 institution shall be made available to the department for the purpose of
29 conducting an evaluation or review under this subsection.

30 (3) No privilege or contract shall relieve anyone required by
31 this subchapter to make notification of the requirement of making
32 notification.

33 (e)(1)~~(A)~~ If, before the investigation is completed, the opinion of the
34 investigators is that the immediate removal of the abused, neglected, or
35 exploited adult is necessary to protect him or her from further abuse, sexual
36 abuse, exploitation, or neglect, the investigators may petition the probate

1 court for an order of temporary protective custody or exercise a seventy-two
2 (72) hour hold pursuant to § 5-28-301.

3 ~~(B) The probate court, upon good cause being shown, may~~
4 ~~issue an order for temporary protective custody in the manner and procedures~~
5 ~~provided in § 5-28-303.~~

6 (2)(A) If, before the investigation is completed, the opinion of
7 the investigators is that the abused, exploited, or neglected adult is in
8 imminent danger of death or serious bodily harm, that available services have
9 been offered to alleviate the danger and have been refused, and the abused,
10 exploited, or neglected adult's capacity to comprehend the nature and
11 consequences of remaining in the situation or condition cannot be adequately
12 assessed in the home, the investigators may petition the probate court for an
13 order of temporary protective custody for the purpose of having the adult
14 evaluated.

15 (B) The probate court, upon good cause being shown, may
16 issue an order for temporary custody for the purpose of having the adult
17 evaluated.

18 (C) The petition shall be filed and the order issued in the
19 manner and procedures provided in § 5-28-303.

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

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

26 (1)(A)(i) Unfounded, which shall be entered when the allegation
27 is not supported by a preponderance of the evidence.

28 (ii) Unfounded reports may be used within the
29 department prior to expungement for purposes of danger assessment on future
30 reports.

31 (iii) There can be no disclosure outside the
32 department of unfounded reports or information obtained during an unfounded
33 investigation, except for release to:

34 (a) The prosecutor for the limited purpose of
35 prosecution of a person who willfully makes false notification pursuant to
36 this subchapter;

1 (b) A subject of the report, as limited by § 5-
2 28-212; or

3 (c) A court if the information in the record is
4 necessary for a determination of an issue before the court.

5 (B)(i) This section shall not prevent the department, prior
6 to completion of an investigation, from:

7 (a) Offering services;

8 (b) Petitioning the court for protective
9 custody; or

10 (c) Petitioning the probate court for an order
11 of investigation.

12 (ii) Further, this section shall not prohibit sharing
13 of information, prior to investigative determination, as discussed elsewhere
14 in this chapter, with:

15 (a) Law enforcement;

16 (b) Coroners or medical examiners; or

17 (c) Prosecutors.

18 (C)(i) If the investigation cannot be completed, the
19 investigation shall be determined incomplete and placed in inactive status for
20 one (1) year, at which time it will be expunged.

21 (ii) The report shall include documentation
22 indicating why the investigation could not be completed.

23 (D) For purposes of disclosure, pending or inactive reports
24 shall be treated as unfounded; and

25 (2)(A) Founded, which shall be entered when the allegation is
26 supported by ~~some credible evidence~~ a preponderance of the evidence.

27 (B) A determination of founded shall not be entered solely
28 because an adult, practicing his or her religious beliefs, is receiving
29 spiritual treatment as indicated in § 5-28-105.

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

32
33 SECTION 5. Arkansas Code 5-28-211(b)(10)(A), concerning rights of
34 subjects of reports to notice of findings and to amendment and appeal, is
35 amended to read as follows:

36 (b)(1)(A)(i) Following completion of the investigation, the department

1 shall notify each known subject of the report of the determination within
2 thirty (30) days after completion of the investigation.

3 (ii) In cases of unfounded self-neglect, no
4 notification to the subject of the report is required.

5
6 SECTION 6. Arkansas Code 5-28-213(a), concerning availability of
7 reports of adult abuse, is amended to read as follows:

8 (a) Reports made pursuant to this chapter which are determined to be
9 founded, as well as any other information obtained, and reports written or
10 photographs taken concerning founded reports in the possession of the
11 Department of Human Services shall be confidential and shall be made available
12 only to:

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

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

21 (3) An authorized agency having responsibility for the care or
22 supervision of an endangered or impaired adult;

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

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

26 (6)(A) A prosecuting attorney, law enforcement official, or
27 coroner conducting a criminal investigation or investigating a death; or

28 (B) The Attorney General or his designated investigator
29 when conducting an investigation of abuse, exploitation, or neglect;

30 (7)(A) A ~~person~~ mandated reporter who has made a report of
31 suspected abuse, neglect, or exploitation, only to the extent that he may be
32 informed after completion and closure of the investigation whether legal
33 action was taken, services were provided, or no action was taken.

34 (B) No further information shall be released and the person
35 shall be informed of the confidentiality of the information and the penalties
36 for disclosure; and

1 (8)(A) Agencies employing personal care assistants for purposes
2 of screening applicants upon submission of a signed, notarized release from
3 the applicant.

4 (B) The only information released to the agency will be
5 whether or not the registry contains any founded reports naming the applicant
6 as an offender.

7
8 SECTION 7. Arkansas Code 5-28-301 is amended to read as follows:

9 5-28-301. Emergency custody.

10 (a)(1) The Department of Human Services or a law enforcement official
11 may take an abused, neglected, or exploited adult into emergency ~~protective~~
12 custody or any person in charge of a hospital or similar institution or any
13 physician treating any such adult may keep that adult in his custody, whether
14 or not medical treatment is required, if the circumstances or condition of the
15 adult is such that returning to or continuing at his place of residence or in
16 the care or custody of a parent, guardian, or other person responsible for the
17 adult's care presents imminent danger to that adult's health or safety and the
18 adult lacks the capacity to comprehend the nature and consequences of
19 remaining in a situation that presents imminent danger to his health or
20 safety.

21 (2)(A)(i) However, emergency ~~protective~~ custody shall not exceed
22 seventy-two (72) hours, excluding weekends and holidays, and the Department of
23 Human Services shall be notified immediately upon taking such adult into
24 emergency protective custody.

25 (ii) The Department of Human Services may release
26 custody of the adult within the seventy-two (72) hours if the adult is no
27 longer in circumstances or conditions that present imminent danger to the
28 adult's health or safety.

29 (B) An emergency ex parte order of custody shall be
30 obtained on the abused, neglected, or exploited adult within the seventy-two
31 (72) hours.

32 (3)(A)(i) When emergency ~~protective~~ custody is exercised pursuant
33 to this section, the person exercising such custody or the department shall
34 have authority to consent to having the abused, neglected, or exploited adult
35 transported by law enforcement or by ambulance if medically appropriate, even
36 if the adult objects.

1 (ii) No court order shall be required for such law
2 enforcement or ambulance transport.

3 (B)(i) When an ambulance driver or company or law
4 enforcement officer acts in good faith pursuant to this subdivision (a)(3),
5 the immunity provisions of § 5-28-215 shall apply.

6 (ii) The good faith of the ambulance driver or
7 company or law enforcement officer shall be presumed.

8 (b)(1) If the court grants the ex parte order of emergency custody, a
9 ~~preliminary~~ hearing shall be held within five (5) working days to establish
10 probable cause for grounds for ~~protective~~ temporary custody.

11 (2) The probable cause hearing shall be a miscellaneous hearing.

12 (c)~~(1)~~ Upon a finding of probable cause, the court may order temporary
13 ~~protective~~ custody for up to ~~fourteen (14)~~ thirty (30) days pending the
14 hearing for long-term protective custody.

15 ~~(2) Upon a finding that extenuating circumstances are present and~~
16 ~~that the hearing cannot be held within fourteen (14) days, the court may~~
17 ~~extend the period of temporary protective custody for up to nineteen (19)~~
18 ~~days.~~

19
20 SECTION 8. Arkansas Code 5-28-303 is amended to read as follows:

21 5-28-303. Temporary custody.

22 (a)(1) The Department of Human Services may file a petition requesting
23 the probate court to find that there is probable cause to place an abused,
24 neglected, or exploited adult in temporary custody for a period of up to
25 thirty (30) days.

26 (2) This hearing shall be a miscellaneous hearing.

27 (b) During the period the abused, neglected, or exploited adult is in
28 emergency or temporary custody, the court may:

29 (1) Order or authorize the department to obtain:

30 (A) Medical treatment; or

31 (B) Physical or psychological evaluations;

32 (2) Investigate the adult's financial affairs; or

33 (3) Order that a hearing for long-term protective custody or
34 court-ordered services be held.

35
36 SECTION 9. Arkansas Code 5-28-304 is amended to read as follows:

1 5-28-304. Long-term custody - Notice - Court Ordered Services.

2 (a)(1)(A) The Department of Human Services may file a petition
3 requesting that an abused, neglected, or exploited adult be placed in the
4 department's long-term protective custody.

5 (B) Alternatively, or in combination with a petition for
6 ~~protective~~ emergency or temporary custody, the department may file a petition
7 for court-ordered services requesting that the abused, neglected, or exploited
8 adult or the primary caregiver of the adult be ordered to accept services in
9 the adult's home environment in lieu of being placed in protective custody.

10 (2) The petition requesting long-term protective custody or
11 court-ordered services may be combined with the petition requesting emergency
12 or temporary ~~protective~~ custody.

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

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

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

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

29 (e) The person or persons serving the notice shall return the
30 certificate of service to the court verifying that the petition, the order for
31 hearing, and a statement of the rights in subsection (d) of this section have
32 been delivered and notice given.

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

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

- 1 (3) The person having physical custody of the respondent;
- 2 (4) Any person named in the petition; and
- 3 (5) Such other persons or entities as the court may require.
- 4 (g) The probate clerk shall not charge or collect a filing fee from the
- 5 department when it files a petition for:
 - 6 (1) ~~Temporary~~ Emergency, temporary or long-term protective
 - 7 custody;
 - 8 (2) Temporary custody for purposes of evaluation;
 - 9 (3) Court-ordered services; or
 - 10 (4) An order of investigation.

11
12 SECTION 10. Arkansas Code 5-28-306 is amended to read as follows:

13 5-28-306. Long-term custody - Hearing - Placement - Appeal.

14 (a) A hearing for long-term protective custody or court-ordered

15 services shall be no later than thirty (30) days from the date the order for

16 emergency or temporary ~~protective~~ custody was signed, unless the court extends

17 the time in which the hearing must be held upon a finding that extenuating

18 circumstances exist.

19 (b) The court may hold a hearing for long-term protective custody or

20 court-ordered services anywhere in the judicial district.

21 (c)(1) The court shall make a finding in connection with the

22 determination of the least restrictive alternative to be considered proper

23 under the circumstances, including the finding for noninstitutional care

24 wherever possible.

25 (2) Where there are services available to remedy the imminent

26 danger to the abused, neglected, or exploited adult, the court may order the

27 adult or the caregiver for the adult to accept the services in lieu of placing

28 the adult in protective custody.

29 (d) In the order, the court shall specify:

- 30 (1) The placement or care plan to be followed;
- 31 (2) The reason for the placement or care to be given;
- 32 (3) The scope and duration of the order;
- 33 (4) That the department periodically review the case every six
- 34 (6) months, or more frequently if warranted;
- 35 (5) That the department monitor the services being received in
- 36 lieu of protective custody as often as is necessary to prevent the recurrence

1 of the danger; and

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

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

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

9 (2) The individual is unable to provide for his own protection
10 from abuse or neglect; and

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

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

16 (g)(1) Placement under this section does not replace commitment of a
17 person in need of acute psychiatric treatment, a person in need of casework
18 supervision by mental health professionals, or alcohol or drug abuse
19 treatment.

20 (2) Placement under this section does not apply to domestic abuse
21 of mentally competent persons.

22 (3) No adult shall be placed in the custody of the department for
23 the sole purpose of consenting to the adult's medical treatment.

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

27 /s/ Dees
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