

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 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 931

4
5 By: Senator Salmon
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE LAW REGARDING MALTREATMENT
10 AND NEGLECT OF ENDANGERED AND IMPAIRED PERSONS;
11 TO REPEAL PROVISIONS CONCERNING REPORTING,
12 PROTECTIVE PLACEMENT, AND CUSTODY OF ENDANGERED
13 AND IMPAIRED PERSONS; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO CLARIFY THE LAW REGARDING
16 MALTREATMENT AND NEGLECT OF ENDANGERED
17 AND IMPAIRED PERSONS.
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 5-28-101 is amended to read as follows:
24 5-28-101. Definitions.

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

26 (1) "Abuse" means:

27 (A) Any intentional and unnecessary physical act which
28 inflicts pain on or causes injury to an endangered or impaired ~~adult,~~
29 ~~including sexual abuse~~ person;

30 (B) Any intentional or demeaning act ~~which~~ that a
31 reasonable person, regardless of age, ability to comprehend, or disability,
32 would believe subjects an endangered or impaired ~~adult~~ person to ridicule or
33 psychological injury in a manner likely to provoke fear or alarm; ~~or~~

34 (C) Any serious and realistic threat to inflict pain on or
35 cause injury to an endangered or impaired person; or

36 ~~(C)(D)~~ With regard to any adult resident of a long-term



1 care facility ~~by a caregiver~~, any willful infliction of injury, unreasonable
2 confinement, intimidation, or punishment with resulting physical harm, pain,
3 or mental anguish;

4 (2) "Adult maltreatment" means adult abuse, exploitation,
5 neglect, physical abuse, or sexual abuse;

6 (3) "Caregiver" means a related or unrelated person, owner,
7 agent, high managerial agent of a public or private organization, or a public
8 or private organization that has the responsibility for the protection, care,
9 or custody of an endangered or impaired adult as a result of assuming the
10 responsibility voluntarily, by contract, through employment, or by order of
11 the court;

12 ~~(4)(A) "Department" means the Department of Human Services.~~

13 ~~(B) The Director of the Department of Human Services may~~
14 ~~assign responsibilities for administering the various duties imposed upon the~~
15 ~~department under this chapter to respective divisions of the department which~~
16 ~~in his or her opinion are best able to render service or administer the~~
17 ~~provisions of this chapter;~~

18 ~~(5)~~(4) "Endangered adult person" means:

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

24 (B) A resident ~~eighteen (18) years of age or older of a~~
25 ~~long-term care facility, certified pursuant to Title XIX of the Social~~
26 ~~Security Act, 42 U.S.C. § 1396 et seq., who is found to be in a situation or~~
27 ~~condition which poses an imminent risk of death or serious bodily harm to the~~
28 ~~person and who demonstrates the lack of capacity to comprehend the nature and~~
29 ~~consequences of remaining in that situation or condition;~~

30 ~~(6)~~(5) "Exploitation" means:

31 (A) The illegal or unauthorized use or management of an
32 endangered or impaired adult's funds, assets, or property or the use of an
33 endangered or impaired adult's person, power of attorney, or guardianship for
34 the profit or advantage of himself, herself, or another; or

35 (B) Misappropriation of property of an adult resident of a
36 long-term care facility, which means the deliberate misplacement,

1 exploitation, or wrongful, temporary, or permanent use of a resident's
2 belongings or money without the resident's consent;

3 ~~(7)(A)(6)~~ "Imminent danger to health or safety" means a
4 situation in which death or severe bodily injury could reasonably be expected
5 to occur without intervention;

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

8 ~~(8)(A)(7)(A)~~ "Impaired ~~adult~~ person" means a person eighteen
9 (18) years of age or older who, as a result of mental or physical impairment,
10 is unable to protect himself or herself from abuse, sexual abuse, neglect, or
11 exploitation, and as a consequence thereof is endangered.

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

14 ~~(9)(8)~~ "Long-term care facility" means:

15 (A) A nursing home;

16 (B) A residential care facility;

17 (C) A post-acute head injury retraining and residential
18 facility; ~~or~~

19 (D) Any facility which provides long-term medical or
20 personal care;

21 (E) An intermediate care facility for the mentally
22 retarded; or

23 (F) Any facility that provides long-term medical or
24 personal care;

25 (9) "Long-term care facility resident" means a person,
26 regardless of age, living in a long-term care facility;

27 (10) "Long-term care facility resident maltreatment" means
28 abuse, exploitation, neglect, physical abuse, or sexual abuse of a resident
29 of a long-term care facility;

30 ~~(10)(11)~~ "Neglect" means:

31 ~~(A) acts or omissions~~ An act or omission by an endangered
32 ~~adult or impaired person;~~, for example, self-neglect; or

33 ~~(B) intentional acts or omissions~~ An intentional act or
34 omission by a caregiver responsible for the care and supervision of an
35 endangered or impaired adult constituting:

36 ~~(A)(i)~~ Negligently failing to provide necessary

1 treatment, rehabilitation, care, food, clothing, shelter, supervision, or
2 medical services to an endangered or impaired adult;

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

6 ~~(C)(iii)~~ Negligently failing to carry out a
7 prescribed treatment plan; or

8 ~~(D)(iv)~~ Failing to provide goods and services
9 necessary to avoid physical harm, mental anguish, or mental illness as
10 defined in regulations promulgated by the Office of Long-Term Care of the
11 Division of Medical Services of the Department of Human Services to an adult
12 resident of a long-term care facility;

13 ~~(11)(A)(12)(A)~~ "Physical injury" means the impairment of a
14 physical condition or the infliction of substantial pain.

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

18 ~~(12)(A) "Protective services" means services to protect the~~
19 ~~endangered or impaired adult from:~~

20 ~~(i) Self neglect or self abuse; and~~

21 ~~(ii) Abuse or neglect by others.~~

22 ~~(B) Protective services shall include, but not be limited~~
23 ~~to:~~

24 ~~(i) Evaluation of the need for services;~~

25 ~~(ii) Arrangements for appropriate services;~~

26 ~~(iii) Assistance in obtaining financial benefits to~~
27 ~~which the person is entitled; or~~

28 ~~(iv) Securing medical and legal services.~~

29 ~~(C)(i) Protective services may include:~~

30 ~~(a) Referrals for services available in the~~
31 ~~community;~~

32 ~~(b) Seeking protective custody or court-~~
33 ~~ordered services for endangered adults; or~~

34 ~~(c) In appropriate cases, assistance in~~
35 ~~locating an appropriate person or entity interested in and able to assume~~
36 ~~guardianship over an endangered adult.~~

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

5 ~~(a) Referrals for legal assistance;~~
6 ~~(b) Referrals, as appropriate, to law~~
7 ~~enforcement or prosecutors; or~~

8 ~~(c) Assistance in locating an appropriate~~
9 ~~person or entity interested in and able to assume guardianship;~~

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

12 (14) "Serious physical injury" means physical injury to an
13 endangered or impaired ~~adult~~ person that creates a substantial risk of death
14 or that causes protracted disfigurement, protracted impairment of health, or
15 loss or protracted impairment of the function of any bodily member or organ;
16 and

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

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

24
25 SECTION 2. Arkansas Code § 5-28-103 is amended to read as follows:

26 5-28-103. Criminal penalties for adult abuse.

27 (a) It shall be unlawful for any person or caregiver to abuse,
28 neglect, or exploit any endangered or impaired person ~~subject to protection~~
29 ~~under the provisions of this chapter.~~

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

34 (2) Any person or caregiver who purposely abuses an endangered
35 or impaired ~~adult in violation of the provisions of this chapter~~ person, if
36 ~~such~~ the abuse causes physical injury, shall be guilty of a Class D felony

1 ~~and shall be punished as provided by law.~~

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

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

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

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

17 (2) Any person or caregiver who exploits ~~a person in violation~~
18 ~~of the provisions of this chapter shall be guilty of a Class C felony and~~
19 ~~shall be punished as provided by law~~ an endangered or impaired person, where
20 the value of the property, assets, or resources is less than two thousand
21 five hundred dollars (\$2,500), but more than two hundred dollars (\$200) shall
22 be guilty of a Class B felony.

23 (3) Any person or caregiver who exploits ~~a person in violation~~
24 ~~of the provisions of this chapter shall be guilty of a Class A misdemeanor~~
25 ~~and shall be punished as provided by law~~ an endangered or impaired person,
26 where the value of the property, assets, or resources is two hundred dollars
27 (\$200) or less shall be guilty of a Class C felony.

28
29 SECTION 3. Arkansas Code § 5-28-104 is amended to read as follows:

30 5-28-104. Privilege not grounds for exclusion of evidence.

31 Any privilege between husband and wife or between any professional
32 person, except lawyer and client, including, but not limited to, physicians,
33 members of the clergy, counselors, hospitals, clinics, rest homes, nursing
34 homes, and their clients, shall not constitute grounds for excluding evidence
35 at any proceedings regarding adult abuse, sexual abuse, or neglect of an
36 endangered or impaired ~~adult~~ person, or the cause ~~thereof~~ of the adult abuse,

1 sexual abuse, or neglect.

2
3 SECTION 4. Arkansas Code § 5-28-106 is repealed.

4 ~~5-28-106. Civil penalties.~~

5 ~~(a)(1) The State of Arkansas and the Attorney General may institute a~~
6 ~~civil action against any long term care facility caregiver necessary to~~
7 ~~enforce any provision of this chapter.~~

8 ~~(2) Notwithstanding any criminal penalties assessed under this~~
9 ~~chapter, any caregiver against whom any civil judgment is entered as the~~
10 ~~result of a civil action brought by the State of Arkansas through the~~
11 ~~Attorney General on a complaint alleging that caregiver to have abused,~~
12 ~~neglected, or exploited an endangered or impaired adult in a long term care~~
13 ~~facility certified under Title XIX of the Social Security Act, 42 U.S.C. §~~
14 ~~1396 et seq., shall be subject to pay a civil penalty:~~

15 ~~(A) Not to exceed ten thousand dollars (\$10,000) for each~~
16 ~~violation judicially found to have occurred; or~~

17 ~~(B) Not to exceed fifty thousand dollars (\$50,000) for the~~
18 ~~death of an adult in a long term care facility which results from a single~~
19 ~~violation.~~

20 ~~(3)(A) The State of Arkansas and the Attorney General shall not~~
21 ~~be precluded from recovering civil penalties under subdivision (a)(2)(A) of~~
22 ~~this section for the death of an adult which results from multiple~~
23 ~~violations.~~

24 ~~(B) However, the State of Arkansas and the Attorney~~
25 ~~General shall be prohibited from recovering civil penalties under both~~
26 ~~subdivisions (a)(2)(A) and (B) of this section.~~

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

30 ~~(c) Any penalty shall be paid into the State Treasury and credited to~~
31 ~~the Arkansas Medicaid Program Trust Fund.~~

32 ~~(d) Any caregiver against whom any civil judgment is entered as the~~
33 ~~result of a civil action brought or threatened to be brought under this~~
34 ~~section by the State of Arkansas through the Attorney General shall be~~
35 ~~required to pay to the Attorney General all reasonable expenses which the~~
36 ~~court determines have been necessarily incurred in the enforcement of this~~

1 chapter.

2 ~~(e) A civil action under this section may not be brought more than~~
 3 ~~three (3) years after the date on which the violation of this subchapter is~~
 4 ~~committed.~~

5
 6 SECTION 5. Arkansas Code § 5-28-107(a), concerning investigations by
 7 the state Attorney General, is amended to read as follows:

8 (a) The office of the Attorney General shall have concurrent
 9 jurisdiction with the Department of Human Services to investigate cases of
 10 suspected adult maltreatment of an endangered or impaired adult in a long-
 11 term care facility certified ~~pursuant to~~ under Title XIX of the Social
 12 Security Act, 42 U.S.C. § 1396 et seq.

13
 14 SECTION 6. Arkansas Code § 5-28-109 is repealed.

15 ~~5-28-109. Investigative powers of the Attorney General.~~

16 ~~(a) The primary purposes of an investigation are to:~~

17 ~~(1) Protect maltreated adults; and~~

18 ~~(2) Refer for prosecution those persons maltreating any~~
 19 ~~endangered or impaired adult.~~

20 ~~(b) The Attorney General shall conduct a thorough investigation that~~
 21 ~~may include a medical, psychological, social, vocational, financial, and~~
 22 ~~educational evaluation and review.~~

23 ~~(c)(1) Upon request, the medical, mental health, or other records~~
 24 ~~regarding the maltreated adult maintained by any facility or maintained by~~
 25 ~~any person required by this chapter to report suspected maltreatment shall be~~
 26 ~~made available to the Attorney General for the purposes of conducting an~~
 27 ~~investigation under this chapter.~~

28 ~~(2) Upon request, financial records regarding the subject of the~~
 29 ~~investigation maintained by a bank or similar institution shall be made~~
 30 ~~available to the Attorney General for the purpose of conducting an~~
 31 ~~investigation under this chapter.~~

32 ~~(d)(1) A subpoena requiring the production of documents or the~~
 33 ~~attendance of a witness at an interview, trial, or hearing conducted pursuant~~
 34 ~~to the jurisdiction of the Medicaid Fraud Control Unit within the office of~~
 35 ~~the Attorney General may be served by the Attorney General or any law~~
 36 ~~enforcement officer in the State of Arkansas personally, by telephone, or by~~

1 ~~registered or certified mail.~~

2 ~~(2) If service is by registered or certified mail, the return~~
 3 ~~shall be accompanied by the return post office receipt of delivery of the~~
 4 ~~demand.~~

5 ~~(e)(1) If a facility or person objects to or otherwise fails to comply~~
 6 ~~with the Attorney General's request for records, the Attorney General may~~
 7 ~~file an action in circuit court for an order to enforce the request.~~

8 ~~(2) Venue for the action to enforce the request shall be in~~
 9 ~~Pulaski County.~~

10 ~~(f) The circuit court, upon good cause shown, shall order the facility~~
 11 ~~or person who maintains medical, mental health, or other records regarding~~
 12 ~~the maltreated adult to tender records to the Attorney General for the~~
 13 ~~purpose of conducting an investigation under this chapter.~~

14 ~~(g)(1) Records obtained by the Attorney General under this subchapter~~
 15 ~~shall be classified as confidential information and shall not be subject to~~
 16 ~~outside review or release by an individual unless the records are used or are~~
 17 ~~potentially to be used by any governmental entity in any legal,~~
 18 ~~administrative, or judicial proceeding.~~

19 ~~(2) Notwithstanding any other law to the contrary, no person~~
 20 ~~shall be subject to any civil or criminal liability for providing access to~~
 21 ~~records to the Attorney General or to the prosecuting attorneys.~~

22
 23 SECTION 7. Arkansas Code § 5-28-201 is repealed.

24 ~~5-28-201. Adult maltreatment central registry.~~

25 ~~(a)(1) Pursuant to this chapter, there shall be established within the~~
 26 ~~Department of Human Services a statewide central registry for adult~~
 27 ~~maltreatment.~~

28 ~~(2) The adult maltreatment central registry shall contain~~
 29 ~~investigative determinations made by the department on all founded~~
 30 ~~allegations of adult maltreatment.~~

31 ~~(3) The offender's name shall be placed in the central registry~~
 32 ~~if:~~

33 ~~(A) After notice, the offender does not timely appeal for~~
 34 ~~an administrative hearing; or~~

35 ~~(B) Upon completion of the administrative hearing process,~~
 36 ~~the department's investigative determination of founded is upheld.~~

1 ~~(4) The offender's name shall remain in the central registry~~
2 unless:

- 3 ~~(A) Removed pursuant to another statute;~~
- 4 ~~(B) Removed pursuant to regulation; or~~
- 5 ~~(C) The offender prevails upon appeal.~~

6 ~~(b) The central registry may adopt such rules and regulations which~~
7 ~~may be necessary to encourage cooperation with other states in exchanging~~
8 ~~reports to effect a national registry system of adult maltreatment.~~

9
10 SECTION 8. Arkansas Code § 5-28-202 is amended to read as follows:
11 5-28-202. Penalties.

12 (a) Any person or caregiver required by ~~this chapter~~ by the Adult and
13 Long-Term Care Facility Resident Maltreatment Act to report a case of
14 suspected adult or long-term care facility resident maltreatment who
15 purposely fails to do so shall be guilty of a Class B misdemeanor ~~and shall~~
16 ~~be punished as provided by law.~~

17 (b) Any person or caregiver required by ~~this chapter~~ by the Adult and
18 Long-Term Care Facility Resident Maltreatment Act to report a case of
19 suspected adult or long-term care facility resident maltreatment who
20 purposely fails to do so shall be civilly liable for damages proximately
21 caused by the failure.

22 (c) Any person, official, or institution willfully making false
23 notification under ~~this subchapter~~ by the Adult and Long-Term Care Facility
24 Resident Maltreatment Act knowing the allegations to be false shall be guilty
25 of a Class A misdemeanor.

26 (d) Any person, official, or institution willfully making false
27 notification under ~~this subchapter~~ by the Adult and Long-Term Care Facility
28 Resident Maltreatment Act knowing the allegations to be false and who has
29 been previously convicted of making false allegations shall be guilty of a
30 Class D felony.

31 (e) Any person who willfully permits and any other person who
32 encourages the release of data or information contained in the adult and
33 long-term care facility maltreatment central registry to persons to whom
34 disclosure is not permitted under this subchapter shall be guilty of a Class
35 A misdemeanor.

36 (f) Any person required to report a death as the result of suspected

1 adult or long-term care facility resident maltreatment who knowingly fails to
2 make a report in the manner and time provided in the Adult and Long-Term Care
3 Facility Resident Maltreatment Act is guilty of a Class C misdemeanor.

4 (g) Any person required to report suspected adult or long-term care
5 facility resident maltreatment who knowingly fails to make a report in the
6 manner and time provided in the Adult and Long-Term Care Facility Resident
7 Maltreatment Act is guilty of a Class C misdemeanor.

8
9 SECTION 9. Arkansas Code §§ 5-28-203 - 5-28-205 are repealed.

10 ~~5-28-203. Persons required to report adult maltreatment.~~

11 ~~(a)(1) Whenever any of the following has observed or has reasonable~~
12 ~~cause to suspect that an endangered or impaired adult has been subjected to~~
13 ~~conditions or circumstances which would reasonably result in adult~~
14 ~~maltreatment, as defined in this chapter, he or she shall immediately report~~
15 ~~or cause a report to be made in accordance with the provisions of this~~
16 ~~section.~~

17 ~~(A) A physician;~~

18 ~~(B) A surgeon;~~

19 ~~(C) A coroner;~~

20 ~~(D) A dentist;~~

21 ~~(E) An osteopath;~~

22 ~~(F) A resident intern;~~

23 ~~(G) A nurse;~~

24 ~~(H) Hospital personnel who are engaged in the~~
25 ~~administration, examination, care, or treatment of persons;~~

26 ~~(I) Any social worker;~~

27 ~~(J) A case manager;~~

28 ~~(K) A case worker;~~

29 ~~(L) A mental health professional;~~

30 ~~(M) A peace officer;~~

31 ~~(N) A law enforcement officer;~~

32 ~~(O) A facility administrator;~~

33 ~~(P) An employee in a facility;~~

34 ~~(Q) An employee of the Department of Human Services;~~

35 ~~(R) A firefighter;~~

36 ~~(S) An emergency medical technician; or~~

1 ~~(T) An employee of a bank or other financial institution,~~
2 ~~(2) Whenever a person is required to report under this chapter~~
3 ~~in his or her capacity as a member of the staff, an employee in a facility,~~
4 ~~or an employee of the department, he or she shall immediately notify the~~
5 ~~person in charge of the institution, facility, or agency, or that person's~~
6 ~~designated agent, who shall then become responsible for making a report or~~
7 ~~cause a report to be made.~~

8 ~~(3) In addition to those persons and officials required to~~
9 ~~report suspected maltreatment, any other person may make a report if the~~
10 ~~person has reasonable cause to suspect that an adult has been maltreated, as~~
11 ~~defined in this chapter.~~

12 ~~(b)(1) A report for maltreated adults residing in a long-term care~~
13 ~~facility shall be made:~~

14 ~~(A) Immediately to the local law enforcement agency for~~
15 ~~the jurisdiction in which the facility is located; and~~

16 ~~(B) To the Office of Long-Term Care of the Division of~~
17 ~~Medical Services of the Department of Human Services, pursuant to regulations~~
18 ~~of that office.~~

19 ~~(2) Reports of maltreated adults who do not reside in a long-~~
20 ~~term care facility shall be made to the adult maltreatment hotline.~~

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

23
24 ~~5-28-204. Report of death caused by maltreatment.~~

25 ~~(a)(1) Any person or official who is required to report cases of~~
26 ~~suspected maltreatment of adults under the provisions of this chapter and who~~
27 ~~has reasonable cause to suspect that an adult has died as a result of~~
28 ~~maltreatment shall report that fact to the appropriate medical examiner or~~
29 ~~coroner.~~

30 ~~(2)(A) In all cases of the death of a long-term care facility~~
31 ~~resident or a hospice facility resident, the long-term care facility or the~~
32 ~~hospice facility shall immediately report the death to the appropriate~~
33 ~~coroner.~~

34 ~~(B) The report is required regardless of whether the~~
35 ~~facility believes the death to be from natural causes or the result of~~
36 ~~maltreatment or any other cause.~~

1 ~~(3)(A) In all cases of the death of an individual in a hospital~~
2 ~~who was a resident of a long term care facility within five (5) days of~~
3 ~~entering the hospital, the hospital shall immediately report the death to the~~
4 ~~appropriate coroner.~~

5 ~~(B) The report is required regardless of whether the~~
6 ~~hospital believes the death to be from natural causes or the result of~~
7 ~~maltreatment or any other cause.~~

8 ~~(b)(1) The medical examiner or coroner shall accept the report for~~
9 ~~investigation and, upon finding reasonable cause to suspect that an adult has~~
10 ~~died as a result of maltreatment, shall report the findings to the police and~~
11 ~~the appropriate prosecuting attorney.~~

12 ~~(2) If the institution making the report is a hospital or~~
13 ~~nursing home, the coroner shall report the findings to the hospital or~~
14 ~~nursing home unless the findings are part of a pending or ongoing law~~
15 ~~enforcement investigation.~~

16 ~~(c) The medical examiner, coroner, or hospital shall also report the~~
17 ~~findings to the Department of Human Services when:~~

18 ~~(1) Reasonable cause exists to believe the death resulted from~~
19 ~~maltreatment of an adult; or~~

20 ~~(2) There is a pending investigation concerning allegations of~~
21 ~~maltreatment occurring prior to death, upon request of the department.~~

22
23 ~~5-28-205. Photographs and X rays.~~

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

28 ~~(b) Whenever a person is required to report under this chapter in his~~
29 ~~capacity as a member of the staff of any private or public institution or~~
30 ~~agency, he shall immediately notify the person in charge of the institution~~
31 ~~or agency or his designated delegate, who shall then take or cause to be~~
32 ~~taken, at public expense, color photographs of physical trauma and shall, if~~
33 ~~medically indicated, cause to be performed radiological examination of the~~
34 ~~adult.~~

35 ~~(c) Any photographs or X rays taken shall be sent to the department as~~
36 ~~soon as possible.~~

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SECTION 10. Arkansas Code § 5-28-210 is repealed.

~~5-28-210. Investigation by the Department of Human Services.~~

~~(a) The Department of Human Services shall conduct a thorough investigation of all suspected adult maltreatment in accordance with § 5-28-218.~~

~~(b) The primary purposes of the investigation are to protect the maltreated adult and to refer for prosecution those persons who maltreat any endangered or impaired adult.~~

~~(c)(1) The investigation shall be completed and an investigative determination entered within sixty (60) days.~~

~~(2) The investigation and written investigative report shall include:~~

~~(A) The nature, extent, and cause of the maltreatment of the adult;~~

~~(B) The identity of the person responsible;~~

~~(C) The names and conditions of other adults in the home, if the incident occurred in the home;~~

~~(D) The evaluation of the persons responsible for the care of the maltreated adult, if any;~~

~~(E) The home environment and relationship of the maltreated adult to the next of kin or other person responsible for his or her care, and all other pertinent data; and~~

~~(F)(i) A visit to the maltreated adult's home, if the incident occurred in the home, and an interview with the maltreated adult.~~

~~(ii) The investigators shall interview the maltreated adult alone and out of the hearing of any next of kin or other persons responsible for his or her care.~~

~~(iii) An interpreter may be present during the interview of the maltreated adult, if necessary.~~

SECTION 11. Arkansas Code §§ 5-28-213 - 5-28-310 are repealed.

~~5-28-213. Availability of founded reports of adult maltreatment.~~

~~(a) Reports made pursuant to this chapter which are determined to be founded, as well as any other information obtained, and reports written or photographs taken concerning founded reports in the possession of the~~

1 ~~Department of Human Services shall be confidential and shall be made~~
2 ~~available only to:~~

3 ~~(1) A physician who has before him or her an endangered or~~
4 ~~impaired adult whom he or she reasonably believes may have been maltreated;~~

5 ~~(2) A person authorized to place the adult in protective custody~~
6 ~~when such a person has before him or her an adult whom he or she reasonably~~
7 ~~believes may have been maltreated, and the person requires the information to~~
8 ~~determine whether to place the adult in protective custody;~~

9 ~~(3) An authorized agency having responsibility for the care or~~
10 ~~supervision of an endangered or impaired adult;~~

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

12 ~~(5) A grand jury or court, where it determines that such~~
13 ~~information is necessary for the determination of an issue before the grand~~
14 ~~jury or court;~~

15 ~~(6)(A) A prosecuting attorney, law enforcement official, or~~
16 ~~coroner; or~~

17 ~~(B) The Attorney General or his or her designated~~
18 ~~investigator;~~

19 ~~(7)(A) A mandated reporter who has made a report of suspected~~
20 ~~maltreatment, only to the extent that he or she may be informed after~~
21 ~~completion and closure of the investigation whether legal action was taken,~~
22 ~~services were provided, or no action was taken.~~

23 ~~(B) No further information shall be released and the~~
24 ~~person shall be informed of the confidentiality of the information and the~~
25 ~~penalties for disclosure;~~

26 ~~(8)(A) Employers or volunteer agencies for purposes of screening~~
27 ~~employees, applicants, or volunteers upon submission of a signed, notarized~~
28 ~~release from the employee, applicant, or volunteer.~~

29 ~~(B) The only information released to the employer or~~
30 ~~agency will be whether or not the registry contains any founded reports~~
31 ~~naming the employee, applicant, or volunteer as an offender;~~

32 ~~(9) The Department of Human Services Death Review Committee;~~

33 ~~(10) The current administrator of the facility, if the incident~~
34 ~~occurred in a long-term care facility; and~~

35 ~~(11) The administrator of the facility that currently employs~~
36 ~~the offender, if different from the facility in which the incident occurred.~~

1 ~~(b)(1) Under no circumstances shall the information contained in the~~
2 ~~statewide adult maltreatment central registry be released unless the person's~~
3 ~~or official's capacity is confirmed by the department.~~

4 ~~(2) No person or agency, except the subject of the report, to~~
5 ~~whom disclosure is made may disclose to any other person reports or other~~
6 ~~information obtained under this section.~~

7 ~~(c)(1) The department shall not release data that would identify the~~
8 ~~person who made the report except to law enforcement, the prosecuting~~
9 ~~attorney, or the office of the Attorney General.~~

10 ~~(2) A court of competent jurisdiction may order release of data~~
11 ~~that would identify the person who made the report after the court has~~
12 ~~reviewed, in camera, the record related to the report and has found that~~
13 ~~disclosure is needed to prevent execution of a crime or for prosecution of a~~
14 ~~crime.~~

15 ~~(d) However, information contained in the registry for maltreated~~
16 ~~adults may be made available to bona fide and approved research groups solely~~
17 ~~for the purpose of scientific research, but in no event shall the names of~~
18 ~~individuals be released, nor shall specific circumstances or facts related to~~
19 ~~a specific individual be utilized in any research report which might be~~
20 ~~identifiable with such individual.~~

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

25
26 ~~5-28-214. Reports as evidence.~~

27 ~~(a) A written report from persons or officials required by this~~
28 ~~chapter to report shall be admissible in evidence in any proceeding relating~~
29 ~~to adult abuse, sexual abuse, neglect, or exploitation.~~

30 ~~(b) The affidavit of a physician, psychiatrist, psychologist, or~~
31 ~~licensed certified social worker shall also be admissible in evidence in any~~
32 ~~proceeding relating to adult abuse, sexual abuse, neglect, or exploitation.~~
33

34 ~~5-28-215. Immunity for investigation participants.~~

35 ~~(a) Any person, official, or institution participating in good faith~~
36 ~~in the making of a report, the taking of photographs, or the removal of an~~

1 ~~abused adult pursuant to this chapter shall have immunity from liability and~~
 2 ~~suit for damages, civil or criminal, that otherwise might result by reason of~~
 3 ~~such actions.~~

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

6
 7 ~~5-28-216. Penalties.~~

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

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

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

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

22
 23 ~~5-28-217. Adult maltreatment hotline.~~

24 ~~(a) The Department of Human Services shall maintain a single statewide~~
 25 ~~telephone number that all persons, whether mandated by law or not, may use to~~
 26 ~~report cases of suspected adult maltreatment.~~

27 ~~(b) The hotline, if possible, shall obtain the following information~~
 28 ~~from the person making the report:~~

29 ~~(1) The names, phone numbers, and addresses of the next of kin~~
 30 ~~or persons responsible for care of the endangered or impaired adult, if~~
 31 ~~known;~~

32 ~~(2) The victim's name, address, phone number, age, sex, and~~
 33 ~~race;~~

34 ~~(3) The nature and extent of maltreatment, including any~~
 35 ~~evidence of previous maltreatment to the person;~~

36 ~~(4) The names and addresses of the persons suspected to be~~

1 ~~responsible for the maltreatment, if known;~~

2 ~~(5) Family composition;~~

3 ~~(6) The source of the report;~~

4 ~~(7) The person making the report;~~

5 ~~(8) Whether or not any photographs, videos, or X rays exist that~~
6 ~~are probative as to the existence of maltreatment, including the location of~~
7 ~~the item;~~

8 ~~(9) The identity of any individual who witnessed or may have~~
9 ~~witnessed the event being reported and the identity of any individuals who~~
10 ~~know or may know any facts concerning the event being reported; and~~

11 ~~(10) Other information that the person making the report~~
12 ~~believes may be helpful in the furtherance of the purposes of this chapter.~~

13 ~~(c) When appropriate, a copy of the initial report shall immediately~~
14 ~~be made available to the appropriate law enforcement agency for its~~
15 ~~consideration.~~

16 ~~(d)(1)(A) The department shall not release data that would identify~~
17 ~~the person who made the report unless a court of competent jurisdiction~~
18 ~~orders release of the information after the court has reviewed, in camera,~~
19 ~~the record related to the report and has found that disclosure is needed to~~
20 ~~prevent execution of a crime or disclosure is necessary for prosecution of a~~
21 ~~crime;~~

22 ~~(B) However, any person to whom the name of the reporter~~
23 ~~is disclosed is prohibited from redisclosing this information, except as~~
24 ~~outlined in subdivision (d)(2) of this section.~~

25 ~~(2)(A) The information shall be disclosed to the Attorney~~
26 ~~General, the prosecuting attorney, or law enforcement officers upon request;~~

27 ~~(B) However, the information remains confidential until~~
28 ~~criminal charges are filed.~~

29 ~~(e) An allegation of suspected adult maltreatment shall be accepted if~~
30 ~~the allegations, if true, would constitute adult maltreatment and as long as~~
31 ~~sufficient identifying information is provided to identify and locate the~~
32 ~~victim.~~

33 ~~(f)(1) The hotline shall accept a report if the victim or offender is~~
34 ~~present in Arkansas or if the incident occurred in Arkansas.~~

35 ~~(2) If the incident occurred in another state, the hotline shall~~
36 ~~screen out the report and transfer the report to the hotline of the state in~~

1 ~~which the incident occurred.~~

2 ~~(3) Upon request from adult maltreatment investigators in other~~
 3 ~~states, the department shall complete courtesy interviews with the victim,~~
 4 ~~offender, or witnesses of adult maltreatment who reside in Arkansas.~~

5 ~~(g) Upon registration of a hotline report of suspected adult~~
 6 ~~maltreatment, the hotline shall refer the matter immediately to the~~
 7 ~~appropriate investigating agency as outlined in §§ 5-28-107 and 5-28-218.~~

8
 9 ~~5-28-218. Investigation by Department of Human Services.~~

10 ~~The Department of Human Services shall have jurisdiction to investigate~~
 11 ~~all cases of suspected maltreatment of an endangered or impaired adult, as~~
 12 ~~follows:~~

13 ~~(1) The Adult Protective Services Unit of the Department of~~
 14 ~~Human Services shall investigate:~~

15 ~~(A) All cases of suspected maltreatment of an endangered~~
 16 ~~or impaired adult when the act or omission occurs in a place other than a~~
 17 ~~long-term care facility; and~~

18 ~~(B) All cases of suspected maltreatment of an endangered~~
 19 ~~or impaired adult if a family member is named as the suspected offender,~~
 20 ~~regardless of whether or not the endangered or impaired adult resides in a~~
 21 ~~long-term care facility.~~

22 ~~(2) The Office of Long Term Care of the Division of Medical~~
 23 ~~Services of the Department of Human Services shall investigate all cases of~~
 24 ~~suspected maltreatment of an endangered or impaired adult occurring in a~~
 25 ~~long-term care facility.~~

26 ~~(3) If requested by the department, law enforcement agencies~~
 27 ~~shall assist in the investigation of any case of suspected adult~~
 28 ~~maltreatment.~~

29
 30 ~~5-28-219. Investigative powers of the Department of Human Services.~~

31 ~~(a) If admission cannot be obtained to the home, institution, or other~~
 32 ~~place in which an allegedly maltreated adult may be present, the circuit~~
 33 ~~court, upon good cause shown, shall order the person responsible for or in~~
 34 ~~charge of the place to allow entrance for the examination and investigation.~~

35 ~~(b) Further, if admission to the home cannot be obtained due to~~
 36 ~~hospitalization or similar absence of the maltreated adult and admission to~~

1 the home is necessary to complete the investigation, the circuit court, upon
 2 good cause shown, shall order law enforcement to assist the Department of
 3 Human Services to obtain entrance to the home for the required investigation
 4 of the home environment.

5 (c)(1) Upon request, the medical, mental health, or other records
 6 regarding the maltreated adult, maintained by any facility or maintained by
 7 any person required by this chapter to report suspected adult maltreatment,
 8 shall be made available to the department for the purpose of conducting an
 9 investigation under this subsection.

10 (2) Upon request, financial records maintained by a bank or
 11 similar institution regarding the maltreated adult shall be made available to
 12 the department for the purpose of conducting an investigation under this
 13 subsection.

14 (3) The circuit court, upon good cause shown, shall order any
 15 facility or person who maintains medical, mental health, or other records
 16 regarding the maltreated adult to tender records to the department for the
 17 purpose of conducting an investigation under this subsection.

18 (d) The investigation may include a medical, psychological, social,
 19 vocational, financial, and educational evaluation and review, if necessary.

20 (e)(1) If before the investigation is completed, the Adult Protective
 21 Services Unit of the Department of Human Services determines that the
 22 immediate removal of the maltreated adult is necessary to protect him or her
 23 from further maltreatment, the unit may petition the circuit court for an
 24 order of temporary custody or may exercise a seventy two hour hold pursuant
 25 to § 5-28-301.

26 (2)(A) The unit may petition the circuit court for an order of
 27 temporary custody for the purpose of having the adult evaluated, if the unit
 28 determines before the investigation is completed that:

29 (i) The maltreated adult is in imminent danger of
 30 death or serious bodily harm;

31 (ii) Available protective services have been offered
 32 to alleviate the danger and have been refused; and

33 (iii) The maltreated adult's capacity to comprehend
 34 the nature and consequences of remaining in the situation or condition cannot
 35 be adequately assessed in the home.

36 (B) The circuit court, upon good cause being shown, may

1 ~~issue an order for temporary custody for the purpose of having the adult~~
2 ~~evaluated.~~

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

5
6 ~~5-28-220. Rights of subject of report—Investigative determination of~~
7 ~~the Department of Human Services—Notice of finding—Appeal.~~

8 ~~(a) Upon completion of an investigation, the Department of Human~~
9 ~~Services shall determine that the allegations of adult maltreatment are~~
10 ~~either:~~

11 ~~(1)(A) Unfounded, a finding that shall be entered if the~~
12 ~~allegation is not supported by a preponderance of the evidence.~~

13 ~~(B) All information identifying the subject of the report~~
14 ~~shall be expunged one (1) year after completion of the investigation; or~~

15 ~~(2)(A) Founded, a finding that shall be entered if the~~
16 ~~allegation is supported by a preponderance of the evidence.~~

17 ~~(B) A determination of founded shall not be entered solely~~
18 ~~because an adult practicing his or her religious beliefs is receiving~~
19 ~~spiritual treatment under § 5-28-105.~~

20 ~~(b)(1)(A) After making an investigative determination, the department~~
21 ~~shall notify in writing within ten (10) business days:~~

22 ~~(i) The person identified as the offender;~~

23 ~~(ii) The person identified as the maltreated adult,~~
24 ~~except that in cases of unfounded self neglect no notice is required;~~

25 ~~(iii) The legal guardian of the maltreated adult;~~

26 ~~and~~

27 ~~(iv) The current administrator of the facility if~~
28 ~~the incident occurred in a long term care facility.~~

29 ~~(B) If the investigation determines that the report is~~
30 ~~founded, notification to the offender shall be by process server or by~~
31 ~~certified mail, restricted delivery.~~

32 ~~(2) The notification shall include the following:~~

33 ~~(A) The investigative determination, exclusive of the~~
34 ~~source of the notification, including the nature of the allegation and the~~
35 ~~date and time of occurrence;~~

36 ~~(B) A statement that an offender of a founded report has~~

1 ~~the right to an administrative hearing upon a timely request;~~

2 ~~(C)—A statement that the request must be made to the~~
 3 ~~department within thirty (30) days of receipt of the notice of determination;~~

4 ~~(D)—A statement of intent to report in writing the founded~~
 5 ~~investigative determination, once the offender has had an opportunity for a~~
 6 ~~hearing, to:~~

7 ~~(i)—The adult maltreatment central registry; and~~

8 ~~(ii)—Any applicable licensing authority;~~

9 ~~(E)—A statement that the offender's failure to request a~~
 10 ~~hearing in writing within thirty (30) days from the date of receipt of the~~
 11 ~~notice will result in submission of the investigative report, including the~~
 12 ~~investigative determination, to:~~

13 ~~(i)—The registry; and~~

14 ~~(ii)—Any applicable licensing authority;~~

15 ~~(F)—The consequences of waiving the right to an~~
 16 ~~administrative hearing;~~

17 ~~(G)—The consequences of a finding by a preponderance of~~
 18 ~~the evidence through the administrative hearing process that the maltreatment~~
 19 ~~occurred;~~

20 ~~(H)—The fact that the offender has the right to be~~
 21 ~~represented by an attorney at the offender's own expense; and~~

22 ~~(I)—The name of the person making notification, his or her~~
 23 ~~occupation, and the location at which he or she can be reached.~~

24 ~~(c)(1)—The administrative hearing process shall be completed within~~
 25 ~~one hundred twenty (120) days from the date of the receipt of the request for~~
 26 ~~a hearing unless waived by the petitioner.~~

27 ~~(2)—The department shall hold the administrative hearing at a~~
 28 ~~reasonable place and time.~~

29 ~~(3)—For incidents occurring in long term care facilities, the~~
 30 ~~department may not make a finding that an offender has neglected a resident~~
 31 ~~if the offender demonstrates that the neglect was caused by factors beyond~~
 32 ~~the control of the offender.~~

33 ~~(4)—Delays in completing the hearing that are attributable to~~
 34 ~~the petitioner shall not count against the time limit.~~

35 ~~(5)—Failure to complete the hearing process in a timely fashion~~
 36 ~~shall not prevent the department or a court reviewing the investigative~~

1 ~~determination of jurisdiction from making a final agency determination or~~
 2 ~~reviewing a final agency determination under the Arkansas Administrative~~
 3 ~~Procedure Act, § 25-15-201 et seq.~~

4 ~~(d)(1) When the department conducts such administrative hearings, the~~
 5 ~~chief counsel of the department is authorized to require the attendance of~~
 6 ~~witnesses and the production of books, records, or other documents through~~
 7 ~~the issuance of subpoenas when such testimony or information is necessary to~~
 8 ~~adequately present the position of the department or the alleged offender in~~
 9 ~~a report.~~

10 ~~(2) Failure to obey the subpoena may be deemed a contempt,~~
 11 ~~punishable accordingly.~~

12 ~~(e) If the department's investigative determination of founded is~~
 13 ~~upheld during the administrative hearing process or if the offender does not~~
 14 ~~timely appeal for or waives the right to an administrative hearing, the~~
 15 ~~department shall report the investigative determination in writing within ten~~
 16 ~~(10) working days to:~~

17 ~~(1) The offender;~~

18 ~~(2) The current administrator of the facility if the incident~~
 19 ~~occurred in a long-term care facility;~~

20 ~~(3) The administrator of the facility that currently employs the~~
 21 ~~offender, if different from the facility in which the incident occurred;~~

22 ~~(4) The appropriate licensing authority;~~

23 ~~(5) The adult maltreatment central registry;~~

24 ~~(6) The legal guardian of the maltreated adult; and~~

25 ~~(7) The maltreated adult.~~

26
 27 ~~5-28-221. Availability of pending and unfounded reports.~~

28 ~~(a)(1) Pending reports shall be confidential and shall be made~~
 29 ~~available only to:~~

30 ~~(A) The Department of Human Services, including the Death~~
 31 ~~Review Committee created by the Director of the Department of Human Services;~~

32 ~~(B) Law enforcement agencies;~~

33 ~~(C) Prosecutors;~~

34 ~~(D) The office of the Attorney General;~~

35 ~~(E) A circuit court having jurisdiction pursuant to a~~
 36 ~~petition for emergency, temporary, long-term protective custody, or for~~

1 ~~protective services; and~~

2 ~~(F) A grand jury or court, upon a finding that the~~
 3 ~~information in the record is necessary for the determination of an issue~~
 4 ~~before the court or grand jury;~~

5 ~~(2) The subject of the report may only be advised that a report~~
 6 ~~is pending.~~

7 ~~(b) Upon completion of the administrative hearing process and if the~~
 8 ~~allegation was determined to be unfounded, the investigative report shall be~~
 9 ~~confidential and shall be made available only to:~~

10 ~~(1) The department, including the committee created by the~~
 11 ~~director of the department;~~

12 ~~(2) Law enforcement agencies;~~

13 ~~(3) Prosecutors;~~

14 ~~(4) The office of the Attorney General;~~

15 ~~(5) Any licensing or registering authority;~~

16 ~~(6) Any person named as a subject of the report;~~

17 ~~(7) A circuit court having jurisdiction pursuant to a petition~~
 18 ~~for emergency, temporary, long term protective custody, or for protective~~
 19 ~~services; and~~

20 ~~(8) A grand jury or court, upon a finding that the information~~
 21 ~~in the record is necessary for the determination of an issue before the court~~
 22 ~~or grand jury.~~

23
 24 SECTION 12. Arkansas Code §§ 5-28-301 - 5-28-310 are repealed.

25 ~~5-28-301. Emergency custody.~~

26 ~~(a)(1) The Department of Human Services or a law enforcement official~~
 27 ~~may take a maltreated adult into emergency custody, or any person in charge~~
 28 ~~of a hospital or similar institution or any physician treating any such adult~~
 29 ~~may keep that adult in custody, whether or not medical treatment is required,~~
 30 ~~if the circumstances or condition of the adult is such that returning to or~~
 31 ~~continuing at the adult's place of residence or in the care or custody of a~~
 32 ~~parent, guardian, or other person responsible for the adult's care presents~~
 33 ~~imminent danger to that adult's health or safety, and the adult lacks the~~
 34 ~~capacity to comprehend the nature and consequences of remaining in a~~
 35 ~~situation that presents imminent danger to his or her health or safety.~~

36 ~~(2)(A)(i)(a) However, emergency custody shall not exceed~~

1 ~~seventy two (72) hours, except in the event that the expiration of seventy-~~
 2 ~~two (72) hours falls on a weekend or holiday, in which case emergency custody~~
 3 ~~may be extended through the next business day following the weekend or~~
 4 ~~holiday.~~

5 ~~(b)—The department shall be notified~~
 6 ~~immediately upon taking the adult into emergency custody.~~

7 ~~(ii)—The department may release custody of the adult~~
 8 ~~within the seventy two (72) hours if the adult is no longer in circumstances~~
 9 ~~or conditions that present imminent danger to the adult's health or safety.~~

10 ~~(B)—An emergency ex parte order of custody shall be~~
 11 ~~obtained on the maltreated adult within the seventy two (72) hours, except in~~
 12 ~~the event that the expiration of seventy two (72) hours falls on a weekend or~~
 13 ~~holiday, in which case emergency custody may be extended through the next~~
 14 ~~business day following the weekend or holiday.~~

15 ~~(C)—An emergency order shall include:~~

16 ~~(i)—Notice to the maltreated adult of the right to:~~

17 ~~(a)—A hearing and that the hearing will be~~
 18 ~~held within five (5) business days of the issuance of the ex parte order and~~
 19 ~~the date of the probable cause hearing, if known;~~

20 ~~(b)—Effective assistance of counsel; and~~

21 ~~(c)—Be present at the hearing; and~~

22 ~~(ii)—The location and telephone number of the court~~
 23 ~~and the procedure for obtaining a hearing.~~

24 ~~(D)—Immediate notice of the emergency order shall be given~~
 25 ~~by the petitioner or by the court to the respondent and the person from whom~~
 26 ~~physical custody of the respondent was removed.~~

27 ~~(3)(A)(i)—When emergency custody is exercised pursuant to this~~
 28 ~~section, the person exercising the custody or the department shall have~~
 29 ~~authority to consent to having the maltreated adult transported by law~~
 30 ~~enforcement or by ambulance if medically appropriate, even if the adult~~
 31 ~~objects.~~

32 ~~(ii)—No court order shall be required for law~~
 33 ~~enforcement or ambulance transport.~~

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

1 ~~(ii) The good faith of the ambulance driver or~~
 2 ~~company or law enforcement officer shall be presumed.~~

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

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

7 ~~(c) Upon a finding of probable cause, the court may order temporary~~
 8 ~~eustody for up to thirty (30) days pending the hearing for long term~~
 9 ~~protective custody, unless the court extends the time upon a finding that~~
 10 ~~extenuating circumstances exist.~~

11
 12 ~~5-28-302. Voluntary placement.~~

13 ~~(a) Any person may request voluntary protective placement under this~~
 14 ~~chapter.~~

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

16 ~~(c) Procedures for hearings pursuant to §§ 5-28-303, 5-28-304, and 5-~~
 17 ~~28-306 shall be followed.~~

18
 19 ~~5-28-303. Temporary custody.~~

20 ~~(a)(1) The Department of Human Services may file a petition requesting~~
 21 ~~the court to find that there is probable cause to place a maltreated adult in~~
 22 ~~temporary custody for a period of up to thirty (30) days, unless the court~~
 23 ~~extends the time upon a finding that extenuating circumstances exist.~~

24 ~~(2) This hearing shall be a miscellaneous hearing.~~

25 ~~(b) During the period the maltreated adult is in emergency or~~
 26 ~~temporary custody, the court may:~~

27 ~~(1) Order or authorize the department to obtain:~~

28 ~~(A) Medical treatment; or~~

29 ~~(B) Physical or psychological evaluations;~~

30 ~~(2) Issue orders regarding the adult's financial affairs; or~~

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

33
 34 ~~5-28-304. Long term custody — Notice — Court-ordered protective~~
 35 ~~services.~~

36 ~~(a)(1)(A) The Department of Human Services may file a petition~~

1 ~~requesting that a maltreated adult be placed in the department's long-term~~
 2 ~~protective custody.~~

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

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

11 ~~(b) If the respondent is not represented by counsel, notice of a~~
 12 ~~petition for long-term protective custody or court-ordered protective~~
 13 ~~services shall be served upon the respondent at least seven (7) calendar days~~
 14 ~~prior to the time set for a hearing.~~

15 ~~(c) Notice of the respondent's rights shall be served upon the~~
 16 ~~respondent at least seven (7) calendar days before the long-term protective~~
 17 ~~eustody hearing and may be contained in the notice provided to the respondent~~
 18 ~~for the probable cause hearing or temporary hearing.~~

19 ~~(d) The respondent shall be advised of the following rights:~~

20 ~~(1) The right to effective assistance of counsel;~~

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

22 ~~(3) The right to present evidence on the respondent's own~~
 23 ~~behalf;~~

24 ~~(4) The right to cross-examine witnesses who testify against him~~
 25 ~~or her;~~

26 ~~(5) The right to present witnesses in the respondent's own~~
 27 ~~behalf;~~

28 ~~(6) The right to remain silent; and~~

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

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

35 ~~(f) Notice of the long-term protective custody hearing shall be given~~
 36 ~~to:~~

- 1 ~~(1) The legal counsel of the respondent;~~
- 2 ~~(2) The next of kin of the respondent whose names and addresses~~
- 3 ~~are known to the petitioner;~~
- 4 ~~(3) The person having physical custody of the respondent;~~
- 5 ~~(4) Any person named in the petition; and~~
- 6 ~~(5) Any other persons or entities as the court may~~
- 7 ~~require.~~

8 ~~(g) The circuit clerk shall not charge or collect a filing fee from~~

9 ~~the department when it files a petition for:~~

- 10 ~~(1) Emergency, temporary, or long term protective custody;~~
- 11 ~~(2) Temporary custody for purposes of evaluation;~~
- 12 ~~(3) Court ordered protective services; or~~
- 13 ~~(4) An order of investigation.~~

14

15 ~~5-28 305. Contents of petition.~~

16 ~~The petition shall set forth the following:~~

- 17 ~~(1) The name, address, and, if known, the date of birth of the~~
- 18 ~~abused, neglected, or exploited adult;~~
- 19 ~~(2) The abused, neglected, or exploited adult's current~~
- 20 ~~location;~~
- 21 ~~(3) The name and address of the abused, neglected, or exploited~~
- 22 ~~adult's closest adult relative, if known;~~
- 23 ~~(4)(A) The facts which, if proven, cause the person to be an~~
- 24 ~~abused, neglected, or exploited adult.~~
- 25 ~~(B) The facts may be set out in an affidavit attached to~~
- 26 ~~the petition and incorporated therein; and~~
- 27 ~~(5) The relief requested by the petitioner.~~

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29 ~~5-28 306. Long term protective custody—Hearing—Placement—Appeal.~~

30 ~~(a) A hearing for long term protective custody or court ordered~~

31 ~~protective services shall be no later than thirty (30) days from the date of~~

32 ~~the probable cause hearing or the date the order for emergency or temporary~~

33 ~~eustody was signed, unless the court extends the time in which the hearing~~

34 ~~must be held upon a finding that extenuating circumstances exist.~~

35 ~~(b) The court may hold a hearing for long term protective custody or~~

36 ~~court ordered protective services anywhere in the judicial district.~~

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

5 ~~(2) Where there are protective services available to remedy the~~
 6 ~~imminent danger to the maltreated adult, the court may order the adult or the~~
 7 ~~caregiver for the adult to accept the protective services in lieu of placing~~
 8 ~~the adult in protective custody.~~

9 ~~(d) In the order, the court shall specify:~~

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

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

12 ~~(3) The scope and duration of the order;~~

13 ~~(4) That the Department of Human Services periodically review~~
 14 ~~the case every six (6) months or more frequently if warranted;~~

15 ~~(5) That the department monitor the protective services being~~
 16 ~~received in lieu of protective custody as often as is necessary to prevent~~
 17 ~~the recurrence of the danger; and~~

18 ~~(6)(A) The requirement of judicial review of the case, either~~
 19 ~~formal or informal as determined by the court, at least one (1) time a year.~~

20 ~~(B) Notice for review hearings shall be by regular mail to~~
 21 ~~the attorney for the respondent and to the administrator of the facility in~~
 22 ~~which the respondent is placed.~~

23 ~~(e) No long term protective custody may be ordered unless there is a~~
 24 ~~determination by the court that:~~

25 ~~(1) The adult is lacking the capacity to comprehend the nature~~
 26 ~~and consequences of remaining in a situation that presents an imminent danger~~
 27 ~~to his or her health or safety;~~

28 ~~(2) The adult is unable to provide for his or her own protection~~
 29 ~~from maltreatment; and~~

30 ~~(3) The court finds clear and convincing evidence that the adult~~
 31 ~~to be placed is in need of placement as provided in this chapter.~~

32 ~~(f) Placement may be in facilities such as nursing homes, boarding~~
 33 ~~homes, medical institutions, foster care services, or other facilities that~~
 34 ~~provide either medical or personal supervision.~~

35 ~~(g)(1) Placement under this section does not replace commitment of a~~
 36 ~~person in need of:~~

- ~~(A) Acute psychiatric treatment;~~
- ~~(B) Chronic mental health treatment; or~~
- ~~(C) Alcohol or drug abuse treatment.~~

~~(2) Placement under this section does not apply to domestic abuse of mentally competent persons or persons needing casework supervision by mental health professionals.~~

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

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

~~5-28 307. Protection of assets of a maltreated adult.~~

~~(a)(1) The circuit court shall have the authority to enter orders, as needed, to identify, secure, and protect the assets of any person in the custody of the Department of Human Services or any maltreated adult receiving court ordered protective services from the department.~~

~~(2) The court, after review of the assets, may order the sale of any assets if it is in the best interests of the maltreated adult.~~

~~(b) The court shall also have the authority to direct payment from the assets of the person in department custody or receiving protective services from the department for services rendered or goods purchased by or for the person in the custody of the department or receiving services from the department.~~

~~(c)(1) The court may appoint only the department as custodian of the person and not the estate of the person.~~

~~(2) The court has jurisdiction in this matter to hear and grant a petition for guardianship of the estate of a person in the custody of the department.~~

~~5-28 308. Jurisdiction—Custody proceedings.~~

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

1 ~~5-28 309. Duties and responsibilities of custodian.~~

2 ~~(a)(1) If the court appoints the Department of Human Services as the~~
 3 ~~legal custodian of a maltreated adult, the department shall:~~

4 ~~(A) Secure care and maintenance for the person;~~

5 ~~(B) Honor any advance directives, such as living wills, if~~
 6 ~~the legal documents were executed in conformity with applicable laws; and~~

7 ~~(C) Find a person to be guardian of the estate of the~~
 8 ~~person if a guardian of the estate is needed.~~

9 ~~(2) If the court appoints the department as the legal custodian~~
 10 ~~of a maltreated adult, the department may:~~

11 ~~(A) Consent to medical care for the person;~~

12 ~~(B) Obtain physical or psychological evaluations; and~~

13 ~~(C) Obtain medical, financial, and other records of the~~
 14 ~~person.~~

15 ~~(b) The department, as custodian, may not make any of the following~~
 16 ~~decisions without receiving express court approval:~~

17 ~~(1) Consent to abortion, sterilization, psychosurgery, or~~
 18 ~~removal of bodily organs except when necessary in a situation threatening the~~
 19 ~~life of the incapacitated person;~~

20 ~~(2) Consent to withholding life-saving treatment;~~

21 ~~(3) Authorize experimental medical procedures;~~

22 ~~(4) Authorize termination of parental rights;~~

23 ~~(5) Prohibit the person from voting;~~

24 ~~(6) Prohibit the person from obtaining a driver's license;~~

25 ~~(7) Consent to a settlement or compromise of any claim by or~~
 26 ~~against the person or his or her estate; or~~

27 ~~(8) Consent to the liquidation of assets of the person, such as~~
 28 ~~an estate sale.~~

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 30 ~~5-28 310. Availability of custody and protective services records.~~

31 ~~(a) Reports, correspondence, memoranda, case histories, medical~~
 32 ~~records, or other materials compiled or gathered by the Department of Human~~
 33 ~~Services regarding a maltreated adult in the custody of the department or~~
 34 ~~receiving services from the department shall be confidential and shall not be~~
 35 ~~released or otherwise made available except:~~

36 ~~(1) To the maltreated person;~~

1 ~~(2) To the attorney representing the maltreated person in a~~
2 ~~eustody or protective services case;~~

3 ~~(3) For any audit or similar activity conducted with the~~
4 ~~administration of any plan or program by any governmental agency which is~~
5 ~~authorized by law to conduct the audit or activity;~~

6 ~~(4) To law enforcement agencies, a prosecuting attorney, or the~~
7 ~~Attorney General;~~

8 ~~(5) To any licensing or registering authority to the extent~~
9 ~~necessary to carry out its official responsibilities, but the information~~
10 ~~shall be maintained as confidential;~~

11 ~~(6) To a circuit court under this chapter;~~

12 ~~(7) To a grand jury or court upon a finding that information in~~
13 ~~the record is necessary for the determination of an issue before the court or~~
14 ~~grand jury;~~

15 ~~(8) To a person or provider currently providing care or services~~
16 ~~to the maltreated adult; and~~

17 ~~(9)(A) To individual federal and state representatives and~~
18 ~~senators with no redisclosure of information.~~

19 ~~(B) No disclosure shall be made to any committee or~~
20 ~~legislative body of any information that identifies by name or address any~~
21 ~~recipient of services.~~

22 ~~(b) No person or agency to whom disclosure is made may disclose to any~~
23 ~~other person reports or other information obtained under this section.~~

24 ~~(c) A disclosure of information in violation of this section shall be~~
25 ~~a Class C misdemeanor.~~

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