

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
4

As Engrossed: S3/15/05

A Bill

SENATE BILL 931

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 would believe subjects an endangered or impaired ~~adult~~
32 person, regardless of age, ability to comprehend, or disability, to ridicule
33 or 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) An assisted living facility;

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

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

29 ~~(10)(11)~~ "Neglect" means:

30 (A) ~~acts~~ Acts or omissions by an endangered ~~adult~~ or
31 impaired person, for example, self-neglect; or

32 (B) ~~Intentional~~ Intentional acts or omissions by a
33 caregiver responsible for the care and supervision of an endangered or
34 impaired adult constituting:

35 ~~(A)(i)~~ Negligently failing to provide necessary
36 treatment, rehabilitation, care, food, clothing, shelter, supervision, or

1 medical services to an endangered or impaired adult;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(ii) In situations involving exploitation of an~~

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

4 ~~(a) Referrals for legal assistance;~~

5 ~~(b) Referrals, as appropriate, to law~~
 6 ~~enforcement or prosecutors; or~~

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

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

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

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

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

23
 24 SECTION 2. Arkansas Code § 5-28-103 is amended to read as follows:

25 5-28-103. Criminal penalties for adult abuse.

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

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

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

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

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

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

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

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

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

27
28 SECTION 3. Arkansas Code § 5-28-104 is amended to read as follows:

29 5-28-104. Privilege not grounds for exclusion of evidence.

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

1
2 SECTION 4. Arkansas Code § 5-28-106 is repealed.

3 ~~5-28-106. Civil penalties.~~

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

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

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

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

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

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

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

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

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

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

4
5 SECTION 5. Arkansas Code § 5-28-107(a), concerning investigations by
6 the state Attorney General, is amended to read as follows:

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

12
13 SECTION 6. Arkansas Code § 5-28-109 is repealed.

14 ~~5-28-109. Investigative powers of the Attorney General.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

21
22 SECTION 7. Arkansas Code § 5-28-201 is repealed.

23 ~~5-28-201. Adult maltreatment central registry.~~

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

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

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

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

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

36 ~~(4) The offender's name shall remain in the central registry~~

1 ~~unless:~~

2 ~~(A) Removed pursuant to another statute;~~

3 ~~(B) Removed pursuant to regulation; or~~

4 ~~(C) The offender prevails upon appeal.~~

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

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

10 5-28-202. Penalties.

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

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

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

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

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

35 (f) Any person required to report a death as the result of suspected
36 adult or long-term care facility resident maltreatment who knowingly fails to

1 make a report in the manner and time provided in the Adult and Long-Term Care
2 Facility Resident Maltreatment Act is guilty of a Class C misdemeanor.

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

7
8 */s/ Salmon*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36