

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 S3/17/05

A Bill

SENATE BILL 932

5 By: Senator Salmon
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE ADULT MALTREATMENT CUSTODY
10 ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO CREATE THE ADULT MALTREATMENT
13 CUSTODY ACT.
14
15
16

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

19 SECTION 1. Arkansas Code Title 9 is amended to add an additional
20 chapter to read as follows:

21 9-20-101. Title

22 This chapter shall be known and may be cited as the "Adult
23 Maltreatment Custody Act".
24

25 9-20-102. --Purpose.

26 The purposes of this subchapter are to:

27 (1) Protect a maltreated adult or long-term care facility
28 resident who is in imminent danger; and

29 (2) Encourage the cooperation of state agencies and private
30 providers in the service delivery system for maltreated adults.
31

32 9-20-103. Definitions.

33 As used in this chapter:

34 (1) "Abuse" means:

35 (A) Any intentional and unnecessary physical act that
36 inflicts pain on or causes injury to an endangered or impaired adult;



1 (B) Any intentional or demeaning act that a reasonable
2 person would believe subjects an endangered or impaired person, regardless of
3 age, ability to comprehend, or disability, to ridicule or psychological
4 injury in a manner likely to provoke fear or alarm;

5 (C) Any intentional threat that a reasonable person would
6 find credible and non-frivolous to inflict pain on or cause injury to an
7 endangered or impaired person except in the course of medical treatment or
8 for justifiable cause; or

9 (D) With regard to any adult resident of a long-term care
10 facility, any willful infliction of injury, unreasonable confinement,
11 intimidation, or punishment with resulting physical harm, pain or mental
12 anguish;

13 (2) "Adult maltreatment" means abuse, exploitation, neglect,
14 physical abuse, or sexual abuse of an adult;

15 (3) "Caregiver" means a related or unrelated person, owner,
16 agent, high managerial agent of a public or private organization, or a public
17 or private organization that has the responsibility for the protection, care,
18 or custody of an endangered or impaired person as a result of assuming the
19 responsibility voluntarily, by contract, through employment, or by order of
20 the court;

21 (4) "Department" means the Department of Human Services.

22 (5) "Endangered adult" means:

23 (A) An adult eighteen (18) years of age or older who:

24 (i) Is found to be in a situation or condition that
25 poses an imminent risk of death or serious bodily harm to that person; and

26 (ii) Demonstrates a lack of capacity to comprehend
27 the nature and consequences of remaining in that situation or condition; or

28 (B) An adult resident of a long-term care facility who:

29 (i) Is found to be in a situation or condition that
30 poses an imminent risk of death or serious bodily harm to that person; and

31 (ii) Demonstrates a lack of capacity to comprehend
32 the nature and consequences of remaining in that situation or condition; or

33 (6) "Exploitation" means:

34 (A) The illegal or unauthorized use or management of an
35 endangered or impaired adult's funds, assets, or property or the use of an
36 endangered or impaired adult's person, power of attorney, or guardianship for

1 the profit or advantage of himself, herself, or another; or

2 (B) Misappropriation of property of an adult resident of a
3 long-term care facility, that is, the deliberate misplacement, exploitation,
4 or wrongful, temporary, or permanent use of a resident's belongings or money
5 without the resident's consent;

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

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

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

15 (9) "Long-term care facility" means:

16 (A) A nursing home;

17 (B) A residential care facility;

18 (C) A post-acute head injury retraining and residential
19 facility;

20 (D) An assisted living facility;

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 (10) "Long-term care facility resident" means a person eighteen
26 (18) years of age or older living in a long-term care facility;

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

30 (12) "Maltreated adult" means an adult who has been abused,
31 exploited, neglected, physically abused or sexually abused;

32 (13) "Neglect" means:

33 (A) An act or omission by an endangered or impaired adult,
34 for example, self-neglect; or

35 (B) An act or omission by a caregiver responsible for the
36 care and supervision of an endangered or impaired adult constituting:

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

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

7 (iii) Negligently failing to carry out a prescribed
8 treatment plan; or

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

14 (14)(A) "Physical injury" means the impairment of a physical
15 condition or the infliction of substantial pain.

16 (B) If the person is an endangered or impaired adult,
17 there is a presumption that any physical injury resulted in the infliction of
18 substantial pain;

19 (15)(A) "Protective services" means services to protect AN
20 endangered or impaired adult from:

21 (i) Self-neglect or self-abuse; or

22 (ii) Abuse or neglect by others.

23 (B) Protective services may include:

24 (i) Evaluation of the need for services;

25 (ii) Arrangements or referrals for appropriate
26 services available in the community;

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

29 (v) Referrals, as appropriate, to law enforcement or
30 prosecutors.

31 (16) "Resident of a long-term care facility" means a person
32 eighteen (18) years of age or older living in a long-term care facility;

33 (17) "Serious bodily harm" means physical abuse, sexual abuse,
34 physical injury, or serious physical injury;

35 (18) "Serious physical injury" means physical injury to an
36 endangered or impaired adult that:

1 (A) Creates a substantial risk of death

2 (B) Causes protracted disfigurement, protracted impairment
3 of health, or loss or protracted impairment of the function of any bodily
4 member or organ;

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

10 (20) "Subject of the report" means:

11 (A) The endangered or impaired adult;

12 (B) The adult's legal guardian; and

13 (C) The offender.

14
15 9-20-104. Spiritual treatment alone not abusive.

16 Nothing in this chapter implies that an endangered or impaired adult
17 who is being furnished with treatment by spiritual means alone through prayer
18 in accordance with the tenets and practices of a recognized church or
19 religious denomination by an accredited practitioner thereof, is for this
20 reason alone an endangered or impaired adult.

21
22 9-20-105. Privilege not grounds for exclusion of evidence.

23 Any privilege between husband and wife or between any professional
24 person, except lawyer and client, including, but not limited to, physicians,
25 members of the clergy, counselors, hospitals, clinics, rest homes, nursing
26 homes, and their clients, shall not constitute grounds for excluding evidence
27 at any proceedings regarding an endangered or impaired adult, or the cause of
28 the proceeding.

29
30 9-20-106. Immunity for investigation participants.

31 Any person, official, or institution participating in good faith in the
32 removal of a maltreated adult pursuant to this chapter shall have immunity
33 from liability and suit for damages, civil or criminal, that otherwise might
34 result by reason of such actions.

35
36 9-20-107. Reports as evidence.

1 (a) A written report from persons or officials required to report
2 under the Adult and Long-Term Care Facility Resident Maltreatment Act shall
3 be admissible in evidence in any proceeding relating to adult maltreatment or
4 long-term care facility resident maltreatment.

5 (b) The affidavit of a physician, psychiatrist, psychologist, or
6 licensed certified social worker shall be admissible in evidence in any
7 proceeding relating to adult maltreatment or long-term care facility resident
8 maltreatment.

9
10 9-20-108. Jurisdiction – Venue – Eligibility.

11 (a)(1) The probate division of circuit court shall have jurisdiction
12 over proceedings for:

13 (a) Custody;

14 (B) Temporary custody for purposes of evaluation;

15 (C) Court-ordered protective services; or

16 (D) An order of investigation pursuant to this chapter.

17 (2) The probate division of circuit court shall retain
18 jurisdiction for one hundred and eighty (180) days after the death of an
19 adult in the custody of the Department of Human Services to enter orders
20 concerning disposition of any assets of the adult, including the ability to
21 order payment for services rendered or goods purchased by or for the adult
22 while in the custody of the Department of Human Services before the death of
23 the adult.

24 (b) A proceeding under this chapter shall be commenced in the probate
25 division of the circuit court of the county where:

26 (1) The maltreated adult resides; or

27 (2) The maltreatment occurred.

28 (c) Eligibility for services from the Department of Human Services,
29 including custody, for aliens and non-aliens shall be the same eligibility
30 requirements for the Arkansas Medical Assistance Program.

31 (d) No person may be taken into custody or placed in the custody of
32 the Department of Human Services under this section if that person is in need
33 of:

34 (1) Acute psychiatric treatment;

35 (2) Chronic mental health treatment;

36 (3) Alcohol or drug abuse treatment;

1 (4) Protection from domestic abuse if that person is mentally
2 competent; or

3 (5) Casework supervision by mental health professionals.

4 (f) No adult may be taken into custody or placed in the custody of the
5 Department of Human Services for the sole purpose of consenting to the
6 adult's medical treatment.

7
8 9-20-109. Commencement of proceedings.

9 (a) Proceedings shall be commenced by filing a petition with the clerk
10 of the probate division of the circuit court or by transfer by another court.

11 (b) Only the Department of Human Services may file a petition seeking
12 ex parte emergency relief.

13 (c) No fees may be charged or collected by the clerk in cases brought
14 by the department, including, but not limited to:

15 (1) Fees for filing;

16 (2) Summons; or

17 (3) Subpoenas.

18
19 9-20-110. Petition.

20 A petition shall set forth the following:

21 (1) The name, address, and, if known, the date of birth of the
22 maltreated adult who shall be designated as the respondent;

23 (2) The maltreated adult's current location;

24 (3) The name and address of the maltreated adult's closest adult
25 relative, if known;

26 (4)(A) The facts intended to prove the person to be maltreated.

27 (B) The facts may be set out in an affidavit attached to
28 the petition and incorporated into the petition; and

29 (5) The relief requested by the petitioner.

30
31 9-20-111. Notification

32 (a) All maltreated adults named as the respondent shall be served with
33 a copy of the petition under the Arkansas Rules of Civil Procedure.

34 (b) The Department of Human Services shall provide immediate notice of
35 the date, time, and location of the probable cause hearing to:

36 (1) The respondent;

1 (2) The person from whom physical custody of the respondent was
2 removed; and

3 (3) Counsel for the respondent.

4 (c) The pleadings served on the respondent shall include a statement
5 of the right to:

6 (1) Effective assistance of counsel;

7 (2) Be present at the hearing;

8 (3) Present evidence on the respondent's own behalf;

9 (4) Cross-examine witnesses who testify against him or her;

10 (5) Present witnesses in the respondent's own behalf;

11 (6) Remain silent; and

12 (7) View and copy all petitions, reports, and documents retained
13 in the court file.

14 (d) Notice of the long-term custody hearing shall be given to:

15 (1) The legal counsel of the respondent;

16 (2) The next of kin of the respondent whose names and addresses
17 are known to the petitioner;

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

19 (4) Any person named in the petition; and

20 (5) Any other persons or entities as the court may require.

21
22 9-20-112. Voluntary placement.

23 (a) Any adult may request voluntary protective placement under this
24 chapter.

25 (b) No civil rights are relinquished as a result of voluntary
26 protective placement.

27 (c) Procedures for hearings under this chapter shall be followed with
28 regard to voluntary protective placement.

29
30 9-20-113. Petition for evaluations.

31 (a) The Department of Human Services may petition the circuit court
32 for an order of temporary custody for the purpose of having an adult
33 evaluated if during the course of an investigation under the Adult and Long-
34 Term Care Facility Resident Maltreatment Act, § 12-12-1601, et seq., the
35 department determines that:

36 (i) The adult is in imminent danger of death or

1 serious bodily harm;

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

4 (iii) The adult's capacity to comprehend the nature
5 and consequences of remaining in the situation or condition cannot be
6 adequately assessed in the adult's place of residence.

7 (b) The circuit court, upon good cause being shown, may issue an order
8 for temporary custody for the purpose of having the adult evaluated.

9
10 9-20-114. Emergency custody.

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

21 (b) Emergency custody shall not exceed seventy-two (72) hours, unless
22 the expiration of seventy-two (72) hours falls on a weekend or holiday in
23 which case emergency custody shall be extended through the next business day
24 following the weekend or holiday.

25 (c) A person who takes a maltreated adult into emergency custody shall
26 notify the department immediately upon taking the adult into emergency
27 custody.

28 (d) The department may release custody of an adult within the seventy-
29 two (72) hours if the adult is no longer in circumstances or conditions that
30 present imminent danger to the adult's health or safety.

31 (e)(1) If emergency custody is exercised under this section, the
32 person exercising the custody or the department may consent to having the
33 maltreated adult transported by a law enforcement officer or by ambulance if
34 medically appropriate, even if the adult objects.

35 (2) No court order shall be required for law enforcement or
36 ambulance transport.

1 (3) If an ambulance driver or company or a law enforcement
2 officer acts in good faith under this section, the immunity provisions of §
3 5-78-207 shall apply.

4 (4) The good faith of the ambulance driver or company or law
5 enforcement officer shall be presumed.

6
7 9-20-115. Emergency order of custody.

8 (a) If there is probable cause to believe that immediate emergency
9 custody is necessary to protect a maltreated adult, the probate division of
10 circuit court shall issue an ex parte order for emergency custody to protect
11 the maltreated adult.

12 (b) The Department of Human Services shall obtain an emergency ex
13 parte order of custody on a maltreated adult within the seventy-two (72)
14 hours of taking the maltreated adult into emergency custody unless the
15 expiration of seventy-two (72) hours falls on a weekend or holiday, in which
16 case emergency custody may be extended through the next business day
17 following the weekend or holiday.

18 (c) The emergency order shall include notice to the maltreated adult
19 and the person from whom physical custody of the respondent was removed of
20 the right to a hearing and that a hearing will be held within five (5)
21 business days of the issuance of the ex parte order.

22
23 9-20-116. Probable cause hearing.

24 (a) Following issuance of an emergency order, the probate division of
25 circuit court shall within five (5) business days hold a hearing to determine
26 whether probable cause to issue the emergency order continues to exist.

27 (b)(1) At the probable cause hearing, the court shall make the
28 following inquiries of the maltreated adult or other witnesses:

29 (A) Whether the maltreated adult has the financial ability
30 to retain counsel, and

31 (B) If the maltreated adult does not have the financial
32 ability to retain counsel, whether the maltreated adult is indigent.

33 (2) The court shall:

34 (A) Inform the maltreated adult of the right to effective
35 assistance of counsel; and

36 (B) If the maltreated adult is indigent, appoint counsel

1 for the maltreated adult.

2 (c) The hearing shall be limited to the purpose of determining whether
3 probable cause:

4 (1) Existed to protect the maltreated adult; and

5 (2) Still exists to protect the maltreated adult.

6 (d) The court may enter orders:

7 (1) Regarding protection of assets of the maltreated adult;

8 (2) Ordering or authorizing the Department of Human Services to
9 obtain treatment, evaluations or services for the maltreated adult.

10 (e) The probable cause hearing shall be a miscellaneous hearing.

11 (f)(1) Upon a finding of probable cause, the court may order temporary
12 custody for up to thirty (30) days pending the hearing for long-term custody.

13 (2) However, the court may extend the time under subdivision of
14 (f)(1) of this section upon a finding that extenuating circumstances exist.

15
16 9-20-117. Long-term custody and court-ordered protective services
17 hearings.

18 (a) A hearing for long-term custody or court-ordered protective
19 services shall be held no later than thirty (30) days after the date of the
20 probable cause hearing or the date the order for emergency custody was
21 signed.

22 (2) However, the probate division of circuit court may extend
23 the time during which the hearing must be held upon a finding that
24 extenuating circumstances exist.

25 (b) The court may hold a hearing for long-term custody or protective
26 services anywhere in the judicial district.

27 (c) The court may order long-term custody with the Department of Human
28 Services if the court determines that:

29 (1) The adult lacks the capacity to comprehend the nature and
30 consequences of remaining in a situation that presents an imminent danger to
31 his or her health or safety;

32 (2) The adult is unable to provide for his or her own protection
33 from maltreatment; and

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

36 (d)(1) The court shall make a finding in connection with the

1 determination of the least restrictive alternative to be considered proper
2 under the circumstances, including A finding for non-institutional care if
3 possible.

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

8 (e)(1) The court may order that treatment, evaluations, and services
9 be obtained for the maltreated adult.

10 (2) However the court may not specify a particular provider for
11 services or placement unless the adult is paying for the service or
12 placement.

13
14 9-20-118. Review hearings.

15 (a) The Department of Human Services shall periodically review the
16 case of an adult in the custody of the department, but not less often than
17 one (1) time every six (6) months.

18 (b) The court shall review the case of an adult in the custody of the
19 department, either formally or informally as determined by the court, at
20 least one (1) time every twelve (12) months.

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

24
25 9-20-119. Assets of a maltreated adult.

26 (a)(1) The probate division of circuit court may enter orders as
27 needed to identify, secure, and protect the assets of any adult in the
28 custody of the Department of Human Services or any maltreated adult receiving
29 court-ordered protective services from the department.

30 (2) If the court orders the adult placed in the custody of the
31 department, the court shall address the issue of the adult's residence,
32 whether rented or owned by the adult, including, the cleaning, vacating,
33 selling or leasing of the residence and the disposition of the property in
34 the residence.

35 (3) After review of the assets, the court may order the sale of
36 any assets if it is in the best interests of the adult.

1 (b) The court may also direct payment from the assets of the adult in
2 department custody or receiving protective services from the department for
3 services rendered or goods purchased by or for the adult in the custody of
4 the department or receiving services from the department.

5 (c)(1) The court may appoint the department only as custodian of the
6 adult and not of the estate of the adult.

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

10
11 9-20-120. Duties and responsibilities of custodian.

12 (a)(1) If the probate division of circuit court appoints the
13 Department of Human Services as the legal custodian of a maltreated adult,
14 the department shall:

15 (A) Secure care and maintenance for the person;

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

18 (C) Find a person to be guardian of the estate of the
19 adult if a guardian of the estate is needed.

20 (2) If the court appoints the department as the legal custodian
21 of a maltreated adult, the department may:

22 (A) Consent to medical care for the adult;

23 (B) Obtain physical or psychological evaluations; and

24 (C) Obtain medical, financial, and other records of the
25 adult.

26 (b) The department, as custodian, shall not make any of the following
27 decisions without receiving express court approval:

28 (1) Consent to abortion, sterilization, psychosurgery, or
29 removal of bodily organs unless a procedure is necessary in a situation
30 threatening the life of the maltreated adult;

31 (2) Consent to withholding life-saving treatment;

32 (3) Authorize experimental medical procedures;

33 (4) Authorize termination of parental rights;

34 (5) Prohibit the adult from voting;

35 (6) Prohibit the adult from obtaining a driver's license;

36 (7) Consent to a settlement or compromise of any claim by or

1 against the adult or his or her estate;

2 (8) Consent to the liquidation of assets of the adult, through
3 such activities as an estate sale; or

4 (9) Amputation of any part of the body.

5
6 9-20-221. Availability of custody and protective services records.

7 (a) Reports, correspondence, memoranda, case histories, medical
8 records, or other materials compiled or gathered by the Department of Human
9 Services regarding a maltreated adult in the custody of the department or
10 receiving services from the department shall be confidential and shall not be
11 released or otherwise made available except:

12 (1) To the maltreated adult;

13 (2) To the attorney representing the maltreated adult in a
14 custody or protective services case;

15 (3) For any audit or similar activity conducted with the
16 administration of any plan or program by any governmental agency that is
17 authorized by law to conduct the audit or activity;

18 (4) To law enforcement agencies, a prosecuting attorney, or the
19 Attorney General;

20 (5) To any licensing or registering authority to the extent
21 necessary to carry out its official responsibilities.

22 (B) Information released under subdivision (5)(A) of this
23 section shall be maintained as confidential;

24 (6) To a circuit court under this chapter;

25 (7) To a grand jury or court upon a finding that information in
26 the record is necessary for the determination of an issue before the court or
27 grand jury;

28 (8) To a person or provider currently providing care or services
29 to the adult;

30 (9) To a person or provider identified by the department as
31 having services needed by the adult;

32 (10)(A) To individual federal and state representatives and
33 senators who shall not redisclose the information.

34 (B) No disclosure may be made to any committee or legislative body of
35 any information that identifies by name or address any recipient of services;
36 and

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

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

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

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

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

~~(A) Medical treatment; or~~

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

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

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

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

~~(a)(1)(A) The Department of Human Services may file a petition requesting that a maltreated adult be placed in the department's long term protective custody.~~

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

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

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

~~(c) Notice of the respondent's rights shall be served upon the respondent at least seven (7) calendar days before the long term protective custody hearing and may be contained in the notice provided to the respondent~~

1 ~~for the probable cause hearing or temporary hearing.~~

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

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

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

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

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

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

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

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

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

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

20 ~~(1) The legal counsel of the respondent;~~

21 ~~(2) The next of kin of the respondent whose names and addresses~~
22 ~~are known to the petitioner;~~

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

24 ~~(4) Any person named in the petition; and~~

25 ~~(5) Any other persons or entities as the court may~~
26 ~~require.~~

27 ~~(g) The circuit clerk shall not charge or collect a filing fee from~~
28 ~~the department when it files a petition for:~~

29 ~~(1) Emergency, temporary, or long-term protective custody;~~

30 ~~(2) Temporary custody for purposes of evaluation;~~

31 ~~(3) Court-ordered protective services; or~~

32 ~~(4) An order of investigation.~~

33
34 ~~5-28-305. Contents of petition.~~

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

36 ~~(1) The name, address, and, if known, the date of birth of the~~

1 ~~abused, neglected, or exploited adult;~~

2 ~~(2) The abused, neglected, or exploited adult's current~~
3 ~~location;~~

4 ~~(3) The name and address of the abused, neglected, or exploited~~
5 ~~adult's closest adult relative, if known;~~

6 ~~(4)(A) The facts which, if proven, cause the person to be an~~
7 ~~abused, neglected, or exploited adult.~~

8 ~~(B) The facts may be set out in an affidavit attached to~~
9 ~~the petition and incorporated therein; and~~

10 ~~(5) The relief requested by the petitioner.~~

11
12 ~~5-28-306. Long term protective custody—Hearing—Placement—Appeal.~~

13 ~~(a) A hearing for long term protective custody or court ordered~~
14 ~~protective services shall be no later than thirty (30) days from the date of~~
15 ~~the probable cause hearing or the date the order for emergency or temporary~~
16 ~~eustody was signed, unless the court extends the time in which the hearing~~
17 ~~must be held upon a finding that extenuating circumstances exist.~~

18 ~~(b) The court may hold a hearing for long term protective custody or~~
19 ~~court ordered protective services anywhere in the judicial district.~~

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

24 ~~(2) Where there are protective services available to remedy the~~
25 ~~imminent danger to the maltreated adult, the court may order the adult or the~~
26 ~~caregiver for the adult to accept the protective services in lieu of placing~~
27 ~~the adult in protective custody.~~

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

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

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

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

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

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

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

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

6 ~~(c) No long term protective custody may be ordered unless there is a~~
7 ~~determination by the court that:~~

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

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

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

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

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

20 ~~(A) Acute psychiatric treatment;~~

21 ~~(B) Chronic mental health treatment; or~~

22 ~~(C) Alcohol or drug abuse treatment.~~

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

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

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

31
32 ~~5-28 307. Protection of assets of a maltreated adult.~~

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

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

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

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

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

13
14 ~~5-28-308. Jurisdiction—Custody proceedings.~~

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

19
20 ~~5-28-309. Duties and responsibilities of custodian.~~

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

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

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

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

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

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

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

32 ~~(C) Obtain medical, financial, and other records of the~~
33 ~~person.~~

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

36 ~~(1) Consent to abortion, sterilization, psychosurgery, or~~

1 ~~removal of bodily organs except when necessary in a situation threatening the~~
2 ~~life of the incapacitated person;~~

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

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

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

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

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

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

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

12
13 ~~5-28 310. Availability of custody and protective services records.~~

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

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

20 ~~(2) To the attorney representing the maltreated person in a~~
21 ~~custody or protective services case;~~

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

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

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

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

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

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

36 ~~(9)(A) To individual federal and state representatives and~~

1 ~~senators with no redisclosure of information.~~

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

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

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

9
10 */s/ Salmon*
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