

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 945

4  
5 By: Senator Salmon  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO CREATE THE ADULT AND LONG-TERM CARE  
10 FACILITY RESIDENT MALTREATMENT ACT; AND FOR OTHER  
11 PURPOSES.  
12

### Subtitle

13  
14 THE ADULT AND LONG-TERM CARE FACILITY  
15 RESIDENT MALTREATMENT ACT.  
16  
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code Title 12, Chapter 12 is amended to add an  
21 additional subchapter to read as follows:

22 12-12-1601. Title.

23 This subchapter shall be known and may be cited as the "Adult and Long-  
24 Term Care Facility Resident Maltreatment Act".  
25

26 12-12-1602. Purpose.

27 The purpose of this subchapter is to:

28 (1) Provide a system for the reporting of known or suspected  
29 adult and long-term care facility resident maltreatment;

30 (2) Ensure the screening, safety assessment, and prompt  
31 investigation of reports of known or suspected adult and long-term care  
32 facility resident maltreatment;

33 (3) Provide for the prosecution of persons maltreating any  
34 maltreated adult or resident of a long-term care facility;

35 (4) Provide for a civil action, if appropriate, to protect  
36 maltreated adults and residents of long-term care facilities; and



1           (5) Encourage the cooperation of state law enforcement  
 2 officials, courts, and state agencies in the investigation, assessment, and  
 3 prosecution of maltreated adults and residents of long-term care facilities;

4  
 5           12-12-1603. Definitions.

6           As used in this subchapter:

7           (1) "Abuse" means:

8                   (A) Any intentional and unnecessary physical act that  
 9 inflicts pain on or causes injury to an endangered or impaired person;

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

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

16                   (D) With regard to any resident of a long-term care  
 17 facility, any willful infliction of injury, unreasonable confinement,  
 18 intimidation, or punishment with resulting physical harm, pain, or mental  
 19 anguish;

20           (2) "Adult maltreatment" means abuse, exploitation, neglect, or  
 21 sexual abuse of an adult;

22           (3) "Caregiver" means a related or unrelated person, owner,  
 23 agent, high managerial agent of a public or private organization, or a public  
 24 or private organization that has the responsibility for the protection, care,  
 25 or custody of an endangered or impaired person as a result of assuming the  
 26 responsibility voluntarily, by contract, through employment, or by order of a  
 27 court;

28           (4) "Department" means the Department of Human Services;

29           (5) "Endangered person" means:

30                   (A) A person eighteen (18) years of age or older who:

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

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

35                   (B) A resident of a long-term care facility who:

36                           (i) Is found to be in a situation or condition that

1 poses an imminent risk of death or serious bodily harm to the person; and

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

4 (6) "Exploitation" means:

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

9 (B) Misappropriation of property of a resident of a long-  
 10 term care facility, that is, the deliberate misplacement, exploitation, or  
 11 wrongful, temporary, or permanent use of a resident's belongings or money  
 12 without the resident's consent;

13 (7) "Imminent danger to health or safety" means a situation in  
 14 which death or severe bodily injury could reasonably be expected to occur  
 15 without intervention;

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

20 (B) For purposes of this subchapter, residents of a long-  
 21 term care facility are presumed to be impaired persons;

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

23 (A) A nursing home;

24 (B) A residential care facility;

25 (C) A post-acute head injury retraining and residential  
 26 facility;

27 (D) An assisted living facility;

28 (E) An intermediate care facility for the mentally  
 29 retarded; or

30 (F) Any facility that provides long-term medical or  
 31 personal care;

32 (10) "Long-term care facility resident" means a person,  
 33 regardless of age, living in a long-term care facility;

34 (11) "Long-term care facility resident maltreatment" means  
 35 abuse, exploitation, neglect, or sexual abuse of a resident of a long-term  
 36 care facility;

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

3           (13) "Maltreated person" means a person, regardless of age, who  
4 has been abused, exploited, neglected, or sexually abused;

5           (14) "Neglect" means:

6           (A) An act or omission by an endangered or impaired  
7 person, for example, self-neglect; or

8           (B) An intentional act or omission by a caregiver  
9 responsible for the care and supervision of an endangered or impaired person  
10 constituting:

11           (i) Negligently failing to provide necessary  
12 treatment, rehabilitation, care, food, clothing, shelter, supervision, or  
13 medical services to an endangered or impaired person;

14           (ii) Negligently failing to report health problems  
15 or changes in health problems or changes in the health condition of an  
16 endangered or impaired person to the appropriate medical personnel;

17           (iii) Negligently failing to carry out a prescribed  
18 treatment plan; or

19           (iv) Failing to provide goods or services to a  
20 resident of a long-term care facility necessary to avoid physical harm,  
21 mental anguish, or mental illness as defined in regulations promulgated by  
22 the Office of Long-Term Care of the Division of Medical Services of the  
23 Department of Human Services;

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

26           (B) If the person is an endangered or impaired person,  
27 there shall be a presumption that any physical injury resulted in the  
28 infliction of substantial pain;

29           (16) "Resident of a long-term care facility" means a person,  
30 regardless of age, living in a long-term care facility;

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

33           (18) "Serious physical injury" means physical injury to an  
34 endangered or impaired person that creates a substantial risk of death or  
35 that causes protracted disfigurement, protracted impairment of health, or  
36 loss or protracted impairment of the function of any bodily member or organ;

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

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

7                   (A) The endangered or impaired person;

8                   (B) The adult's legal guardian;

9                   (C) The natural or legal guardian of a long-term care  
10 facility resident under eighteen (18) years of age; and

11                   (D) The offender.

12  
13           12-12-1604. Spiritual treatment alone not abusive.

14           Nothing in this subchapter shall be construed to mean that an  
15 endangered or impaired person who is being furnished with treatment by  
16 spiritual means alone through prayer in accordance with the tenets and  
17 practices of a recognized church or religious denomination by an accredited  
18 practitioner of the church or denomination is for that reason alone an  
19 endangered or impaired person.

20  
21           12-12-1605. Privilege not grounds for exclusion of evidence.

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

28  
29           12-12-1606. Civil penalties.

30           (a)(1) The State of Arkansas and the Attorney General may institute a  
31 civil action against any long-term care facility caregiver necessary to  
32 enforce any provision of this subchapter.

33           (2) Notwithstanding any criminal penalties assessed, any  
34 caregiver against whom any civil judgment is entered as the result of a civil  
35 action brought by the State of Arkansas through the Attorney General on a  
36 complaint alleging that caregiver to have abused, neglected, or exploited an

1 endangered or impaired person in a long-term care facility certified under  
2 Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed  
3 on January 1, 2005, shall be subject to pay a civil penalty:

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

6 (B) Not to exceed fifty thousand dollars (\$50,000) for the  
7 death of a long-term care facility resident that results from a single  
8 violation.

9 (3)(A) The Attorney General shall not be precluded from  
10 recovering civil penalties under subdivision (a)(2)(A) of this section for  
11 the death of a person that results from multiple violations.

12 (B) However, the Attorney General may not recover civil  
13 penalties under both subdivisions (a)(2)(A) and (B) of this section.

14 (b) In any action brought under this section, the Attorney General  
15 shall be required to prove all essential elements of the cause of action,  
16 including damages, by a preponderance of the evidence.

17 (c) Any penalty under subdivision (a)(2) of this section shall be paid  
18 into the State Treasury and credited to the Arkansas Medicaid Program Trust  
19 Fund.

20 (d) Any caregiver against whom any civil judgment is entered as the  
21 result of a civil action brought or threatened to be brought under this  
22 section by the Attorney General shall be required to pay to the Attorney  
23 General all reasonable expenses that the court determines have been  
24 necessarily incurred in the enforcement of this subchapter.

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

28  
29 12-12-1607. Adult and long-term care facility resident maltreatment  
30 hotline.

31 (a) The Department of Human Services shall maintain a single statewide  
32 telephone number that all persons, whether mandated by law or not, may use to  
33 report cases of suspected adult and long-term care facility resident  
34 maltreatment.

35 (b) When appropriate, a copy of the initial report shall immediately  
36 be made available to the appropriate law enforcement agency for its

1 consideration.

2 (c)(1) The department shall not release information that would  
3 identify the person who made the report unless a court of competent  
4 jurisdiction orders release of the information after the court has reviewed  
5 in camera the record related to the report and has found that disclosure is  
6 necessary:

7 (A) To prevent execution of a crime; or

8 (B) For prosecution of a crime.

9 (2)(A) However, any person to whom the name of the reporter is  
10 disclosed is prohibited from redisclosing this information, except as  
11 provided in subdivision (c)(2)(B) of this section.

12 (B)(i) Upon request, the information shall be disclosed  
13 to:

14 (a) The Attorney General;

15 (b) The prosecuting attorney; or

16 (c) Law enforcement officers.

17 (ii) However, the information shall remain  
18 confidential until criminal charges are filed.

19 (d)(1) A report of an allegation of suspected adult or long-term care  
20 facility resident maltreatment shall be accepted if:

21 (A) The allegation, if true, would constitute adult or  
22 long-term care facility resident maltreatment;

23 (B) Sufficient identifying information is provided to  
24 identify and locate the victim; and

25 (C) The hotline shall accept a report if:

26 (i) The victim or offender is present in Arkansas;  
27 or

28 (ii) The incident occurred in Arkansas.

29 (2) Reports to the hotline if the allegations, even if true,  
30 would not constitute adult or long-term care facility resident maltreatment,  
31 shall be screened out.

32 (3) If the incident occurred in another state, the hotline shall  
33 screen out the report and transfer the report to the hotline of the state in  
34 which the incident occurred.

35 (4) Upon request from an adult or long-term care facility  
36 resident maltreatment investigator in other states, the department shall

1 complete courtesy interviews with the victim, the offender, or any witness of  
 2 adult maltreatment who resides in Arkansas.

3 (e) Upon registration of a hotline report of suspected adult or long-  
 4 term care facility resident maltreatment, the hotline shall refer the matter  
 5 immediately to the appropriate investigating agency as outlined in this  
 6 subchapter.

7  
 8 12-12-1608. Persons required to report adult or long-term care  
 9 facility resident maltreatment.

10 (a)(1) Whenever any of the following has observed or has reasonable  
 11 cause to suspect that an endangered or impaired person has been subjected to  
 12 conditions or circumstances that constitute adult or long-term care facility  
 13 resident maltreatment, as defined in this subchapter, the person shall  
 14 immediately report or cause a report to be made in accordance with the  
 15 provisions of this section:

16 (A) A physician;

17 (B) A surgeon;

18 (C) A coroner;

19 (D) A dentist;

20 (E) A dental hygienist;

21 (F) An osteopath;

22 (G) A resident intern;

23 (H) A nurse;

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

26 (J) A social worker;

27 (K) A case manager;

28 (L) A home health worker;

29 (M) A mental health professional;

30 (N) A peace officer;

31 (O) A law enforcement officer;

32 (P) A facility administrator or owner;

33 (Q) An employee in a facility;

34 (R) An employee of the Department of Human Services;

35 (S) A firefighter;

36 (T) An emergency medical technician; or



1 (U) An employee of a bank or other financial institution.

2 (2)(A) Whenever a person is required to report under this  
3 subchapter in his or her capacity as a member of the staff, an employee in or  
4 owner of a facility, or an employee of the department, he or she shall  
5 immediately notify the person in charge of the institution, facility, or  
6 agency, or that person's designated agent.

7 (B) Upon notification under subdivision (a)(2)(A) of this  
8 section, the person in charge of the institution, facility, or agency, or  
9 that person's designated agent shall become responsible for making a report  
10 or causing a report to be made in accordance with subsection (b) of this  
11 section within twenty-four (24) hours or on the next business day, whichever  
12 is earlier.

13 (3) In addition to those persons and officials required to  
14 report suspected maltreatment, any other person may make a report if the  
15 person has observed an adult or long-term care facility resident being  
16 maltreated or has reasonable cause to suspect that an adult or long-term care  
17 facility resident has been maltreated.

18 (b)(1) A report a for long-term care facility resident shall be made:

19 (A) Immediately to the local law enforcement agency for  
20 the jurisdiction in which the long-term care facility is located; and

21 (B) To the Office of Long-Term Care of the Division of  
22 Medical Services of the Department of Human Services, under regulations of  
23 that office.

24 (2) A report of maltreated adult who does not reside in a long-  
25 term care facility shall be made to the adult and long-term care facility  
26 maltreatment hotline provided in § 12-12-1607.

27 (c) No privilege or contract shall relieve any person required by this  
28 subchapter to make a notification or report from the requirement of making  
29 notification or report.

30  
31 12-12-1609. Report of death caused by maltreatment.

32 (a)(1) Any person or official who is required to report cases of  
33 suspected maltreatment of adults or long-term care facility residents under  
34 this subchapter and who has reasonable cause to suspect that an adult or  
35 long-term care facility resident has died as a result of maltreatment shall  
36 report the suspected death from maltreatment to the appropriate medical

1 examiner or coroner.

2 (2)(A) In all cases of the death of a long-term care facility  
3 resident or a hospice facility resident, the long-term care facility or the  
4 hospice facility shall immediately report the death to the appropriate  
5 coroner.

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

9 (3)(A) In all cases of the death of an individual in a hospital  
10 who was a resident of a long-term care facility within five (5) days before  
11 entering the hospital, the hospital shall immediately report the death to the  
12 appropriate coroner.

13 (B) The report is required regardless of whether the  
14 hospital believes the death to be from natural causes, the result of  
15 maltreatment, or any other cause.

16 (b)(1) The medical examiner or coroner shall accept the report for  
17 investigation and upon finding reasonable cause to suspect that a person has  
18 died as a result of maltreatment shall report the findings to the police and  
19 the appropriate prosecuting attorney.

20 (2) If the institution making the report is a hospital or long-  
21 term care facility, the medical examiner or coroner shall report the findings  
22 to the hospital or long-term care facility unless the findings are part of a  
23 pending or ongoing law enforcement investigation.

24 (c) The medical examiner, coroner, or hospital if it receives findings  
25 under subdivision (b)(2) of this section shall also report findings under  
26 subdivision (b) of this section to the Department of Human Services if:

27 (1) Reasonable cause exists to believe the death resulted from  
28 maltreatment; or

29 (2) Upon request of the department, there is a pending  
30 investigation concerning allegations of maltreatment occurring before death.

31  
32 12-12-1610. Investigation by Department of Human Services.

33 (a) The Department of Human Services shall have jurisdiction to  
34 investigate all cases of suspected maltreatment of an endangered or impaired  
35 person.

36 (b)(1) The Adult Protective Services Unit of the Department of Human

1 Services shall investigate:

2 (A) All cases of suspected adult maltreatment if the act  
3 or omission occurs in a place other than a long-term care facility; and

4 (B) All cases of suspected adult maltreatment if a  
5 nonlong-term care facility employee or volunteer is named as the suspected  
6 offender, regardless of whether or not the adult resides in a long-term care  
7 facility.

8 (2) The Office of Long-term Care of the Division of Medical  
9 Services of the Department of Human Services shall investigate all cases of  
10 suspected maltreatment of long-term care facility residents.

11 (3) If requested by the department, law enforcement agencies  
12 shall assist in the investigation of any case of suspected adult or long-term  
13 care facility resident maltreatment.

14  
15 12-12-1611. Procedures for investigation by the Department of Human  
16 Services.

17 (a) The Department of Human Services shall conduct a thorough  
18 investigation of all suspected adult or long-term care facility resident  
19 maltreatment in accordance with this subchapter.

20 (b)(1) The investigation shall be completed and an investigative  
21 determination entered within sixty (60) days.

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

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

25 (B) The identity of the person responsible;

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

28 (D) The evaluation of the persons responsible for the care  
29 of the maltreated person, if any;

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

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

35 (ii) The investigators shall interview the  
36 maltreated person alone and out of the hearing of any next of kin or other

1 persons responsible for his or her care.

2 (iii) If necessary, an interpreter may be present  
3 during the interview of the maltreated person.

4  
5 12-12-1612. Photographs and X-rays.

6 (a) Any person who is required to report cases of adult or long-term  
7 care facility resident maltreatment may take or cause to be taken, at public  
8 expense, color photographs of the area of trauma visible on the person and,  
9 if medically indicated, cause to be performed radiological examination of the  
10 person.

11 (b)(1) Whenever a person is required to report under this subchapter  
12 in his or her capacity as a member of the staff of any private or public  
13 institution or agency, he or she shall immediately notify the person in  
14 charge of the institution or agency or his or her designee.

15 (2) Upon notification under subdivision (b)(1) of this section,  
16 the person in charge of the institution or agency or his or her designee  
17 shall:

18 (A) Take or cause to be taken, at public expense, color  
19 photographs of physical trauma; and

20 (B) If medically indicated, cause to be performed a  
21 radiological examination of the person.

22 (c) Any photographs or X-rays taken shall be sent to the Department of  
23 Human Services as soon as possible.

24  
25 12-12-1613. Immunity for investigation participants.

26 (a) Any person, official, or institution acting in good faith in the  
27 making of a report, the taking of photographs, or the removal of a maltreated  
28 person under this subchapter shall have immunity from liability and suit for  
29 damages, civil or criminal, that otherwise might result by reason of those  
30 actions.

31 (b) The good faith of any person required to report cases of adult or  
32 long-term care facility resident maltreatment shall be presumed.

33  
34 12-12-1614. Investigative powers of the Department of Human Services.

35 (a) If admission cannot be obtained to the home, institution, or other  
36 place in which an allegedly maltreated person may be present, the circuit

1 court, upon good cause shown, shall order the person responsible for or in  
2 charge of the place to allow entrance for the examination and investigation.

3 (b) If admission to the home cannot be obtained due to hospitalization  
4 or similar absence of the maltreated person and admission to the home is  
5 necessary to complete the investigation, the circuit court, upon good cause  
6 shown, shall order law enforcement to assist the Department of Human Services  
7 to obtain entrance to the home for the required investigation of the home  
8 environment.

9 (c)(1) Upon request, the medical, mental health, or other records  
10 regarding the maltreated person, maintained by any facility or maintained by  
11 any person required by this chapter to report suspected adult or long-term  
12 care facility resident maltreatment, shall be made available to the  
13 department for the purpose of conducting an investigation under this  
14 subchapter.

15 (2) Upon request, financial records maintained by a bank or  
16 similar institution regarding the maltreated person shall be made available  
17 to the department for the purpose of conducting an investigation under this  
18 subchapter.

19 (3) The circuit court, upon good cause shown, shall order any  
20 facility or person that maintains medical, mental health, or other records  
21 regarding the maltreated person to tender the records to the department for  
22 the purpose of conducting an investigation under this subchapter.

23 (d) An investigation under this subchapter may include a medical,  
24 psychological, social, vocational, financial, and educational evaluation and  
25 review, if necessary.

26 (e) If before an investigation under this subchapter is completed, the  
27 Adult Protective Services Unit of the Department of Human Services determines  
28 that the immediate removal of the maltreated adult is necessary to protect  
29 the maltreated adult from imminent danger to his or her health or safety, the  
30 unit may:

31 (1) Petition the circuit court for an order of temporary  
32 custody; or

33 (2) Exercise a seventy-two-hour hold under the Adult  
34 Maltreatment Custody Act, § 9-20-101 et seq.

35  
36 12-12-1615. Rights of subject of report - Investigative determination

1 of the Department of Human Services - Notice of finding - Appeal.

2 (a) Upon completion of an investigation, the Department of Human  
3 Services shall determine that the allegations of adult maltreatment or long-  
4 term care facility maltreatment are either:

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

7 (B)(i) Unfounded reports shall be expunged one (1) year  
8 after completion of the investigation.

9 (ii) Demographic information may be retained for  
10 statistical purposes; or

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

13 (B) A determination of founded shall not be entered solely  
14 because an adult practicing his or her religious beliefs is receiving  
15 spiritual treatment under § 5-28-105 or § 12-12-1604.

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

18 (i) The person identified as the offender;

19 (ii) The person identified as the maltreated person;

20 (iii) The legal guardian of the maltreated person;

21 (iv)(a) The natural or legal guardian of a long-term  
22 care facility under eighteen (18) years of age.

23 (b) However, in cases of unfounded self-  
24 neglect no notice is required;

25 (v) The current administrator of the facility if the  
26 incident occurred in a long-term care facility; and

27 (vi) If known by the Office of Long-term Care, the  
28 administrator of the long-term care facility that currently employs the  
29 offender if different from the facility in which the incident occurred.

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

33 (2) The notification shall include the following:

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

1                   (B) A statement that an offender of a founded report has  
2 the right to an administrative hearing upon a timely request;

3                   (C) A statement that the request shall be made to the  
4 department within thirty (30) days of receipt of the notice of determination;

5                   (D) A statement of intent to report in writing the founded  
6 investigative determination after the offender has had an opportunity for a  
7 hearing to:

8                                 (i) The adult and long-term care facility resident  
9 maltreatment central registry; and

10                                (ii) Any applicable licensing authority;

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

15                                (i) The registry; and

16                                (ii) Any applicable licensing authority;

17                   (F) The consequences of waiving the right to an  
18 administrative hearing;

19                   (G) The consequences of a finding by a preponderance of  
20 the evidence through the administrative hearing process that the maltreatment  
21 occurred;

22                   (H) The fact that the offender has the right to be  
23 represented by an attorney at the offender's own expense; and

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

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

29                                (2) The department shall hold the administrative hearing at a  
30 reasonable place and time.

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

35                                (4) Delays in completing the hearing that are attributable to  
36 the petitioner shall not count against the time limit in subdivision (c)(1)

1 of this section.

2 (5) Failure to complete the hearing process in a timely fashion  
3 shall not prevent the department or a court from:

4 (A) Reviewing the investigative determination of  
5 jurisdiction;

6 (B) Making a final agency determination; or

7 (C) Reviewing a final agency determination under the  
8 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

9 (d)(1) When the department conducts an administrative hearing, the  
10 chief counsel of the department may require the attendance of witnesses and  
11 the production of books, records, or other documents through the issuance of  
12 subpoenas if the testimony or information is necessary to adequately present  
13 the position of the department or the alleged offender in a report.

14 (2) Failure to obey the subpoena may be deemed a contempt and  
15 shall be punishable accordingly.

16 (e) If the department's investigative determination of founded is  
17 upheld during the administrative hearing process or if the offender does not  
18 timely appeal for or waives the right to an administrative hearing, the  
19 department shall report the investigative determination in writing within ten  
20 (10) business days to:

21 (1) The offender;

22 (2) The current administrator of the long-term care facility if  
23 the incident occurred in a long-term care facility;

24 (3) The administrator of the facility that currently employs the  
25 offender if different from the facility in which the incident occurred;

26 (4) The appropriate licensing authority;

27 (5) The adult and long-term care facility resident maltreatment  
28 central registry; and

29 (6) The maltreated person or the legal guardian of the  
30 maltreated person.

31  
32 12-12-1616. Adult and long-term care facility resident maltreatment  
33 central registry.

34 (a)(1) There is established within the Department of Human Services a  
35 statewide adult and long-term care facility resident maltreatment central  
36 registry.



1           (2) The adult and long-term care facility resident maltreatment  
 2 central registry shall contain investigative determinations made by the  
 3 department on all founded allegations of adult and long-term care facility  
 4 resident maltreatment.

5           (3) The offender's name shall be placed in the central registry  
 6 if:

7                   (A) After notice, the offender does not timely request an  
 8 administrative hearing; or

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

11           (4) The offender's name shall remain in the central registry  
 12 unless:

13                   (A) Removed under a statute;

14                   (B) Removed under a rule; or

15                   (C) The offender prevails upon appeal.

16           (b) The department may adopt rules necessary to encourage cooperation  
 17 with other states in exchanging reports to effect a national registry system  
 18 of adult maltreatment.

19           (c)(1) The department may charge a reasonable fee not to exceed ten  
 20 dollars (\$10.00) for researching, copying, and mailing records of the  
 21 investigative files maintained under this subchapter.

22           (2) The department may also charge a reasonable fee for  
 23 reproducing copies of tapes and photographs maintained under this subchapter.

24           (3) No fee may be charged to a nonprofit or volunteer agency  
 25 that requests searches of the investigative files maintained under this  
 26 subchapter.

27           (4) No fee may be charged under this subchapter to a person who  
 28 is indigent.

29  
 30           12-12-1617. Availability of founded reports of adult or long-term care  
 31 facility resident maltreatment.

32           (a) Reports made under this subchapter that are determined to be  
 33 founded, as well as any other information obtained, and reports written or  
 34 photographs taken concerning founded reports in the possession of the  
 35 Department of Human Services shall be confidential and shall be made  
 36 available only to:

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

3           (2) A person authorized to place the adult in protective custody  
4 if the person:

5                 (A) Has before him or her an adult whom he or she  
6 reasonably believes may have been maltreated; and

7                 (B) Requires the information to determine whether to place  
8 the adult in protective custody;

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

11           (4) Any person who is the subject of a report or that person's  
12 legal guardian;

13           (5) A grand jury or court, if the grand jury or court determines  
14 that the information is necessary for the determination of an issue before  
15 the grand jury or court;

16           (6) A prosecuting attorney, law enforcement official, or  
17 coroner, or the Attorney General or his or her designated investigator;

18           (7)(A) A mandated reporter who has made a report of suspected  
19 maltreatment.

20                 (B) However, a mandated reporter shall receive the  
21 information only to the extent that he or she may be informed after  
22 completion and closure of the investigation whether:

23                         (i) Legal action was taken;

24                         (ii) Services were provided; or

25                         (iii) No action was taken.

26                 (C) No further information shall be released and the  
27 person shall be informed of the confidentiality of the information and the  
28 penalties for disclosure;

29           (8)(A) Employers or volunteer agencies for purposes of screening  
30 employees, applicants, or volunteers upon submission of a signed, notarized  
31 release from the employee, applicant, or volunteer.

32                 (B) The only information released to the employer or  
33 agency shall be whether or not the adult and long-term care facility resident  
34 maltreatment central registry contains any founded reports naming the  
35 employee, applicant, or volunteer as an offender;

36           (9) The Death Review Committee of the Department of Human

1 Services;

2 (10) The current administrator of the facility, if the incident  
3 occurred in a long-term care facility;

4 (11) The administrator of the long-term care facility that  
5 currently employs the offender, if different from the facility in which the  
6 incident occurred;

7 (12) A person or provider identified by the department as having  
8 services needed by the maltreated person;

9 (13)(A) Individual federal and state representatives and  
10 senators who shall not redisclose the information.

11 (B) No disclosure may be made to any committee or  
12 legislative body of any information that identifies by name or address any  
13 recipient of services, nor may any protected health information be disclosed;  
14 and

15 (14) Any applicable licensing or registering authority.

16 (b)(1) Under no circumstances may the information contained in the  
17 adult and long-term care facility resident maltreatment central registry be  
18 released to a person unless the person's capacity is confirmed by the  
19 department.

20 (2) Except for the subject of the report, no person or agency to  
21 whom disclosure is made may disclose to any other person reports or other  
22 information obtained under this section.

23 (c)(1) The department may not release data that would identify the  
24 person who made the report except to law enforcement, the prosecuting  
25 attorney, or the office of the Attorney General.

26 (2) A court of competent jurisdiction may order release of data  
27 that would identify the person who made the report after the court has  
28 reviewed in camera the record related to the report and has found that  
29 disclosure is needed:

30 (A) To prevent execution of a crime; or

31 (B) For prosecution of a crime.

32 (d) However, information contained in the central registry may be made  
33 available to bona fide and approved research groups solely for the purpose of  
34 scientific research, but in no event shall the names of individuals be  
35 released, nor shall specific circumstances or facts related to a specific  
36 individual be used in any research report that might be identifiable with the

1 individual.

2 (e) Any person who willfully permits and any other person who  
3 encourages the release of data or information contained in the central  
4 registry to persons not permitted by this subchapter to receive the data or  
5 information is guilty of a Class A misdemeanor.

6  
7 12-12-1618. Availability of screened out, pending, and unfounded  
8 reports.

9 (a)(1) Screened out and pending reports shall be confidential and  
10 shall be made available only to:

11 (A) The Department of Human Services, including the Death  
12 Review Committee created by the Director of the Department of Human Services;

13 (B) Law enforcement agencies;

14 (C) Prosecutors;

15 (D) The office of the Attorney General;

16 (E) A circuit court having jurisdiction pursuant to a  
17 petition for emergency, temporary, long-term protective custody, or  
18 protective services;

19 (F) A grand jury or court, upon a finding that the  
20 information in the report is necessary for the determination of an issue  
21 before the court or grand jury;

22 (G) A person or provider identified by the department as  
23 having services needed by the maltreated person;

24 (H)(i) Individual federal and state representatives and  
25 senators who shall not redisclose the information.

26 (ii) No disclosure may be made to any committee or  
27 legislative body of any information that identifies by name or address any  
28 recipient of services, nor shall any protected health information be  
29 disclosed; and

30 (I) Any applicable licensing or registering authority.

31 (2) The subject of the report may only be advised that a report  
32 is pending.

33 (b) Upon completion of the administrative hearing process and if the  
34 allegation was determined to be unfounded, the investigative report shall be  
35 confidential and shall be made available only to:

36 (1) The department, including the death review committee created

1 by the director;

2 (2) Law enforcement agencies;

3 (3) Prosecutors;

4 (4) The office of the Attorney General;

5 (5) Any applicable licensing or registering authority;

6 (6) Any person named as a subject of the report or that person's  
7 legal guardian;

8 (7) A circuit court having jurisdiction pursuant to a petition  
9 for emergency, temporary, long-term protective custody, or protective  
10 services;

11 (8) A grand jury or court, upon a finding that the information  
12 in the record is necessary for the determination of an issue before the court  
13 or grand jury;

14 (9) A person or provider identified by the department as having  
15 services needed by the maltreated person; and

16 (10)(A) Individual federal and state representatives and  
17 senators who shall not redisclose the information.

18 (B) No disclosure may be made to any committee or  
19 legislative body of any information that identifies by name or address any  
20 recipient of services, nor may any protected health information be disclosed.

21 (c)(1) Unfounded reports shall be expunged one (1) year after  
22 completion of the investigation.

23 (2) However, demographic information may be retained for  
24 statistical purposes.

25  
26 12-12-1619. Delegation of authority.

27 The Director of the Department of Human Services may assign  
28 responsibilities for administering the various duties imposed upon the  
29 department under this chapter to respective divisions of the department that  
30 in the director's opinion are best able to render service or administer the  
31 provisions of this chapter.

32  
33 12-12-1620. Penalties.

34 (a) Any person or caregiver required by this subchapter to report a  
35 case of suspected adult or long-term care facility resident maltreatment who  
36 purposely fails to do so is guilty of a Class B misdemeanor.

1       (b) Any person or caregiver required by this subchapter to report a  
2 case of suspected adult or long-term care facility resident maltreatment who  
3 purposely fails to do so shall be civilly liable for damages proximately  
4 caused by the failure.

5       (c) Any person, official, or institution willfully making false  
6 notification under this subchapter knowing the allegations to be false is be  
7 guilty of a Class A misdemeanor.

8       (d) Any person, official, or institution willfully making false  
9 notification under this subchapter knowing the allegations to be false and  
10 who has been previously convicted of making false allegations is guilty of a  
11 Class D felony.

12       (e) Any person who willfully permits and any other person who  
13 encourages the release of data or information contained in the adult or long-  
14 term care facility resident maltreatment central registry to persons to whom  
15 disclosure is not permitted under this subchapter is guilty of a Class A  
16 misdemeanor.

17       (f) Any person required to report a death as the result of suspected  
18 adult or long-term care facility resident maltreatment who knowingly fails to  
19 make a report in the manner and time provided in the Adult and Long-Term Care  
20 Facility Resident Maltreatment Act is guilty of a Class C misdemeanor.

21       (g) Any person required to report suspected adult or long-term care  
22 facility resident maltreatment who knowingly fails to make a report in the  
23 manner and time provided in this subchapter is guilty of a Class C  
24 misdemeanor.

25  
26       12-12-1621. Reports as evidence.

27       (a) A written report from persons or officials required by this  
28 subchapter to report shall be admissible in evidence in any proceeding  
29 relating to adult or long-term care facility resident maltreatment.

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

34  
35       SECTION 2. Arkansas Code §§ 5-28-203 - 5-28-205 are repealed.

36       ~~5-28-203. Persons required to report adult maltreatment.~~

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

7                           ~~(A) A physician;~~  
 8                           ~~(B) A surgeon;~~  
 9                           ~~(C) A coroner;~~  
 10                          ~~(D) A dentist;~~  
 11                          ~~(E) An osteopath;~~  
 12                          ~~(F) A resident intern;~~  
 13                          ~~(G) A nurse;~~  
 14                          ~~(H) Hospital personnel who are engaged in the~~  
 15 ~~administration, examination, care, or treatment of persons;~~  
 16                          ~~(I) Any social worker;~~  
 17                          ~~(J) A case manager;~~  
 18                          ~~(K) A case worker;~~  
 19                          ~~(L) A mental health professional;~~  
 20                          ~~(M) A peace officer;~~  
 21                          ~~(N) A law enforcement officer;~~  
 22                          ~~(O) A facility administrator;~~  
 23                          ~~(P) An employee in a facility;~~  
 24                          ~~(Q) An employee of the Department of Human Services;~~  
 25                          ~~(R) A firefighter;~~  
 26                          ~~(S) An emergency medical technician; or~~  
 27                          ~~(T) An employee of a bank or other financial institution.~~

28           ~~(2) Whenever a person is required to report under this chapter~~  
 29 ~~in his or her capacity as a member of the staff, an employee in a facility,~~  
 30 ~~or an employee of the department, he or she shall immediately notify the~~  
 31 ~~person in charge of the institution, facility, or agency, or that person's~~  
 32 ~~designated agent, who shall then become responsible for making a report or~~  
 33 ~~cause a report to be made.~~

34           ~~(3) In addition to those persons and officials required to~~  
 35 ~~report suspected maltreatment, any other person may make a report if the~~  
 36 ~~person has reasonable cause to suspect that an adult has been maltreated, as~~

1 defined in this chapter.

2 ~~(b)(1) A report for maltreated adults residing in a long-term care~~  
 3 ~~facility shall be made.~~

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

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

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

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

13  
 14 ~~5-28-204. Report of death caused by maltreatment.~~

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

20 ~~(2)(A) In all cases of the death of a long-term care facility~~  
 21 ~~resident or a hospice facility resident, the long-term care facility or the~~  
 22 ~~hospice facility shall immediately report the death to the appropriate~~  
 23 ~~coroner.~~

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

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

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

34 ~~(b)(1) The medical examiner or coroner shall accept the report for~~  
 35 ~~investigation and, upon finding reasonable cause to suspect that an adult has~~  
 36 ~~died as a result of maltreatment, shall report the findings to the police and~~



1 ~~the appropriate prosecuting attorney.~~

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

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

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

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

12  
 13 ~~5-28-205. Photographs and X rays.~~

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

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

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

27  
 28 SECTION 10. Arkansas Code § 5-28-210 is repealed.

29 ~~5-28-210. Investigation by the Department of Human Services.~~

30 ~~(a) The Department of Human Services shall conduct a thorough~~  
 31 ~~investigation of all suspected adult maltreatment in accordance with § 5-28-~~  
 32 ~~218.~~

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

36 ~~(c)(1) The investigation shall be completed and an investigative~~

1 ~~determination entered within sixty (60) days.~~

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

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

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

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

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

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

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

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

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

21  
 22 SECTION 11. Arkansas Code §§ 5-28-221 - 5-28-310 are repealed.

23 ~~5-28-213. Availability of founded reports of adult maltreatment.~~

24 ~~(a) Reports made pursuant to this chapter which are determined to be~~  
 25 ~~founded, as well as any other information obtained, and reports written or~~  
 26 ~~photographs taken concerning founded reports in the possession of the~~  
 27 ~~Department of Human Services shall be confidential and shall be made~~  
 28 ~~available only to:~~

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

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

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

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

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

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

7                         ~~(B) The Attorney General or his or her designated~~  
8 ~~investigator;~~

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

13                         ~~(B) No further information shall be released and the~~  
14 ~~person shall be informed of the confidentiality of the information and the~~  
15 ~~penalties for disclosure;~~

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

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

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

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

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

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

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

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

36           ~~(2) A court of competent jurisdiction may order release of data~~

1 that would identify the person who made the report after the court has  
2 reviewed, in camera, the record related to the report and has found that  
3 disclosure is needed to prevent execution of a crime or for prosecution of a  
4 crime.

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

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

15  
16 ~~5-28-214. Reports as evidence.~~

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

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

23  
24 ~~5-28-215. Immunity for investigation participants.~~

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

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

32  
33 ~~5-28-216. Penalties.~~

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

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

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

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

12  
13           ~~5-28-217. Adult maltreatment hotline.~~

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

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

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

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

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

26                 ~~(4) The names and addresses of the persons suspected to be~~  
27 ~~responsible for the maltreatment, if known;~~

28                 ~~(5) Family composition;~~

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

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

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

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

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

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

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

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

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

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

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

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

25           ~~(2) If the incident occurred in another state, the hotline shall~~  
26 ~~screen out the report and transfer the report to the hotline of the state in~~  
27 ~~which the incident occurred.~~

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

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

34  
35           ~~5-28-218. Investigation by Department of Human Services.~~

36           ~~The Department of Human Services shall have jurisdiction to investigate~~

1 all cases of suspected maltreatment of an endangered or impaired adult, as  
2 follows:

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

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

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

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

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

19  
20 5-28-219. ~~Investigative powers of the Department of Human Services.~~

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

25 (b) ~~Further, if admission to the home cannot be obtained due to~~  
26 ~~hospitalization or similar absence of the maltreated adult and admission to~~  
27 ~~the home is necessary to complete the investigation, the circuit court, upon~~  
28 ~~good cause shown, shall order law enforcement to assist the Department of~~  
29 ~~Human Services to obtain entrance to the home for the required investigation~~  
30 ~~of the home environment.~~

31 (c)(1) ~~Upon request, the medical, mental health, or other records~~  
32 ~~regarding the maltreated adult, maintained by any facility or maintained by~~  
33 ~~any person required by this chapter to report suspected adult maltreatment,~~  
34 ~~shall be made available to the department for the purpose of conducting an~~  
35 ~~investigation under this subsection.~~

36 (2) ~~Upon request, financial records maintained by a bank or~~

1 similar institution regarding the maltreated adult shall be made available to  
 2 the department for the purpose of conducting an investigation under this  
 3 subsection.

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

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

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

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

19                   (i) ~~The maltreated adult is in imminent danger of~~  
 20 ~~death or serious bodily harm;~~

21                   (ii) ~~Available protective services have been offered~~  
 22 ~~to alleviate the danger and have been refused; and~~

23                   (iii) ~~The maltreated adult's capacity to comprehend~~  
 24 ~~the nature and consequences of remaining in the situation or condition cannot~~  
 25 ~~be adequately assessed in the home.~~

26           (B) ~~The circuit court, upon good cause being shown, may~~  
 27 ~~issue an order for temporary custody for the purpose of having the adult~~  
 28 ~~evaluated.~~

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

31  
 32           ~~5-28-220. Rights of subject of report—Investigative determination of~~  
 33 ~~the Department of Human Services—Notice of finding—Appeal.~~

34           (a) ~~Upon completion of an investigation, the Department of Human~~  
 35 ~~Services shall determine that the allegations of adult maltreatment are~~  
 36 ~~either:~~



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

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

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

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

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

12                   ~~(i) — The person identified as the offender;~~

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

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

16 and

17                   ~~(iv) — The current administrator of the facility if~~  
18 ~~the incident occurred in a long term care facility.~~

19          ~~(B) — If the investigation determines that the report is~~  
20 ~~founded, notification to the offender shall be by process server or by~~  
21 ~~certified mail, restricted delivery.~~

22          ~~(2) — The notification shall include the following:~~

23                   ~~(A) — The investigative determination, exclusive of the~~  
24 ~~source of the notification, including the nature of the allegation and the~~  
25 ~~date and time of occurrence;~~

26                   ~~(B) — A statement that an offender of a founded report has~~  
27 ~~the right to an administrative hearing upon a timely request;~~

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

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

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

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

35                   ~~(E) — A statement that the offender's failure to request a~~  
36 ~~hearing in writing within thirty (30) days from the date of receipt of the~~

1 notice will result in submission of the investigative report, including the  
2 investigative determination, to:

3                   (i) ~~The registry; and~~

4                   (ii) ~~Any applicable licensing authority;~~

5                   (F) ~~The consequences of waiving the right to an~~  
6 ~~administrative hearing;~~

7                   (G) ~~The consequences of a finding by a preponderance of~~  
8 ~~the evidence through the administrative hearing process that the maltreatment~~  
9 ~~occurred;~~

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

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

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

17                   (2) ~~The department shall hold the administrative hearing at a~~  
18 ~~reasonable place and time.~~

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

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

25                   (5) ~~Failure to complete the hearing process in a timely fashion~~  
26 ~~shall not prevent the department or a court reviewing the investigative~~  
27 ~~determination of jurisdiction from making a final agency determination or~~  
28 ~~reviewing a final agency determination under the Arkansas Administrative~~  
29 ~~Procedure Act, § 25-15-201 et seq.~~

30           (d)(1) ~~When the department conducts such administrative hearings, the~~  
31 ~~chief counsel of the department is authorized to require the attendance of~~  
32 ~~witnesses and the production of books, records, or other documents through~~  
33 ~~the issuance of subpoenas when such testimony or information is necessary to~~  
34 ~~adequately present the position of the department or the alleged offender in~~  
35 ~~a report.~~

36                   (2) ~~Failure to obey the subpoena may be deemed a contempt,~~

1 ~~punishable accordingly.~~

2 ~~(c) If the department's investigative determination of founded is~~  
 3 ~~upheld during the administrative hearing process or if the offender does not~~  
 4 ~~timely appeal for or waives the right to an administrative hearing, the~~  
 5 ~~department shall report the investigative determination in writing within ten~~  
 6 ~~(10) working days to:~~

7 ~~(1) The offender;~~

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

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

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

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

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

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

16  
 17 ~~5-28-221. Availability of pending and unfounded reports.~~

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

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

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

23 ~~(C) Prosecutors;~~

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

25 ~~(E) A circuit court having jurisdiction pursuant to a~~  
 26 ~~petition for emergency, temporary, long-term protective custody, or for~~  
 27 ~~protective services; and~~

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

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

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

36 ~~(1) The department, including the committee created by the~~

1 ~~director of the department;~~

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

3 ~~(3) Prosecutors;~~

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

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

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

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

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

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