

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

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: S3/15/05

# A Bill

SENATE BILL 945

5 By: Senator Salmon  
6  
7

## For An Act To Be Entitled

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

### Subtitle

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 a civil action, if appropriate, to protect  
34 maltreated adults and residents of long-term care facilities; and

35 (4) Encourage the cooperation of state law enforcement  
36 officials, courts, and state agencies in the investigation, assessment, and



1 prosecution of maltreated adults and residents of long-term care facilities.

2  
3 12-12-1603. Definitions.

4 As used in this subchapter:

5 (1) "Abuse" means:

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

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

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

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

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

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

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

27 (5) "Endangered person" means:

28 (A) A person eighteen (18) years of age or older 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 (B) A resident of a long-term care facility who:

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

36 (ii) Demonstrates a lack of capacity to comprehend

1 the nature and consequences of remaining in that situation or condition;

2 (6) "Exploitation" means:

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

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

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

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

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

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

21 (A) A nursing home;

22 (B) A residential care facility;

23 (C) A post-acute head injury retraining and residential  
24 facility;

25 (D) An assisted living facility;

26 (E) An intermediate care facility for the mentally  
27 retarded; or

28 (F) Any facility that provides long-term medical or  
29 personal care;

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

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

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

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

3           (14) "Neglect" means:

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

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

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

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

15           (iii) Negligently failing to carry out a prescribed  
16 treatment plan; or

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

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

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

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

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

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

35           (19) "Sexual abuse" means deviate sexual activity, sexual  
36 contact, or sexual intercourse, as those terms are defined in § 5-14-101,

1 with another person who is not the actor's spouse and who is incapable of  
2 consent because he or she is mentally defective, mentally incapacitated, or  
3 physically helpless, as those terms are defined in § 5-14-101; and

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

5 (A) The endangered or impaired person;

6 (B) The adult's legal guardian;

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

9 (D) The offender.

10  
11 12-12-1604. Spiritual treatment alone not abusive.

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

18  
19 12-12-1605. Privilege not grounds for exclusion of evidence.

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

26  
27 12-12-1606. Civil penalties.

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

31 (2) Notwithstanding any criminal penalties assessed, any  
32 caregiver against whom any civil judgment is entered as the result of a civil  
33 action brought by the State of Arkansas through the Attorney General on a  
34 complaint alleging that caregiver to have abused, neglected, or exploited an  
35 endangered or impaired person in a long-term care facility certified under  
36 Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed

1 on January 1, 2005, shall be subject to pay a civil penalty:

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

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

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

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

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

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

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

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

26  
27 12-12-1607. Adult and long-term care facility resident maltreatment  
28 hotline.

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

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

36 (c)(1) The department shall not release information that would

1 identify the person who made the report unless a court of competent  
2 jurisdiction orders release of the information after the court has reviewed  
3 in camera the record related to the report and has found that disclosure is  
4 necessary:

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

6 (B) For prosecution of a crime.

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

10 (B)(i) Upon request, the information shall be disclosed  
11 to:

12 (a) The Attorney General;

13 (b) The prosecuting attorney; or

14 (c) Law enforcement officers.

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

17 (d)(1) A report of an allegation of suspected adult or long-term care  
18 facility resident maltreatment shall be accepted if the allegation, if true,  
19 would constitute adult or long-term care facility resident maltreatment and  
20 as long as sufficient identifying information is provided to identify and  
21 locate the victim.

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

25 (e)(1) The hotline shall accept a report if the victim or offender is  
26 present in Arkansas or if the incident occurred in Arkansas.

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

30 (3) Upon request from an adult or long-term care facility  
31 resident maltreatment investigator in another state, the department shall  
32 complete courtesy interviews with the victim, offender, or any witness of  
33 adult maltreatment who reside in Arkansas.

34 (f) Upon registration of a hotline report of suspected adult or long-  
35 term care facility resident maltreatment, the hotline shall refer the matter  
36 immediately to the appropriate investigating agency as outlined in this

1 subchapter.

2  
3 12-12-1608. Persons required to report adult or long-term care  
4 facility resident maltreatment.

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

11 (A) A physician;

12 (B) A surgeon;

13 (C) A coroner;

14 (D) A dentist;

15 (E) A dental hygienist;

16 (F) An osteopath;

17 (G) A resident intern;

18 (H) A nurse;

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

21 (J) A social worker;

22 (K) A case manager;

23 (L) A home health worker;

24 (M) A mental health professional;

25 (N) A peace officer;

26 (O) A law enforcement officer;

27 (P) A facility administrator or owner;

28 (Q) An employee in a facility;

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

30 (S) A firefighter;

31 (T) An emergency medical technician; or

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

33 (2)(A) Whenever a person is required to report under this  
34 subchapter in his or her capacity as a member of the staff, an employee in or  
35 owner of a facility, or an employee of the department, he or she shall  
36 immediately notify the person in charge of the institution, facility, or



1 agency, or that person's designated agent.

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

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

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

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

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

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

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

25  
26 12-12-1609. Report of death caused by maltreatment.

27 (a)(1) Any person or official who is required to report cases of  
28 suspected maltreatment of adults or long-term care facility residents under  
29 this subchapter and who has reasonable cause to suspect that an adult or  
30 long-term care facility resident has died as a result of maltreatment shall  
31 report the suspected death from maltreatment to the appropriate medical  
32 examiner or coroner.

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

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

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

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

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

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

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

22           (1) Reasonable cause exists to believe the death resulted from  
23 maltreatment; or

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

26  
27           12-12-1610. Investigation by Department of Human Services.

28           (a) The Department of Human Services shall have jurisdiction to  
29 investigate all cases of suspected maltreatment of an endangered or impaired  
30 person.

31           (b)(1) The Adult Protective Services Unit of the Department of Human  
32 Services shall investigate:

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

35           (B) All cases of suspected adult maltreatment of an  
36 endangered or impaired adult if a family member is named as the suspected

1 offender, regardless of whether or not the endangered or impaired adult  
2 resides in a long-term care facility.

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

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

9  
10 12-12-1611. Procedures for investigation by the Department of Human  
11 Services.

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

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

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

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

20 (B) The identity of the person responsible;

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

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

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

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

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

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

35  
36 12-12-1612. Photographs and X-rays.

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

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

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

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

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

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

19  
20       12-12-1613. Immunity for investigation participants.

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

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

28  
29       12-12-1614. Investigative powers of the Department of Human Services.

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

34       (b) If admission to the home cannot be obtained due to hospitalization  
35 or similar absence of the maltreated person and admission to the home is  
36 necessary to complete the investigation, the circuit court, upon good cause

1 shown, shall order law enforcement to assist the Department of Human Services  
2 to obtain entrance to the home for the required investigation of the home  
3 environment.

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

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

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

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

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

26 (1) Petition the circuit court for an order of temporary  
27 custody; or

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

30  
31 12-12-1615. Rights of subject of report - Investigative determination  
32 of the Department of Human Services - Notice of finding - Appeal.

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

36 (1)(A) Unfounded, a finding that shall be entered if the

1 allegation is not supported by a preponderance of the evidence.

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

4 (ii) Demographic information may be retained for  
5 statistical purposes; or

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

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

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

13 (i)(a) The person identified as the offender.

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

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

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

18 or

19 (iv) The natural or legal guardian of a long-term  
20 care facility resident under eighteen (18) years of age;

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

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

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

29 (2) The notification shall include the following:

30 (A) The investigative determination, exclusive of the  
31 source of the notification, including the nature of the allegation and the  
32 date and time of occurrence;

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

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

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

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

6                   (ii) Any applicable licensing authority;

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

11                   (i) The registry; and

12                   (ii) Any applicable licensing authority;

13                   (F) The consequences of waiving the right to an  
14 administrative hearing;

15                   (G) The consequences of a finding by a preponderance of  
16 the evidence through the administrative hearing process that the maltreatment  
17 occurred;

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

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

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

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

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

31                   (4) Delays in completing the hearing that are attributable to  
32 the petitioner shall not count against the time limit in subdivision (c)(1)  
33 of this section.

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

36                   (A) Reviewing the investigative determination of

1 jurisdiction;

2 (B) Making a final agency determination; or

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

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

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

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

17 (1) The offender;

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

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

22 (4) The appropriate licensing authority;

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

25 (6) The maltreated person or the legal guardian of the  
26 maltreated person.

27

28 12-12-1616. Adult and long-term care facility resident maltreatment  
29 central registry.

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

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



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

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

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

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

9           (A) Removed under a statute;

10          (B) Removed under a rule; or

11          (C) The offender prevails upon appeal.

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

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

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

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

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

25  
26          12-12-1617. Availability of founded reports of adult or long-term care  
27 facility resident maltreatment.

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

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

35          (2) A person authorized to place the adult in protective custody  
36 if the person:

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

3                   (B) Requires the information to determine whether to place  
4 the adult in protective custody;

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

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

9                   (5) A grand jury or court, if the grand jury or court determines  
10 that the information is necessary for the determination of an issue before  
11 the grand jury or court;

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

14                   (7)(A) A mandated reporter who has made a report of suspected  
15 maltreatment.

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

19                   (i) Legal action was taken;

20                   (ii) Services were provided; or

21                   (iii) No action was taken.

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

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

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

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

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

36                   (11) The administrator of the long-term care facility that

1 currently employs the offender, if different from the facility in which the  
2 incident occurred;

3 (12) A person or provider identified by the department as having  
4 services needed by the maltreated person; and

5 (13) Any applicable licensing or registering authority.

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

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

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

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

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

21 (B) For prosecution of a crime.

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

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

32  
33 12-12-1618. Availability of screened out, pending, and unfounded  
34 reports.

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

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

3                   (B) Law enforcement agencies;

4                   (C) Prosecutors;

5                   (D) The office of the Attorney General;

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

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

12                   (G) A person or provider identified by the department as  
13 having services needed by the maltreated person; and

14                   (H) Any applicable licensing or registering authority.

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

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

20                   (1) The department, including the death review committee created  
21 by the director;

22                   (2) Law enforcement agencies;

23                   (3) Prosecutors;

24                   (4) The office of the Attorney General;

25                   (5) Any applicable licensing or registering authority;

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

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

31                   (8) A grand jury or court, upon a finding that the information  
32 in the record is necessary for the determination of an issue before the court  
33 or grand jury; and

34                   (9) A person or provider identified by the department as having  
35 services needed by the person.

36                   (c)(1) Unfounded reports shall be expunged one (1) year after

1 completion of the investigation.

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

4  
5 12-12-1619. Delegation of authority.

6 The Director of the Department of Human Services may assign  
7 responsibilities for administering the various duties imposed upon the  
8 department under this chapter to respective divisions of the department that  
9 in the director's opinion are best able to render service or administer the  
10 provisions of this chapter.

11  
12 12-12-1620. Penalties.

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

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

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

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

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

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

36 (g) Any person required to report suspected adult or long-term care

1 facility resident maltreatment who knowingly fails to make a report in the  
 2 manner and time provided in this subchapter is guilty of a Class C  
 3 misdemeanor.

4  
 5 12-12-1621. Reports as evidence.

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

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

13  
 14 SECTION 2. Arkansas Code §§ 5-28-203 - 5-28-205 are repealed.

15 ~~5-28-203. Persons required to report adult maltreatment.~~

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

22 ~~(A) A physician;~~

23 ~~(B) A surgeon;~~

24 ~~(C) A coroner;~~

25 ~~(D) A dentist;~~

26 ~~(E) An osteopath;~~

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

28 ~~(G) A nurse;~~

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

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

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

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

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

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

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

- 1                   ~~(O) — A facility administrator;~~  
2                   ~~(P) — An employee in a facility;~~  
3                   ~~(Q) — An employee of the Department of Human Services;~~  
4                   ~~(R) — A firefighter;~~  
5                   ~~(S) — An emergency medical technician; or~~  
6                   ~~(T) — An employee of a bank or other financial institution.~~

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

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 reasonable cause to suspect that an adult has been maltreated, as~~  
16 ~~defined in this chapter.~~

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

19                   ~~(A) — Immediately to the local law enforcement agency for~~  
20 ~~the jurisdiction in which the 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, pursuant to regulations~~  
23 ~~of that office.~~

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

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

28  
29                   ~~5-28-204. — Report of death caused by maltreatment.~~

30                   ~~(a)(1) — Any person or official who is required to report cases of~~  
31 ~~suspected maltreatment of adults under the provisions of this chapter and who~~  
32 ~~has reasonable cause to suspect that an adult has died as a result of~~  
33 ~~maltreatment shall report that fact to the appropriate medical examiner or~~  
34 ~~coroner.~~

35                   ~~(2)(A) — In all cases of the death of a long-term care facility~~  
36 ~~resident or a hospice facility resident, the long-term care facility or the~~

1 hospice facility shall immediately report the death to the appropriate  
2 coroner.

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

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

10 (B) The report is required regardless of whether the  
11 hospital believes the death to be from natural causes or the result of  
12 maltreatment or any other cause.

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

17 (2) If the institution making the report is a hospital or  
18 nursing home, the coroner shall report the findings to the hospital or  
19 nursing home unless the findings are part of a pending or ongoing law  
20 enforcement investigation.

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

23 (1) Reasonable cause exists to believe the death resulted from  
24 maltreatment of an adult; or

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

27  
28 5-28-205. Photographs and X-rays.

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

33 (b) Whenever a person is required to report under this chapter in his  
34 capacity as a member of the staff of any private or public institution or  
35 agency, he shall immediately notify the person in charge of the institution  
36 or agency or his designated delegate, who shall then take or cause to be



1 taken, at public expense, color photographs of physical trauma and shall, if  
2 medically indicated, cause to be performed radiological examination of the  
3 adult.

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

6  
7 SECTION 10. Arkansas Code § 5-28-210 is repealed.

8 ~~5-28-210. Investigation by the Department of Human Services.~~

9 ~~(a) The Department of Human Services shall conduct a thorough~~  
10 ~~investigation of all suspected adult maltreatment in accordance with § 5-28-~~  
11 ~~218.~~

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

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

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

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

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

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

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

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

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

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

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

36

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

2 ~~5-28-213. Availability of founded reports of adult maltreatment.~~

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

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

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

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

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

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

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

22 ~~(B) The Attorney General or his or her designated~~  
23 ~~investigator;~~

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

28 ~~(B) No further information shall be released and the~~  
29 ~~person shall be informed of the confidentiality of the information and the~~  
30 ~~penalties for disclosure;~~

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

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

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

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

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

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

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

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

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

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

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

30  
31           ~~5-28-214. Reports as evidence.~~

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

35           ~~(b) The affidavit of a physician, psychiatrist, psychologist, or~~  
36 ~~licensed certified social worker shall also be admissible in evidence in any~~

1 ~~proceeding relating to adult abuse, sexual abuse, neglect, or exploitation.~~

2  
3 ~~5-28-215. Immunity for investigation participants.~~

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

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

11  
12 ~~5-28-216. Penalties.~~

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

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

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

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

27  
28 ~~5-28-217. Adult maltreatment hotline.~~

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

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

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

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

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

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

7                   ~~(5) Family composition;~~

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

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

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

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

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

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

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

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

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

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

34                  ~~(e) An allegation of suspected adult maltreatment shall be accepted if~~  
35 ~~the allegations, if true, would constitute adult maltreatment and as long as~~  
36 ~~sufficient identifying information is provided to identify and locate the~~

1 ~~victim.~~

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

4 ~~(2) If the incident occurred in another state, the hotline shall~~  
5 ~~screen out the report and transfer the report to the hotline of the state in~~  
6 ~~which the incident occurred.~~

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

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

13  
14 ~~5-28-218. Investigation by Department of Human Services.~~

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

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

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

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

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

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

34  
35 ~~5-28-219. Investigative powers of the Department of Human Services.~~

36 ~~(a) If admission cannot be obtained to the home, institution, or other~~

1 ~~place in which an allegedly maltreated adult may be present, the circuit~~  
2 ~~court, upon good cause shown, shall order the person responsible for or in~~  
3 ~~charge of the place to allow entrance for the examination and investigation.~~

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

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

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

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

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

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

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

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

36 ~~(ii) Available protective services have been offered~~

1 ~~to alleviate the danger and have been refused; and~~

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

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

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

10  
11 ~~5-28-220. Rights of subject of report—Investigative determination of~~  
12 ~~the Department of Human Services—Notice of finding—Appeal.~~

13 ~~(a) Upon completion of an investigation, the Department of Human~~  
14 ~~Services shall determine that the allegations of adult maltreatment are~~  
15 ~~either:~~

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

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

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

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

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

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

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

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

31 ~~and~~

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

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



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

2           ~~(A) The investigative determination, exclusive of the~~  
3 ~~source of the notification, including the nature of the allegation and the~~  
4 ~~date and time of occurrence;~~

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

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

9           ~~(D) A statement of intent to report in writing the founded~~  
10 ~~investigative determination, once the offender has had an opportunity for a~~  
11 ~~hearing, to:~~

12                   ~~(i) The adult maltreatment central registry; and~~

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

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

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

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

20           ~~(F) The consequences of waiving the right to an~~  
21 ~~administrative hearing;~~

22           ~~(G) The consequences of a finding by a preponderance of~~  
23 ~~the evidence through the administrative hearing process that the maltreatment~~  
24 ~~occurred;~~

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

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

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

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

34           ~~(3) For incidents occurring in long-term care facilities, the~~  
35 ~~department may not make a finding that an offender has neglected a resident~~  
36 ~~if the offender demonstrates that the neglect was caused by factors beyond~~

1 ~~the control of the offender.~~

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

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

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

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

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

22 ~~(1) The offender;~~

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

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

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

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

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

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

31  
32 ~~5-28-221. Availability of pending and unfounded reports.~~

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

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

1                           ~~(B) Law enforcement agencies;~~  
 2                           ~~(C) Prosecutors;~~  
 3                           ~~(D) The office of the Attorney General;~~  
 4                           ~~(E) A circuit court having jurisdiction pursuant to a~~  
 5 ~~petition for emergency, temporary, long term protective custody, or for~~  
 6 ~~protective services; and~~

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

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

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

15                           ~~(1) The department, including the committee created by the~~  
 16 ~~director of the department;~~

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

18                           ~~(3) Prosecutors;~~

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

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

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

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

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

29   */s/ Salmon*

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