

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

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

As Engrossed: S3/15/05 S3/17/05

A Bill

SENATE BILL 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 intentional threat that a reasonable person would
13 find credible and non-frivolous to inflict pain on or cause injury to an
14 endangered or impaired person except in the course of medical treatment or
15 for justifiable cause; 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) Acts or omissions by a caregiver responsible for the
9 care and supervision of an endangered or impaired person constituting:

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

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

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

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

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

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

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

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

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

36 (19) "Sexual abuse" means deviate sexual activity, sexual

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

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

6 (A) The endangered or impaired person;

7 (B) The adult's legal guardian;

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

10 (D) The offender.

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

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

19
20 12-12-1605. Privilege not grounds for exclusion of evidence.

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

27
28 12-12-1606. Civil penalties.

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

32 (2) Notwithstanding any criminal penalties assessed, any
33 caregiver against whom any civil judgment is entered as the result of a civil
34 action brought by the State of Arkansas through the Attorney General on a
35 complaint alleging that caregiver to have abused, neglected, or exploited an
36 endangered or impaired person in a long-term care facility certified under

1 Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed
2 on January 1, 2005, shall be subject to pay a civil penalty:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (B) For prosecution of a crime.

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

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

13 (a) The Attorney General;

14 (b) The prosecuting attorney; or

15 (c) Law enforcement officers.

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

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

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

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

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

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

35 (f) Upon registration of a hotline report of suspected adult or long-
36 term care facility resident maltreatment, the hotline shall refer the matter

1 immediately to the appropriate investigating agency as outlined in this
2 subchapter.

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

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

12 (A) A physician;

13 (B) A surgeon;

14 (C) A coroner;

15 (D) A dentist;

16 (E) A dental hygienist;

17 (F) An osteopath;

18 (G) A resident intern;

19 (H) A nurse;

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

22 (J) A social worker;

23 (K) A case manager;

24 (L) A home health worker;

25 (M) A mental health professional;

26 (N) A peace officer;

27 (O) A law enforcement officer;

28 (P) A facility administrator or owner;

29 (Q) An employee in a facility;

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

31 (S) A firefighter;

32 (T) An emergency medical technician; or

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

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

1 immediately notify the person in charge of the institution, facility, or
2 agency, or that person's designated agent, who shall then become responsible
3 for making a report or cause a report to be made within twenty-four (24)
4 hours or on the next business day, whichever is earlier.

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

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

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

13 (B) To the Office of Long-Term Care of the Division of
14 Medical Services of the Department of Human Services, under regulations of
15 that office.

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

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

22
23 12-12-1609. Report of death caused by maltreatment.

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

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

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

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

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

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

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

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

19 (1) Reasonable cause exists to believe the death resulted from
20 maltreatment; or

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

23
24 12-12-1610. Investigation by Department of Human Services.

25 (a) The Department of Human Services shall have jurisdiction to
26 investigate all cases of suspected maltreatment of an endangered or impaired
27 person.

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

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

32 (B) All cases of suspected adult maltreatment of an
33 endangered or impaired adult if a family member is named as the suspected
34 offender, regardless of whether or not the endangered or impaired adult
35 resides in a long-term care facility.

36 (2) The Office of Long-term Care of the Division of Medical

1 Services of the Department of Human Services shall investigate all cases of
2 suspected maltreatment of long-term care facility residents.

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

6
7 12-12-1611. Procedures for investigation by the Department of Human
8 Services.

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

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

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

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

17 (B) The identity of the person responsible;

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

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

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

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

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

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

32
33 12-12-1612. Photographs and X-rays.

34 (a) Any person who is required to report cases of adult or long-term
35 care facility resident maltreatment may take or cause to be taken, at public
36 expense, color photographs of the area of trauma visible on the person and,

1 if medically indicated, cause to be performed radiological examination of the
2 person.

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

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

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

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

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

16
17 12-12-1613. Immunity for investigation participants.

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

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

25
26 12-12-1614. Investigative powers of the Department of Human Services.

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

31 (b) If admission to the home cannot be obtained due to hospitalization
32 or similar absence of the maltreated person and admission to the home is
33 necessary to complete the investigation, the circuit court, upon good cause
34 shown, shall order law enforcement to assist the Department of Human Services
35 to obtain entrance to the home for the required investigation of the home
36 environment.

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

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

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

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

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

23 (1) Petition the circuit court for an order of temporary
24 custody; or

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

27
28 12-12-1615. Rights of subject of report - Investigative determination
29 of the Department of Human Services - Notice of finding - Appeal.

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

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

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

1 (ii) Demographic information may be retained for
2 statistical purposes; or

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

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

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

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

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

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

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

15 or

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

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

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

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

26 (2) The notification shall include the following:

27 (A) The investigative determination, exclusive of the
28 source of the notification, including the nature of the allegation and the
29 date and time of occurrence;

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

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

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

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

3 (ii) Any applicable licensing authority;

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

8 (i) The registry; and

9 (ii) Any applicable licensing authority;

10 (F) The consequences of waiving the right to an
11 administrative hearing;

12 (G) The consequences of a finding by a preponderance of
13 the evidence through the administrative hearing process that the maltreatment
14 occurred;

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

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

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

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

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

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

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

33 (A) Reviewing the investigative determination of
34 jurisdiction;

35 (B) Making a final agency determination; or

36 (C) Reviewing a final agency determination under the

1 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

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

14 (1) The offender;

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

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

19 (4) The appropriate licensing authority;

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

22 (6) The maltreated person or the legal guardian of the
23 maltreated person.

24
25 12-12-1616. Adult and long-term care facility resident maltreatment
26 central registry.

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

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

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

36 (A) After notice, the offender does not timely request an

1 administrative hearing; or

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

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

6 (A) Removed under a statute;

7 (B) Removed under a rule; or

8 (C) The offender prevails upon appeal.

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

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

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

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

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

22
23 12-12-1617. Availability of founded reports of adult or long-term care
24 facility resident maltreatment.

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

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

32 (2) A person authorized to place the adult in protective custody
33 if the person:

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

36 (B) Requires the information to determine whether to place

1 the adult in protective custody;

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

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

6 (5) A grand jury or court, if the grand jury or court determines
7 that the information is necessary for the determination of an issue before
8 the grand jury or court;

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

11 (7)(A) A mandated reporter who has made a report of suspected
12 maltreatment.

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

16 (i) Legal action was taken;

17 (ii) Services were provided; or

18 (iii) No action was taken.

19 (C) No further information shall be released and the
20 person shall be informed of the confidentiality of the information and the
21 penalties for disclosure;

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

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

29 (9) The Death Review Committee of the Department of Human
30 Services;

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

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

36 (12) A person or provider identified by the department as having

1 services needed by the maltreated person; and

2 (13) Any applicable licensing or registering authority.

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

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

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

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

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

18 (B) For prosecution of a crime.

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

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

29
30 12-12-1618. Availability of screened out, pending, and unfounded
31 reports.

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

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

36 (B) Law enforcement agencies;

1 (C) Prosecutors;

2 (D) The office of the Attorney General;

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

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

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

11 (H) Any applicable licensing or registering authority.

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

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

17 (1) The department, including the death review committee created
18 by the director;

19 (2) Law enforcement agencies;

20 (3) Prosecutors;

21 (4) The office of the Attorney General;

22 (5) Any applicable licensing or registering authority;

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

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

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

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

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

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

1
2 12-12-1619. Delegation of authority.

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

8
9 12-12-1620. Penalties.

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

13 (b) 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 shall be civilly liable for damages proximately
16 caused by the failure.

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

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

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

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

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

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12-12-1621. Reports as evidence.

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

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

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

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

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

~~(A) A physician;~~

~~(B) A surgeon;~~

~~(C) A coroner;~~

~~(D) A dentist;~~

~~(E) An osteopath;~~

~~(F) A resident intern;~~

~~(G) A nurse;~~

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

~~(I) Any social worker;~~

~~(J) A case manager;~~

~~(K) A case worker;~~

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

~~(M) A peace officer;~~

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

~~(O) A facility administrator;~~

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

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

1 ~~(R)—A firefighter;~~

2 ~~(S)—An emergency medical technician; or~~

3 ~~(T)—An employee of a bank or other financial institution.~~

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

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

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

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

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

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

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

25

26 ~~5-28-204.—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 under the provisions of this chapter and who~~
29 ~~has reasonable cause to suspect that an adult has died as a result of~~
30 ~~maltreatment shall report that fact to the appropriate medical examiner or~~
31 ~~coroner.~~

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

36 ~~(B)—The report is required regardless of whether the~~

1 ~~facility believes the death to be from natural causes or the result of~~
2 ~~maltreatment or any other cause.~~

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

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

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

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

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

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

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

24
25 ~~5-28-205. Photographs and X-rays.~~

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

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

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

3
4 SECTION 10. Arkansas Code § 5-28-210 is repealed.

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

6 ~~(a) The Department of Human Services shall conduct a thorough~~
7 ~~investigation of all suspected adult maltreatment in accordance with § 5-28-~~
8 ~~218.~~

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

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

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

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

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

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

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

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

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

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

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

33
34 SECTION 11. Arkansas Code §§ 5-28-221 - 5-28-310 are repealed.

35 ~~5-28-213. Availability of founded reports of adult maltreatment.~~

36 ~~(a) Reports made pursuant to this chapter which are determined to be~~

1 ~~founded, as well as any other information obtained, and reports written or~~
2 ~~photographs taken concerning founded reports in the possession of the~~
3 ~~Department of Human Services shall be confidential and shall be made~~
4 ~~available only to:~~

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

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

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

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

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

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

19 ~~(B) The Attorney General or his or her designated~~
20 ~~investigator;~~

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~(e) 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 not permitted by this chapter shall be guilty of a Class~~
26 ~~A misdemeanor.~~

27
28 ~~5-28-214. Reports as evidence.~~

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

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

35
36 ~~5-28-215. Immunity for investigation participants.~~

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

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

8
9 ~~5-28-216. Penalties.~~

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

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

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

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

24
25 ~~5-28-217. Adult maltreatment hotline.~~

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

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

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

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

36 ~~(3) The nature and extent of maltreatment, including any~~

1 ~~evidence of previous maltreatment to the person;~~

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

4 ~~(5) Family composition;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10
11 ~~5-28-218. Investigation by Department of Human Services.~~

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

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

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

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

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

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

31
32 ~~5-28-219. Investigative powers of the Department of Human Services.~~

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

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

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

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

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

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

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

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

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

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

35 ~~(iii) The maltreated adult's capacity to comprehend~~
36 ~~the nature and consequences of remaining in the situation or condition cannot~~

1 ~~be adequately assessed in the home.~~

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

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

7
8 ~~5-28-220. Rights of subject of report—Investigative determination of~~
9 ~~the Department of Human Services—Notice of finding—Appeal.~~

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

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

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

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

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

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

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

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

27 ~~(iii) The legal guardian of the maltreated adult;~~
28 ~~and~~

29 ~~(iv) The current administrator of the facility if~~
30 ~~the incident occurred in a long-term care facility.~~

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

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

35 ~~(A) The investigative determination, exclusive of the~~
36 ~~source of the notification, including the nature of the allegation and the~~

1 ~~date and time of occurrence;~~

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

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

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

9 ~~(i)—The adult 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.~~

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

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

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

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

19 ~~(1) The offender;~~

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

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

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

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

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

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

28
29 ~~5-28-221. Availability of pending and unfounded reports.~~

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

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

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

35 ~~(C) Prosecutors;~~

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

1 ~~(E) A circuit court having jurisdiction pursuant to a~~
2 ~~petition for emergency, temporary, long term protective custody, or for~~
3 ~~protective services; and~~

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

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

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

12 ~~(1) The department, including the committee created by the~~
13 ~~director of the department;~~

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

15 ~~(3) Prosecutors;~~

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

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

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

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

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

25
26 /s/ Salmon
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