

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S2/8/07 S2/20/07 H3/12/07

A Bill

SENATE BILL 266

5 By: Senator Salmon
6 *By: Representatives S. Prater, Hardwick*
7
8

For An Act To Be Entitled

9
10 AN ACT TO AMEND THE ADULT AND LONG-TERM CARE
11 FACILITY RESIDENT MALTREATMENT ACT; TO FURTHER
12 PROTECT ENDANGERED SENIOR CITIZENS BY PROVIDING
13 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH
14 EXPANDED INVESTIGATIVE AUTHORITY; TO PROVIDE
15 COURT PROCEDURES FOR OVERSEEING THE NEW
16 INVESTIGATIVE AUTHORITY; AND FOR OTHER PURPOSES.
17

Subtitle

18
19 AN ACT TO AMEND THE ADULT AND LONG-TERM
20 CARE FACILITY RESIDENT MALTREATMENT ACT.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 9-20-103 is amended to read as follows:
26 9-20-103. Definitions.

27 As used in this chapter:

28 (1) "Abuse" means:

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

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

35 (C) Any intentional threat that a reasonable person would
36 find credible and nonfrivolous to inflict pain on or cause injury to an



1 endangered or impaired person except in the course of medical treatment or
2 for justifiable cause; or

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

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

9 (3) "Caregiver" means a related or unrelated person, owner,
10 agent, high managerial agent of a public or private organization, or a public
11 or private organization that has the responsibility for the protection, care,
12 or custody of an endangered or impaired person as a result of assuming the
13 responsibility voluntarily, by contract, through employment, or by order of
14 the circuit court;

15 (4) "Department" means the Department of Health and Human
16 Services.

17 (5) "Endangered adult" means:

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

19 (i) Is found to be in a situation or condition that
20 poses ~~an imminent risk of death or serious bodily harm to that person a~~
21 danger to himself or herself; and

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

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

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

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

29 (6) "Exploitation" means:

30 (A) The illegal or unauthorized use or management of an
31 endangered or impaired adult's funds, assets, or property or the use of an
32 endangered or impaired adult's person, power of attorney, or guardianship for
33 the profit or advantage of oneself or another; or

34 (B) Misappropriation of property of an adult resident of a
35 long-term care facility, that is, the deliberate misplacement, exploitation,
36 or wrongful, temporary, or permanent use of a resident's belongings or money

1 without the resident's consent;

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

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

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

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

12 (A) A nursing home;

13 (B) A residential care facility;

14 (C) A post-acute head injury retraining and residential
15 facility;

16 (D) An assisted living facility;

17 (E) An intermediate care facility for the mentally
18 retarded; or

19 (F) Any facility that provides long-term medical or
20 personal care;

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

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

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

28 (13) "Neglect" means:

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

31 (B) An act or omission by a caregiver responsible for the
32 care and supervision of an endangered or impaired adult constituting
33 negligent failure to:

34 (i) Provide necessary treatment, rehabilitation,
35 care, food, clothing, shelter, supervision, or medical services to an
36 endangered or impaired adult;

1 (ii) Report health problems or changes in health
2 problems or changes in the health condition of an endangered or impaired
3 adult to the appropriate medical personnel;

4 (iii) Carry out a prescribed treatment plan; or

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

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

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

15 (15)(A) "Protective services" means services to protect an
16 endangered or impaired adult from:

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

18 (ii) Abuse or neglect by others.

19 (B) Protective services may include:

20 (i) Evaluation of the need for services;

21 (ii) Arrangements or referrals for appropriate
22 services available in the community;

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

25 (iv) As appropriate, referrals to law enforcement or
26 prosecutors;

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

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

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

33 (A) Creates a substantial risk of death; or

34 (B) Causes protracted disfigurement, protracted impairment
35 of health, or loss or protracted impairment of the function of any bodily
36 member or organ;

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

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

- 7 (A) The endangered or impaired adult;
- 8 (B) The adult's legal guardian; and
- 9 (C) The offender.

10
11 SECTION 2. Arkansas Code § 9-20-113 is amended to read as follows:
12 9-20-113. ~~Petition for evaluations~~ Evaluations.

13 (a) The Department of Health and Human Services may petition the
14 circuit court for an order of temporary custody for the purpose of having an
15 adult evaluated if during the course of an investigation under the Adult and
16 Long-Term Care Facility Resident Maltreatment Act, ~~§ 12-12-1601 et seq.~~ § 12-
17 12-1701 et seq., the department determines that:

18 (1) ~~The adult is in imminent danger of death or serious bodily~~
19 ~~harm~~ Immediate removal is necessary to protect the adult from imminent danger
20 to his or her health or safety;

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

23 (3)(A) The adult's capacity to comprehend the nature and
24 consequences of remaining in the situation or condition cannot be adequately
25 assessed in the adult's place of residence; or

26 (B) The adult's mental or physical impairment and ability to
27 protect himself or herself from adult maltreatment cannot be adequately
28 assessed in the adult's place of residence.

29 (b) Upon good cause being shown, the court may issue an order for
30 temporary custody for the purpose of having the adult evaluated.

31
32 SECTION 3. Arkansas Code § 9-20-114(a), concerning emergency custody
33 of maltreated adults, is amended to read as follows:

34 (a) The Department of Health and Human Services or a law enforcement
35 official may take a maltreated adult into emergency custody, or any person in
36 charge of a hospital or similar institution or any physician treating any

1 maltreated adult may keep the adult in custody, whether or not medical
2 treatment is required, if the circumstances or condition of the adult are
3 such that returning to or continuing at the adult's place of residence or in
4 the care or custody of a parent, guardian, or other person responsible for
5 the adult's care presents imminent danger to the adult's health or safety,
6 and the adult lacks the capacity to comprehend the nature and consequences of
7 remaining in a situation that presents imminent danger to his or her health
8 or safety or the adult has a mental or physical impairment that prevents the
9 adult from protecting himself or herself from imminent danger to his or her
10 health or safety.

11
12 SECTION 4. Arkansas Code § 12-12-1703 is amended to read as follows:
13 12-12-1703. Definitions.

14 As used in this subchapter:

15 (1) "Abuse" means:

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

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

23 (C) Any intentional threat that a reasonable person would
24 find credible and nonfrivolous to inflict pain on or cause injury to an
25 endangered person or an impaired person except in the course of medical
26 treatment or for justifiable cause; or

27 (D) With regard to any long-term care facility resident,
28 any willful infliction of injury, unreasonable confinement, intimidation, or
29 punishment with resulting physical harm, pain, or mental anguish;

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

32 (3) "Caregiver" means a related or unrelated person, owner,
33 agent, high managerial agent of a public or private organization, or a public
34 or private organization that has the responsibility for the protection, care,
35 or custody of an endangered person or an impaired person as a result of
36 assuming the responsibility voluntarily, by contract, through employment, or

1 by order of a court;

2 (4) "Department" means the Department of Health and Human
3 Services;

4 (5) "Endangered person" means:

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

6 (i) Is found to be in a situation or condition that
7 poses ~~an imminent risk of death or serious bodily harm to that person a~~
8 danger to himself or herself; and

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

11 (B) A long-term care facility resident who:

12 (i) Is found to be in a situation or condition that
13 poses an imminent risk of death or serious bodily harm to the long-term care
14 facility resident; and

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

17 (6) "Exploitation" means the:

18 (A) Illegal or unauthorized use or management of an
19 endangered person's or an impaired person's funds, assets, or property;

20 (B) Use of an adult endangered person's or an adult
21 impaired person's, power of attorney or guardianship for the profit or
22 advantage of one's own self or another; or

23 (C) Misappropriation of property of a long-term care
24 facility resident, that is, the deliberate misplacement, exploitation, or
25 wrongful, temporary, or permanent use of a long-term care facility resident's
26 belongings or money without the long-term care facility resident's consent;

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

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

34 (B) For purposes of this subchapter, a long-term care
35 facility resident is presumed to be an impaired person;

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

- 1 (A) A nursing home;
- 2 (B) A residential care facility;
- 3 (C) A post-acute head injury retraining and residential
4 facility;
- 5 (D) An assisted living facility;
- 6 (E) An intermediate care facility for the mentally
7 retarded; or
- 8 (F) Any facility that provides long-term medical or
9 personal care;
- 10 (10) "Long-term care facility resident" means a person,
11 regardless of age, living in a long-term care facility;
- 12 (11) "Long-term care facility resident maltreatment" means
13 abuse, exploitation, neglect, or sexual abuse of a long-term care facility
14 resident;
- 15 (12) "Maltreated adult" means an adult who has been abused,
16 exploited, neglected, physically abused, or sexually abused;
- 17 (13) "Maltreated person" means a person, regardless of age, who
18 has been abused, exploited, neglected, or sexually abused;
- 19 (14) "Neglect" means:
- 20 (A) An act or omission by an endangered person or an
21 impaired person, for example, self-neglect; or
- 22 (B) An act or omission by a caregiver responsible for the
23 care and supervision of an endangered person or an impaired person
24 constituting:
- 25 (i) Negligently failing to provide necessary
26 treatment, rehabilitation, care, food, clothing, shelter, supervision, or
27 medical services to an endangered person or an impaired person;
- 28 (ii) Negligently failing to report health problems
29 or changes in health problems or changes in the health condition of an
30 endangered person or an impaired person to the appropriate medical personnel;
- 31 (iii) Negligently failing to carry out a prescribed
32 treatment plan; or
- 33 (iv) Negligently failing to provide goods or
34 services to a long-term care facility resident necessary to avoid physical
35 harm, mental anguish, or mental illness as defined in regulations promulgated
36 by the Office of Long-Term Care of the Division of Medical Services of the

1 Department of Health and Human Services;

2 (15)(A) "Physical injury" means the impairment of a physical
3 condition or the infliction of substantial pain on a person.

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

7 (16) "Serious bodily harm" means sexual abuse, physical injury,
8 or serious physical injury;

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

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

19 (19) "Subject of the report" means:

20 (A) The endangered person or impaired person;

21 (B) The adult's legal guardian;

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

24 (D) The offender.

25

26 SECTION 5. Arkansas Code § 12-12-1708(a)(1) concerning persons
27 required to report adult or long-term care facility resident maltreatment, is
28 amended to read as follows:

29 (a)(1) Whenever any of the following persons has observed or has
30 reasonable cause to suspect that an endangered person or an impaired person
31 has been subjected to conditions or circumstances that constitute adult
32 maltreatment or long-term care facility resident maltreatment, the person
33 shall immediately report or cause a report to be made in accordance with the
34 provisions of this section:

35 (A) A physician;

36 (B) A surgeon;

- 1 (C) A coroner;
2 (D) A dentist;
3 (E) A dental hygienist;
4 (F) An osteopath;
5 (G) A resident intern;
6 (H) A nurse;
7 (I) A member of a hospital's personnel who is engaged in
8 the administration, examination, care, or treatment of persons;
9 (J) A social worker;
10 (K) A case manager;
11 (L) A home health worker;
12 (M) A mental health professional;
13 (N) A peace officer;
14 (O) A law enforcement officer;
15 (P) A facility administrator or owner;
16 (Q) An employee in a facility;
17 (R) An employee of the Department of Health and Human
18 Services;
19 (S) A firefighter;
20 (T) An emergency medical technician; ~~or~~
21 (U) An employee of a bank or other financial institution.
22 (V) An employee of the United States Postal Service;
23 (W) An employee or volunteer of a program or organization
24 funded partially or wholly by the Department of Health and Human Services who
25 enters the home of or has contact with an elderly person;
26 (X) A person associated with the care and treatment of
27 animals, such as animal control officers and humane society officials;
28 (Y) An employee who enforces code requirements for a city,
29 township, or municipality; or
30 (Z) Any clergyman, including without limitation, a
31 minister, a priest, a rabbi, an accredited Christian Science practitioner, or
32 any other similar functionary of a religious organization, or an individual
33 reasonably believed to be a minister, a priest, a rabbi, an accredited
34 Christian Science practitioner, or any other similar functionary of a
35 religious organization by the person consulting him or her, except to the
36 extent he or she:

1 (i) Has acquired knowledge of suspected maltreatment
2 through communications required to be kept confidential pursuant to the
3 religious discipline of the relevant denomination or faith; or

4 (ii) Received the knowledge of the suspected
5 maltreatment from the offender in the context of a statement of admission.

6
7 SECTION 6. Arkansas Code § 12-12-1714(d) concerning the investigative
8 powers of the Department of Health and Human Services regarding maltreated
9 adults, is amended to read as follows:

10 (d)(1) An investigation under this subchapter may include a medical,
11 psychological, social, vocational, financial, and educational evaluation and
12 review, if necessary.

13 (2)(A)(i) The department may file an ex parte petition in
14 circuit court requesting an order of investigation.

15 (ii) If the court issues an order of investigation,
16 any subsequent petition for custody shall be filed in this same case.

17 (B) No fees may be charged or collected by the clerk,
18 including without limitation, fees for filing, summons or subpoenas.

19 (3)(A) The department may compel the allegedly maltreated person
20 to be evaluated in the least restrictive environment and least intrusive
21 manner necessary to obtain an assessment if:

22 (i) The department is unable to secure an order of
23 investigation from the circuit court during regular business hours;

24 (ii) The department has reasonable cause to suspect
25 a significant risk for serious harm to the health or safety of the adult; and

26 (iii) The department cannot adequately assess:

27 (a) The adult's capacity to comprehend the
28 nature and consequences of remaining in the situation or condition; or

29 (b) The adult's mental or physical impairment
30 and ability to protect himself or herself from maltreatment.

31 (B)(i) Upon request by the department and without a court
32 order, law enforcement and medical personnel shall assist the department as
33 needed in obtaining an assessment on an allegedly maltreated person

34 (ii) The assessment may include emergency treatment.

35 (C) No later than the next business day after the
36 assessment, the department shall petition the court for an order of

1 investigation as outlined in this section.

2 (4)(A) Upon a showing of reasonable cause to suspect an
3 allegedly maltreated person is endangered or impaired, the circuit court
4 shall issue an order of investigation.

5 (B) The order of investigation may include the power to
6 compel the allegedly maltreated person to be assessed to determine whether
7 the person:

8 (i) Lacks capacity to understand the nature
9 and consequences of remaining in the situation or condition that poses a
10 danger to the person; or

11 (ii) Has a mental or physical impairment such
12 that the person is unable to protect himself or herself from abuse, sexual
13 abuse, neglect, or exploitation.

14 (5) Upon good cause shown by the department, the circuit court
15 may order emergency treatment of the allegedly maltreated adult.

16 (6)(A) The allegedly maltreated adult has a right to counsel,
17 including appointed counsel if indigent, and a right to a hearing within five
18 (5) business days after issuance of an ex parte order of investigation.

19 (B) If the allegedly maltreated adult is not indigent, the
20 circuit court has the authority to appoint counsel to represent the allegedly
21 maltreated adult and to direct payment from the assets of the adult for legal
22 services received by the adult.

23 (7)(A) At the five-day hearing the court shall determine whether
24 the order of investigation shall continue for an additional period of time or
25 be terminated.

26 (B) The burden shall be upon the department to show
27 probable cause that the alleged maltreated person is an endangered or
28 impaired person and that additional time is necessary to complete the
29 investigation.

30 (8) The department and the court shall defer to any declaration
31 executed in conformance with the Arkansas Rights of the Terminally Ill or
32 Permanently Unconscious Act, § 20-17-201 et seq. and before any documented
33 medical or judicial determination of lack of capacity.

34
35 */s/ Salmon*
36