

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H3/6/97

A Bill

ACT 1034 OF 1997
HOUSE BILL 1892

5 By: Representative Judy Smith
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7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 5, CHAPTER 28
10 OF THE ARKANSAS CODE ANNOTATED, PERTAINING TO ADULT ABUSE,
11 TO CLARIFY THE DEFINITION OF SEXUAL ABUSE, TO REQUIRE
12 MANDATED REPORTERS TO ALLOW THE DEPARTMENT OF HUMAN
13 SERVICES ACCESS TO CERTAIN RECORDS, TO ALLOW THE RELEASE
14 OF REPORTS OF ADULT ABUSE TO PROSECUTING ATTORNEYS,
15 CORONERS AND LAW ENFORCEMENT OFFICIALS, TO CLARIFY WHO MAY
16 PLACE AN ENDANGERED ADULT INTO EMERGENCY PROTECTIVE
17 CUSTODY, TO ALLOW THE COURT TO EXTEND THE PERIOD OF
18 TEMPORARY PROTECTIVE CUSTODY AND TO EXTEND THE TIME FOR
19 HOLDING THE HEARING ON LONG-TERM PROTECTIVE CUSTODY, TO
20 SHORTEN THE TIME FOR NOTICE BEFORE THE LONG-TERM
21 PROTECTIVE CUSTODY HEARING, TO ALLOW THE LONG-TERM
22 PROTECTIVE CUSTODY HEARING TO BE HELD IN ANY COUNTY IN THE
23 JUDICIAL DISTRICT UPON AGREEMENT OF THE PARTIES, TO ALLOW
24 THE PARTIES TO AGREE TO CONTINUE A TEMPORARY PROTECTIVE
25 CUSTODY ORDER AND EXTEND THE TIME FOR THE LONG-TERM
26 PROTECTIVE CUSTODY HEARING; AND FOR OTHER PURPOSES."

Subtitle

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29 "TO AMEND VARIOUS SECTIONS OF TITLE 5,
30 CHAPTER 28 OF THE ARKANSAS CODE
31 ANNOTATED, PERTAINING TO ADULT ABUSE."
32

33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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35 SECTION 1. Arkansas Code Annotated § 5-28-101, which defines terms for
36 use in the chapter of the criminal code pertaining to abuse of adults, is

1 amended by adding the following new definition:

2 "(12) Sexual abuse means deviate sexual activity, sexual contact, or
3 sexual intercourse, as those terms are defined in A.C.A. § 5-14-101, with
4 another person who is not the actors spouse and who is incapable of consent
5 because he or she is mentally defective, mentally incapacitated, or physically
6 helpless, as those terms are defined in A.C.A. § 5-14-101."

7
8 SECTION 2. Arkansas Code Annotated § 5-28-210(d), pertaining to
9 investigations of adult abuse, is amended to read as follows:

10 "(d) The investigation may include a medical, psychological, social,
11 vocational, financial, and educational evaluation and review, where necessary.
12 The medical, mental health, or other records regarding the abused adult
13 maintained by any facility whose administrator is required by A.C.A. § 5-28-
14 203 to report suspected abuse, neglect, or exploitation or maintained by any
15 person required by A.C.A. § 5-28-203 to report suspected abuse, neglect, or
16 exploitation shall be made available to the department for the purposes of
17 conducting an evaluation or review under this subsection."

18
19 SECTION 3. Arkansas Code Annotated § 5-28-213(a), pertaining to
20 availability of reports of adult abuse, is amended to read as follows:

21 "(a) Reports made pursuant to this chapter, as well as any other
22 information obtained, and reports written or photographs taken concerning
23 reports in the possession of the department shall be confidential and shall be
24 made available to:

25 (1) A physician who has before him an endangered adult whom he
26 reasonably believes may have been abused, sexually abused, or neglected;

27 (2) A person authorized to place the adult in protective custody
28 when such a person has before him an adult whom he reasonably believes may
29 have been abused, sexually abused, or neglected, and such person requires the
30 information to determine whether to place the adult in protective custody;

31 (3) An authorized agency having responsibility for the care or
32 supervision of a subject of a report;

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

34 (5) A court where it determines that such information is
35 necessary for the determination of an issue before the court-;

36 (6) A prosecuting attorney, law enforcement official, or coroner

1 conducting a criminal investigation or investigating a death or the Attorney
2 General when conducting an investigation of abuse or neglect;
3 (7) A person who has made a report of suspected abuse, neglect,
4 or exploitation only to the extent that he may be informed after completion
5 and closure of the investigation whether legal action was taken, services were
6 provided, or no action was taken. No further information shall be released
7 and the person shall be informed of the confidentiality of the information and
8 the penalties for disclosure."

9
10 SECTION 4. Arkansas Code Annotated § 5-28-301 is amended to read as
11 follows:

12 "5-28-301. Emergency custody.

13 (a)(1) ~~The department, a police officer, or a law enforcement official,~~
14 ~~or a designated employee of a city or county department or office of social~~
15 ~~services~~ may take an endangered adult into emergency protective custody, or
16 any person in charge of a hospital or similar institution or any physician
17 treating any such adult may keep that adult in his custody, whether or not
18 medical treatment is required, if the circumstances or condition of the adult
19 are such that continuing at his place of residence or in the care or custody
20 of a parent, guardian, or other person responsible for the adult's care
21 presents imminent danger to that adult's health or safety and the adult lacks
22 the capacity to comprehend the nature and consequences of remaining in a
23 situation that presents imminent danger to his health or safety.

24 (2) However, emergency protective custody shall not exceed three
25 (3) working days, and the probate court and the department shall be notified
26 immediately upon taking such adult into emergency protective custody, in order
27 that adult protective proceedings may be initiated.

28 (b) When action is taken under subsection (a) of this section for
29 emergency protective custody, a preliminary hearing shall be held within two
30 (2) working days to establish probable cause for grounds for protective
31 custody.

32 (c) Upon a finding of probable cause, the court may order temporary
33 protective custody for up to fourteen (14) days, pending the hearing for
34 long-term protective custody. Upon a finding that extenuating circumstances
35 are present and that the hearing cannot be held within fourteen (14) days, the
36 court may extend the period of temporary custody for up to nineteen (19)

1 days."

2

3 SECTION 5. Arkansas Code Annotated § 5-28-304(b) is amended to read as
4 follows:

5 "(b) Notice of a petition for long-term protective custody shall be
6 served upon the respondent at least ~~ten (10)~~ seven (7) days prior to the time
7 set for a hearing."

8

9 SECTION 6. Arkansas Code Annotated § 5-28-306(a) is amended to read as
10 follows:

11 "(a)(1) A hearing for long-term protective custody shall be no later
12 than fourteen (14) days from the date the order for temporary protective
13 custody was signed, unless the court extends the time in which the hearing
14 must be held upon a finding that extenuating circumstances exist and that the
15 hearing cannot be held within fourteen (14) days in accordance with A.C.A. §
16 5-28-301(c).

17 (2) The court may continue the order for temporary protective
18 custody and extend the time for holding the hearing for long-term protective
19 custody upon agreement of the parties.

20 (b) The court may hold a hearing for long-term protective custody
21 anywhere in the judicial district upon agreement of the parties."

22

23 SECTION 7. All provisions of this act of a general and permanent nature
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
25 Revision Commission shall incorporate the same in the Code.

26

27 SECTION 8. If any provision of this act or the application thereof to
28 any person or circumstance is held invalid, such invalidity shall not affect
29 other provisions or applications of the act which can be given effect without
30 the invalid provision or application, and to this end the provisions of this
31 act are declared to be severable.

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33 SECTION 9. All laws and parts of laws in conflict with this act are
34 hereby repealed.

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/s/Rep. Judy Smith

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APPROVED: 4-02-97

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