

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 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2579

4
5 By: Representative Dees

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING ADULT ABUSE;
10 AND FOR OTHER PURPOSES.

Subtitle

13 AN ACT TO AMEND THE LAW REGARDING ADULT
14 ABUSE.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code § 5-28-101 is amended to read as follows:
20 5-28-101. Definitions.

21 As used in this chapter, unless the context otherwise requires:

22 (1) "Abuse" means:

23 (A) Any intentional and unnecessary physical act which inflicts
24 pain on or causes injury to an endangered or impaired adult, including sexual
25 abuse; ~~or~~

26 (B) Any intentional or demeaning act which subjects an
27 endangered or impaired adult to ridicule or psychological injury in a manner
28 likely to provoke fear or alarm; or

29 (C) With regard to any adult resident of a long-term care
30 facility by a caregiver, any:

31 (i) Willful infliction of injury;

32 (ii) Unreasonable confinement;

33 (iii) Intimidation; or

34 (iv) Punishment resulting in physical harm, pain, or
35 mental anguish;

36 (2) "Adult maltreatment" means adult abuse, exploitation, neglect,



1 physical abuse, or sexual abuse.

2 ~~(2)~~(3) “Caregiver” means a related or unrelated person, owner, agent,
3 high managerial agent of a public or private organization, or a public or
4 private organization that has the responsibility for the protection, care, or
5 custody of an endangered or impaired adult as a result of assuming the
6 responsibility voluntarily, by contract, through employment, or by order of
7 the court;

8 ~~(3)~~(4)(A) “Department” means the Department of Human Services.

9 (B) The Director of the Department of Human Services may assign
10 responsibilities for administering the various duties imposed upon the
11 department under this chapter to respective divisions of the department
12 which, in his or her opinion, are best able to render service or administer
13 the provisions of this chapter;

14 ~~(4)~~(5) “Endangered adult” means:

15 (A) An adult eighteen (18) years of age or older who is found to
16 be in a situation or condition which poses an imminent risk of death or
17 serious bodily harm to that person and who demonstrates a lack of capacity to
18 comprehend the nature and consequences of remaining in that situation or
19 condition; or

20 (B) A resident eighteen (18) years of age or older of a long-
21 term care facility, ~~which is required to be licensed under § 20-10-224~~
22 certified pursuant to Title XIX of the Social Security Act, who is found to
23 be in a situation or condition which poses an imminent risk of death or
24 serious bodily harm to the person and who demonstrates the lack of capacity
25 to comprehend the nature and consequences of remaining in that situation or
26 condition;

27 ~~(5)~~(6) “Exploitation” means:

28 (A) ~~the~~ The illegal use or management of an endangered or
29 impaired adult’s funds, assets, or property, or the use of an endangered or
30 impaired adult’s person, power of attorney, or guardianship for the profit or
31 advantage of himself, herself, or another; or

32 (B) Misappropriation of property of an adult resident of a long-
33 term care facility, including, but is not limited to:

34 (i) The deliberate misplacement; or

35 (ii) Temporary or permanent wrongful use of a resident’s
36 belongings or money without the resident’s consent;

1 ~~(6)~~(7)(A) “Imminent danger to health or safety” means a situation in
 2 which death or severe bodily injury could reasonably be expected to occur
 3 without intervention.

4 (B) The burden of proof shall be upon the department to show by
 5 clear and convincing evidence that such imminent danger exists;

6 ~~(7)~~(8)(A) “Impaired adult” means a person eighteen (18) years or older
 7 who, as a result of mental or physical impairment, is unable to protect
 8 himself or herself from abuse, sexual abuse, neglect, or exploitation, and as
 9 a consequence thereof is endangered.

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

12 (9) “Long-term care facility” has the same meaning as in § 20-10-101;

13 ~~(8)~~(10) “Neglect” means acts or omissions by an endangered adult; for
 14 example, self-neglect or intentional acts or omissions by a caregiver
 15 responsible for the care and supervision of an endangered or impaired adult
 16 constituting:

17 (A) Negligently failing to provide necessary treatment,
 18 rehabilitation, care, food, clothing, shelter, supervision, or medical
 19 services to an endangered or impaired adult;

20 (B) Negligently failing to report health problems or changes in
 21 health problems or changes in the health condition of an endangered or
 22 impaired adult to the appropriate medical personnel; ~~or~~

23 (C) Negligently failing to carry out a prescribed treatment
 24 plan; or

25 (D) Failing to provide goods and services necessary to avoid
 26 physical harm, mental anguish, or mental illness to an adult resident of a
 27 long-term care facility;

28 ~~(9)~~(11)(A) “Physical ~~injury~~ abuse” means the impairment of a physical
 29 condition or the infliction of substantial pain.

30 (B) Where the person is an endangered or impaired adult, there
 31 shall be a presumption that any physical abuse resulted in the infliction of
 32 substantial pain;

33 ~~(10)~~(12)(A) “Protective services” means services to protect the
 34 endangered or impaired adult from:

- 35 (i) Self-neglect or self-abuse; and
- 36 (ii) Abuse or neglect by others.

1 (B) Protective services shall include, but not be limited to:

- 2 (i) Evaluation of the need for services;
- 3 (ii) Arrangements for appropriate services;
- 4 (iii) Assistance in obtaining financial benefits to which
- 5 the person is entitled; or
- 6 (iv) Securing medical and legal services.

7 (C)(i) Protective services may include:

8 (a) Referrals for services available in the
9 community;

10 (b) Seeking protective custody or court-ordered
11 services for endangered adults; or

12 (c) In appropriate cases, assistance in locating an
13 appropriate person or entity interested in and able to assume guardianship
14 over an endangered adult.

15 (ii) In situations involving exploitation of an endangered
16 or impaired adult not resulting in any imminent danger to health or safety or
17 involving protection of the property of such an impaired adult, protective
18 services may include one (1) or more of the following:

19 (a) Referrals for legal assistance;

20 (b) Referrals, as appropriate, to law enforcement or
21 prosecutors; or

22 (c) Assistance in locating an appropriate person or
23 entity interested in and able to assume guardianship;

24 ~~(11)~~(13) “Serious bodily harm” means physical abuse, sexual abuse,
25 physical injury, or serious physical injury as defined in this chapter;

26 ~~(12)~~(14) “Serious physical injury” means physical injury to an
27 endangered or impaired adult that creates a substantial risk of death or that
28 causes protracted disfigurement, protracted impairment of health, or loss or
29 protracted impairment of the function of any bodily member or organ;

30 ~~(13)~~(15) “Sexual abuse” means deviate sexual activity, sexual contact,
31 or sexual intercourse, as those terms are defined in § 5-14-101, with another
32 person who is not the actor’s spouse and who is incapable of consent because
33 he or she is mentally defective, mentally incapacitated, or physically
34 helpless, as those terms are defined in § 5-14-101; and

35 ~~(14)~~(16) “Subject of the report” means the endangered or impaired
36 adult, the adult’s guardian, and the offender.

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SECTION 2. Arkansas Code is amended to read as follows:

5-28-102. Legislative intent.

~~(a) The General Assembly recognizes that rehabilitative and ameliorative services are needed to provide for the detection and correction of the abuse, maltreatment, or exploitation of adults who are unable to protect themselves~~ the state must provide for the detection, correction, and prosecution of the maltreatment of adults.

~~(b) "Abuse, maltreatment, or exploitation" includes any willful or negligent acts which result in neglect, malnutrition, sexual abuse, unreasonable physical injury, material endangerment to mental health, unjust or improper use of an adult for one's own advantage, and failure to provide necessary treatment, attention, sustenance, clothing, shelter, or medical services by a caretaker or by the impaired individual.~~

SECTION 3. Arkansas Code § 5-28-107 is amended to read as follows:

5-28-107. Investigation by Attorney General ~~and Department of Human Services.~~

~~(a) The Department of Human Services shall have jurisdiction to investigate cases of suspected abuse, neglect, or exploitation of an endangered or impaired adult.~~

~~(b)~~(a) The Office of the Attorney General shall have concurrent jurisdiction with the Department of Human Services to investigate cases of suspected abuse, neglect, or exploitation adult maltreatment of an endangered or impaired adult in a long-term care facility certified pursuant to Title XIX of the Social Security Act.

(b) If requested by the office of Attorney General, law enforcement agencies shall assist in the investigation of any case of suspected adult maltreatment.

~~(c) After a thorough investigation, the Attorney General may make a referral to the prosecuting attorney having criminal jurisdiction in the matter, or take appropriate civil action as provided in this chapter.~~

SECTION 4. Arkansas Code Title 5, Chapter 28, Subchapter 1 is amended to add an additional section to read as follows:

5-28-109. Investigative Powers of the Attorney General.

1 (a) The primary purposes of an investigation are to:

2 (1) Protect maltreated adults; and

3 (2) Refer for prosecution those persons maltreating any
4 endangered or impaired adult.

5 (b) The Attorney General shall conduct a thorough investigation that
6 may include a medical, psychological, social, vocational, financial, and
7 educational evaluation and review.

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

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

17 (d)(1) A subpoena requiring the production of documents or the
18 attendance of a witness at an interview, trial, or hearing conducted pursuant
19 to the jurisdiction of the Office of the Attorney General, Medicaid Fraud
20 Control Unit may be served by the Attorney General or any law enforcement
21 officer in the state of Arkansas personally, by telephone, or by registered
22 or certified mail.

23 (2) If service is by registered or certified mail, the return
24 shall be accompanied by the return post office receipt of delivery of the
25 demand.

26 (e)(1) If a facility or person objects to, or otherwise fails to
27 comply with the Attorney General's request for records, the Attorney General
28 may file an action in circuit court for an order to enforce the request.

29 (2) Venue for the action to enforce the request shall be in
30 Pulaski County.

31 (f) The circuit court, upon good cause shown, shall order the facility
32 or person who maintains medical, mental health, or other records regarding
33 the maltreated adult to tender records to the Attorney General for the
34 purpose of conducting an investigation under this chapter.

35 (g)(1) Records obtained by the Attorney General under this subchapter
36 shall be classified as confidential information and shall not be subject to

1 outside review or release by an individual unless the records are used or
2 potentially to be used by any governmental entity in any legal,
3 administrative, or judicial proceeding.

4 (2) Notwithstanding any other law to the contrary, no person
5 shall be subject to any civil or criminal liability for providing access to
6 records to the Attorney General or to the prosecuting attorneys.

7
8
9 SECTION 5. Arkansas Code § 5-28-201 is amended to read as follows:
10 5-28-201. ~~Central~~ Adult maltreatment central registry.

11 (a)(1) Pursuant to this chapter, there shall be established within the
12 department a statewide central registry for ~~abuse, neglect, and exploitation~~
13 adult maltreatment.

14 (2) The adult maltreatment central registry shall contain
15 investigative determinations made by the department on all founded
16 allegations of adult maltreatment.

17 (3) The offender's name shall be placed in the central registry,
18 if:

19 (A) After notice, the offender does not timely appeal for
20 an administrative hearing; or

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

23 (b) The central registry may adopt such rules and regulations which
24 may be necessary to encourage cooperation with other states in exchanging
25 reports to effect a national registry system of ~~abuse, neglect, and~~
26 exploitation adult maltreatment.

27
28 SECTION 6. Arkansas Code § 5-28-203 is amended to read as follows:
29 5-28-203. Persons required to report abuse.

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

36 (A) A physician;

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

21 (2) Whenever a person is required to report under this chapter
 22 in his or her capacity as a member of the staff, an employee in a facility,
 23 or an employee of the department, he or she shall immediately notify the
 24 person in charge of the institution, facility, or agency, or that person's
 25 designated agent, who shall then become responsible for making a report or
 26 cause a report to be made.

27 (3) In addition to those persons and officials required to
 28 report suspected adult ~~abuse, sexual abuse, or neglect,~~ maltreatment any
 29 other person may make a report if the person has reasonable cause to suspect
 30 that an adult has been ~~abused, neglected, or exploited~~ maltreated, as defined
 31 in this chapter.

32 (b)(1) ~~A report required under this chapter shall be made to the~~
 33 ~~central registry by the receiving agency for abused or neglected adults not~~
 34 ~~residing in long-term care facilities.~~

35 ~~(2)~~ A report for ~~abused or neglected~~ maltreated adults residing
 36 in a long-term care facility shall be made;

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

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

6 (2) All other reports required under this subchapter shall be
7 made to the adult maltreatment hotline.

8 ~~(3) The office shall notify the central registry and the office~~
9 ~~of the Attorney General.~~

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

12
13 SECTION 7. Arkansas Code § 5-28-204 is amended to read as follows:

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

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

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

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

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

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

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

1 report his findings to the police and the appropriate prosecuting attorney.

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

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

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

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

13
 14 SECTION 8. Arkansas Code § 5-28-206 through 5-28-209 are repealed:

15 ~~5-28-206. Reporting procedures generally.~~

16 ~~(a) A report of abuse, sexual abuse, neglect, or exploitation of an
 17 adult may be made by telephone, pursuant to this chapter, and shall be
 18 followed by a written report within forty eight (48) hours, if so requested
 19 by the receiving agency or statewide central registry.~~

20 ~~(b) When a report is initially received by an agency other than the
 21 central registry, the receiving agency shall immediately forward a copy of
 22 the report to the central registry.~~

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

26
 27 ~~5-28-207. Contents of central registry.~~

28 ~~The central registry shall contain, but shall not be limited to:~~

29 ~~(1) Information contained in the initial written or telephone report;~~

30 ~~(2) Records of final disposition of the report and the investigation
 31 thereof, including services offered and services accepted, and whether the
 32 report is founded or unfounded;~~

33 ~~(3) The plan, if any, for rehabilitation, treatment, or preventive or
 34 ameliorative services, or both;~~

35 ~~(4) The names and identifying data, dates, and circumstances of
 36 persons requesting or receiving information from the registry; and~~

1 ~~(5) Any other information which might be helpful in furthering the~~
2 ~~purposes of this chapter.~~

3
4 ~~5-28-208. Telephone reporting—Determination of prior records.~~

5 ~~(a) There shall be a single statewide telephone number that all~~
6 ~~persons, whether mandated by law or not, may use to report cases of suspected~~
7 ~~adult abuse, sexual abuse, exploitation, and neglect and that all persons so~~
8 ~~authorized by this chapter may use for determining the existence of prior~~
9 ~~records in order to evaluate the conditions or circumstances of the alleged~~
10 ~~abused, exploited, or neglected adult before them.~~

11 ~~(b) If the records indicate a previous report concerning the subject~~
12 ~~of the report or other pertinent information, the investigator or law~~
13 ~~enforcement, when appropriate, shall be notified of these facts.~~

14
15 ~~5-28-209. Contents of report.~~

16 ~~Reports shall include the following information:~~

17 ~~(1) The names and addresses of the next of kin or persons responsible~~
18 ~~for care, if known;~~

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

20 ~~(3) The nature and extent of the injury, sexual abuse, neglect, or~~
21 ~~exploitation, including any evidence of previous injury, sexual abuse, or~~
22 ~~negligence to the person;~~

23 ~~(4) The names and addresses of the persons responsible for the injury,~~
24 ~~sexual abuse, neglect, or exploitation, if known;~~

25 ~~(5) Family composition;~~

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

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

28 ~~(8) Photographs, videos, and X rays with the identification of the~~
29 ~~photographer and date taken; and~~

30 ~~(9) Other information that the person making the report believes may~~
31 ~~be helpful in the furtherance of the purposes of this chapter.~~

32
33 SECTION 9. Arkansas Code § 5-28-210 is amended to read as follows:

34 5-28-210. Investigation by the Department of Human Services.

35 ~~(a)(1)(A) In cases involving an abused, neglected, or exploited adult~~
36 ~~residing in a long-term care facility certified pursuant to Title XIX of the~~

1 ~~Social Security Act, the local law enforcement agency or the office of the~~
2 ~~Attorney General shall make a thorough investigation.~~

3 ~~(B) In all other cases involving abused, neglected, or~~
4 ~~exploited adults, the Department of Human Services shall make a thorough~~
5 ~~investigation.~~

6 ~~(2) Referrals may be made to local law enforcement during the~~
7 ~~pendency of the department's investigation where cause exists to believe that~~
8 ~~a crime may have occurred. The department shall conduct a thorough~~
9 ~~investigation.~~

10 (b) ~~The primary purpose of an investigation is to protect the abused,~~
11 ~~neglected, or exploited adult purposes of the investigation are to protect~~
12 ~~the maltreated adult and to refer for prosecution those persons who maltreat~~
13 ~~any endangered or impaired adult.~~

14 (c)(1) The investigation shall be completed and a an investigative
15 determination entered.

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

18 (A) The nature, extent, and cause of the ~~abuse, sexual~~
19 ~~abuse, neglect, or exploitation~~ maltreatment of the adult;

20 (B) The identity of the person responsible;

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

23 (D) The evaluation of the persons responsible for the care
24 of the ~~abused, neglected, or exploited~~ maltreated adult, if any;

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

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

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

34 ~~(e)(iii)~~ An interpreter may be present during the
35 interview of the ~~abused, neglected, or exploited~~ maltreated adult, if
36 necessary.

1 ~~(ii) If the admission to the home, institution, or~~
 2 ~~other place that the abused, neglected, or exploited adult may be, or~~
 3 ~~permission of the next of kin or other person responsible for the adult or in~~
 4 ~~charge of any place where the abused, neglected, or exploited adult may be,~~
 5 ~~cannot be obtained, then the probate court, upon cause shown, shall order the~~
 6 ~~next of kin or person responsible and in charge of any place where the~~
 7 ~~abused, neglected, or exploited adult may be to allow entrance for the~~
 8 ~~examination and investigation.~~

9 ~~(G) Further, if admission to the home cannot be obtained~~
 10 ~~due to hospitalization or similar absence of the abused, neglected, or~~
 11 ~~exploited adult and admission to the home is necessary to complete the~~
 12 ~~investigation, then the probate court, upon cause shown, shall order and~~
 13 ~~authorize law enforcement to assist the department in obtaining entrance to~~
 14 ~~the home for the required investigation of the home environment.~~

15 ~~(d)(1) The investigation may include a medical, psychological, social,~~
 16 ~~vocational, financial, and educational evaluation and review, where~~
 17 ~~necessary.~~

18 ~~(2)(A) The medical, mental health, or other records regarding~~
 19 ~~the abused, neglected, or exploited adult maintained by any facility or~~
 20 ~~maintained by any person required by § 5-28-203 to report suspected abuse,~~
 21 ~~neglect, or exploitation shall be made available to the department for the~~
 22 ~~purposes of conducting an evaluation or review under this subsection.~~

23 ~~(B) Financial records maintained by a bank or similar~~
 24 ~~institution shall be made available to the department for the purpose of~~
 25 ~~conducting an evaluation or review under this subsection.~~

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

29 ~~(e)(1) If, before the investigation is completed, the opinion of the~~
 30 ~~investigators is that the immediate removal of the abused, neglected, or~~
 31 ~~exploited adult is necessary to protect him or her from further abuse, sexual~~
 32 ~~abuse, exploitation, or neglect, the investigators may petition the probate~~
 33 ~~court for an order of temporary custody or exercise a seventy-two hour hold~~
 34 ~~pursuant to § 5-28-301.~~

35 ~~(2)(A) If, before the investigation is completed, the opinion of~~
 36 ~~the investigators is that the abused, exploited, or neglected adult is in~~

1 ~~imminent danger of death or serious bodily harm, that available services have~~
2 ~~been offered to alleviate the danger and have been refused, and the abused,~~
3 ~~exploited, or neglected adult's capacity to comprehend the nature and~~
4 ~~consequences of remaining in the situation or condition cannot be adequately~~
5 ~~assessed in the home, the investigators may petition the probate court for an~~
6 ~~order of temporary protective custody for the purpose of having the adult~~
7 ~~evaluated.~~

8 ~~(B) The probate court, upon good cause being shown, may~~
9 ~~issue an order for temporary custody for the purpose of having the adult~~
10 ~~evaluated.~~

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

13 ~~(f) The department shall make a written report or case summary,~~
14 ~~together with services offered and accepted, to the state central registry on~~
15 ~~forms supplied by the registry for the purpose.~~

16 ~~(g) Upon completion of the investigation, the investigating agency~~
17 ~~shall determine that the allegations of adult abuse, sexual abuse, neglect,~~
18 ~~or exploitation are either:~~

19 ~~(1)(A)(i) Unfounded, which shall be entered when the allegation~~
20 ~~is not supported by a preponderance of the evidence.~~

21 ~~(ii) Unfounded reports may be used within the~~
22 ~~department prior to expungement for purposes of danger assessment on future~~
23 ~~reports.~~

24 ~~(iii) There can be no disclosure outside the~~
25 ~~department of unfounded reports or information obtained during an unfounded~~
26 ~~investigation, except for release to:~~

27 ~~(a) The prosecutor for the limited purpose of~~
28 ~~prosecution of a person who willfully makes false notification pursuant to~~
29 ~~this subchapter;~~

30 ~~(b) A subject of the report, as limited by §~~
31 ~~5-28-212; or~~

32 ~~(c) A court if the information in the record~~
33 ~~is necessary for a determination of an issue before the court.~~

34 ~~(B)(i) This section shall not prevent the department,~~
35 ~~prior to completion of an investigation, from:~~

36 ~~(a) Offering services;~~

1 ~~(2)(A) With respect to pending or inactive investigations, the~~
 2 ~~subject may only be advised that the investigation is pending or inactive.~~

3 ~~(B) With respect to unfounded investigations, the subject~~
 4 ~~may only be advised that a report was unfounded and of the date the~~
 5 ~~determination was made.~~

6 ~~(b)(1)(A) Following completion of the investigation, the department~~
 7 ~~shall notify each known subject of the report of the determination within~~
 8 ~~thirty (30) days after completion of the investigation.~~

9 ~~(ii) In cases of unfounded self neglect, no~~
 10 ~~notification to the subject of the report is required.~~

11 ~~(B) If the report is determined to be founded,~~
 12 ~~notification shall be by hand delivery or by certified mail, restricted~~
 13 ~~delivery.~~

14 ~~(2) Such notification shall include the following:~~

15 ~~(A) The investigative determination, exclusive of the~~
 16 ~~source of the notification;~~

17 ~~(B) A statement that a subject of a founded report may~~
 18 ~~request an administrative hearing;~~

19 ~~(C) A statement that such request must be made to the~~
 20 ~~department within thirty (30) days of receipt of the notice of determination;~~
 21 ~~and~~

22 ~~(D) The name of the person making notification, his~~
 23 ~~occupation, and where he can be reached.~~

24 ~~(e) The administrative hearing process must be completed within one~~
 25 ~~hundred eighty (180) days from the date of the receipt of the request for a~~
 26 ~~hearing unless the person appealing waives the time limit.~~

27 ~~(d)(1) When the department conducts such administrative hearings, the~~
 28 ~~chief counsel of the department is authorized to require the attendance of~~
 29 ~~witnesses and the production of books, records, or other documents through~~
 30 ~~the issuance of subpoenas when such testimony or information is necessary to~~
 31 ~~adequately present the position of the Department of Human Services, law~~
 32 ~~enforcement, the Attorney General's office, or the alleged offender in a~~
 33 ~~report.~~

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

36 ~~(e) No action by appeal from a determination that a report is founded~~

1 shall be brought more than two (2) years after the completion of the
2 investigation.

3
4 ~~5-28-212. Expungement of information.~~

5 Unless an investigation of a report conducted pursuant to this chapter
6 determines that a preponderance of the evidence exists of alleged abuse,
7 sexual abuse, or neglect of an endangered adult, all information identifying
8 the subject of the report shall be expunged from the central registry one (1)
9 year after the report was filed with the Department of Human Services.

10
11 SECTION 11. Arkansas Code § 5-28-213. is amended to read as follows:

12 5-28-213. Availability of founded reports of adult ~~abuse~~ maltreatment.

13 (a) Reports made pursuant to this chapter which are determined to be
14 founded, as well as any other information obtained, and reports written or
15 photographs taken concerning founded reports in the possession of the
16 Department of Human Services shall be confidential and shall be made
17 available only to:

18 (1) A physician who has before him an endangered or impaired
19 adult whom he reasonably believes may have been ~~abused, sexually abused,~~
20 exploited, or neglected maltreated;

21 (2) A person authorized to place the adult in protective custody
22 when such a person has before him an adult whom he reasonably believes may
23 have been ~~abused, sexually abused, exploited, or neglected~~ maltreated, and
24 the person requires the information to determine whether to place the adult
25 in protective custody;

26 (3) An authorized agency having responsibility for the care or
27 supervision of an endangered or impaired adult;

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

29 (5) A grand jury or court, where it determines that such
30 information is necessary for the determination of an issue before the grand
31 jury or court;

32 (6)(A) A prosecuting attorney, law enforcement official, or
33 coroner ~~conducting a criminal investigation or investigating a death~~; or

34 (B) The Attorney General or his designated investigator
35 ~~when conducting an investigation of abuse, exploitation, or neglect~~;

36 (7)(A) A mandated reporter who has made a report of suspected

1 ~~abuse, neglect, or exploitation~~ maltreatment, only to the extent that he or
2 she may be informed after completion and closure of the investigation whether
3 legal action was taken, services were provided, or no action was taken.

4 (B) No further information shall be released and the
5 person shall be informed of the confidentiality of the information and the
6 penalties for disclosure; ~~and~~

7 (8)(A) ~~Agencies employing personal care assistants~~ Employers or
8 volunteer agencies for purposes of screening employees, applicants, or
9 volunteers upon submission of a signed, notarized release from the employee,
10 applicant, or volunteer.

11 (B) The only information released to the employer or
12 agency will be whether or not the registry contains any founded reports
13 naming the employee, applicant, or volunteer as an offender-;

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

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

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

19 (b)(1) Under no circumstances shall the information contained in the
20 statewide central registry be released unless the person's or official's
21 capacity is confirmed by the department ~~and the released information states~~
22 ~~whether or not the report is founded or unfounded.~~

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

26 (c)(1) ~~A person given access to names or other information identifying~~
27 ~~a subject of a report, except the subject of a report, shall not divulge or~~
28 ~~make public identifying information unless he or she is an agent of the~~
29 ~~department, the prosecuting attorney, or other law enforcement official and~~
30 ~~the purpose is to initiate or provide evidence in a court action.~~ The
31 department shall not release data that would identify the person who made the
32 report except to law enforcement, the prosecuting attorney, or the Office of
33 the Attorney General.

34 (2) A court of competent jurisdiction may order release of data
35 that would identify the person who made the report after the court has
36 reviewed, in camera, the record related to the report and has found that

1 disclosure is needed to prevent execution of a crime or for prosecution of a
 2 crime.

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

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

14
 15 SECTION 12. Arkansas Code Title 5, Chapter 28, Subchapter 2 is amended
 16 to add additional sections to read as follows:

17 5-28-217. Adult maltreatment hotline.

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

21 (b) The hotline shall, if possible, obtain the following information
 22 from the person making the report:

23 (1) The names, phone numbers, and addresses of the next of kin
 24 or persons responsible for care of the endangered or impaired adult, if
 25 known;

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

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

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

32 (5) Family composition;

33 (6) The source of the report;

34 (7) The person making the report;

35 (8) Whether or not any photographs, videos, or X rays exist that
 36 are probative as to the existence of maltreatment, including the location of

1 the item;

2 (9) The identity of any individual who witnessed, or may have
 3 witnessed, the event being reported, and the identity of any individuals who
 4 know, or may know, any facts concerning the event being reported; and

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

7 (c) When appropriate, a copy of the initial report shall immediately
 8 be made available to the appropriate law enforcement agency for its
 9 consideration.

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

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

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

21 (B) However, the information remains confidential until
 22 criminal charges are filed.

23 (e) An allegation of suspected adult maltreatment shall be accepted if
 24 the allegations, if true, would constitute adult maltreatment and as long as
 25 sufficient identifying information is provided to identify and locate the
 26 victim.

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

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

32 (3) Upon request from adult maltreatment investigators in other
 33 states, the department shall complete courtesy interviews with the victim,
 34 offender, or witnesses of adult maltreatment who resides in Arkansas.

35 (g) Upon registration of a hotline report of suspected adult
 36 maltreatment, the hotline shall refer the matter immediately to the

1 appropriate investigating agency.

2
3 5-28-218. Investigation by Department of Human Services.

4 The Department of Human Services shall have jurisdiction to investigate
5 all cases of suspected maltreatment of an endangered or impaired adult.

6 (1) The Department of Human Services Adult Protective Services Unit
7 shall investigate:

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

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

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

18 (3) If requested by the Department of Human Services law enforcement
19 agencies shall assist in the investigation of any case of suspected adult
20 maltreatment.

21
22 5-28-219. Investigative powers of the Department of Human Services.

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

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

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

1 investigation under this subsection.

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

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

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

12 (e)(1) If, before the investigation is completed, the department
 13 determines that the immediate removal of the maltreated adult is necessary to
 14 protect him or her from further maltreatment, the department may petition the
 15 probate division of circuit court for an order of temporary custody or may
 16 exercise a seventy-two (72) hour hold pursuant to § 5-28-301.

17 (2)(A) The department may petition the probate division of
 18 circuit court for an order of temporary custody for the purpose of having the
 19 adult evaluated, if, before the investigation is completed, the department
 20 determines that:

21 (i) The maltreated adult is in imminent danger of
 22 death or serious bodily harm;

23 (ii) Available protective services have been offered
 24 to alleviate the danger and have been refused; and

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

28 (B) The probate division of circuit court, upon good cause
 29 being shown, may issue an order for temporary custody for the purpose of
 30 having the adult evaluated.

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

33
 34 5-28-220. Rights of subject of report - Investigative determination of
 35 the department - Notice of finding - Appeal.

36 (a) Upon completion of an investigation, the department shall

1 determine that the allegations of adult maltreatment are either:

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

4 (B) All information identifying the subject of the report
 5 shall be expunged one (1) year after completion of the investigation.

6 (C)(i) If the investigation cannot be completed, the
 7 investigation shall be determined incomplete and placed in inactive status.

8 (ii) The report shall include documentation
 9 indicating the reason that the investigation could not be completed; or

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

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

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

17 (i) The person identified as the offender;

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

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

21 and

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

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

27 (2) The notification shall include the following:

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

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

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

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

1 hearing, to:

- 2 (i) The adult maltreatment central registry,
- 3 (ii) The nurse aide registry or Employment Clearance
- 4 Registry of the Office of Long Term Care, if applicable; and
- 5 (iii) Any applicable licensing authority;
- 6 (E) A statement that the offender's failure to request a
- 7 hearing in writing within thirty (30) days from the date of receipt of the
- 8 notice, will result in submission of the investigative report, including the
- 9 investigative determination, to:

- 10 (i) The adult maltreatment central registry,
- 11 (ii) The nurse aide registry or the Employment
- 12 Clearance Registry of the Office of Long Term Care, if applicable; and
- 13 (iii) Any applicable licensing authority;
- 14 (F) The consequences of waiving the right to an
- 15 administrative hearing;
- 16 (G) The consequences of a finding, by a preponderance of
- 17 the evidence, through the administrative hearing process that the
- 18 maltreatment occurred;
- 19 (H) The fact that the offender has the right to be
- 20 represented by an attorney at the offender's own expense; and
- 21 (I) The name of the person making notification, his or her
- 22 occupation, and the location at which he or she can be reached.

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

26 (2) The department shall hold the administrative hearing at a
27 reasonable place and time convenient for the offender.

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

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

34 (5) Failure to complete the hearing process in a timely fashion
35 shall not prevent the department or a court reviewing the investigative
36 determination of jurisdiction from making a final agency determination or

1 reviewing a final agency determination under the Arkansas Administrative
2 Procedure Act, § 25-15-201 et seq.

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

9 (2) Failure to obey the subpoena may be deemed a contempt,
10 punishable accordingly.

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

16 (1) The offender;

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

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

21 (4) The appropriate licensing authority;

22 (5) The adult maltreatment central registry;

23 (6) The nurse aide registry for nurse aides named as offenders
24 in investigations conducted by the Office of Long Term Care; and

25 (7) The maltreated adult.

26
27 5-28-221. Availability of pending, inactive, and unfounded reports.

28 (a)(1) Inactive reports shall be confidential and shall be made
29 available only to:

30 (A) The Department of Human Services;

31 (B) Law enforcement agencies;

32 (C) Prosecutors;

33 (D) The Office of the Attorney General; and

34 (E) Any licensing or registering authority.

35 (2) The subject of the report may only be advised that a report
36 is inactive.

1 (b)(1) Pending reports shall be confidential and shall be made
2 available only to:

3 (A) The Department of Human Services, including the Death
4 Review Committee created by the director of the department;

5 (B) Law enforcement agencies;

6 (C) Prosecutors;

7 (D) The Office of the Attorney General;

8 (E) Any licensing or registering authority;

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

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

15 (H)(i) Individual federal and state senators and
16 representatives and their staff who agree not to allow any redisclosure of
17 information.

18 (ii) However, no disclosure may be made to any
19 committee or legislative body.

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

22 (c) Upon completion of the administrative hearing process, if the
23 allegation was determined to be unfounded, the investigative report shall be
24 confidential and shall be made available only to:

25 (1) The Department of Human Services, including the Death Review
26 Committee created by the director of the department;

27 (2) Law enforcement agencies;

28 (3) Prosecutors;

29 (4) The Office of the Attorney General;

30 (5) Any licensing or registering authority;

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

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

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

1 or grand jury; and

2 (9)(A) Individual federal and state senators and representatives
3 who agree not to allow any redisclosure of information.

4 (B) However, no disclosure may be made to any committee or
5 legislative body.

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