

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: S3/19/15  
**A Bill**

SENATE BILL 808

By: Senator J. Woods  
By: Representative D. Whitaker

### **For An Act To Be Entitled**

AN ACT TO AMEND THE LAW CONCERNING ADULT MALTREATMENT  
AND PROTECTED HEALTH INFORMATION OF A MALTREATED  
ADULT OR INDIVIDUAL RESIDING IN A LONG-TERM CARE  
FACILITY; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE LAW CONCERNING ADULT  
MALTREATMENT AND PROTECTED HEALTH  
INFORMATION OF A MALTREATED ADULT OR  
INDIVIDUAL RESIDING IN A LONG-TERM CARE  
FACILITY.

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

SECTION 1. Arkansas Code § 9-20-116(c)(2), concerning emergency custody of a maltreated adult, is amended to add an additional subdivision to read as follows:

(2)(A) Still exists to protect the maltreated adult.

(B) If the maltreated adult has a physical impairment but does not have a mental impairment, the court shall determine whether the maltreated adult shall remain in the custody of the Department of human Services by specifically addressing these issues:

(i) The current risk to the maltreated adult if removed from the custody of the department and returned to the home or situation from which the maltreated adult was removed;

(ii) Whether the maltreated adult has a mental



impairment and if not, inquiry of the maltreated adult whether the maltreated adult wants to remain in the custody of the department; and

(iii) If the maltreated adult does not want to remain in the custody of the department, is the request of the maltreated adult made intelligently, with full knowledge of the risk if custody is dismissed and the request is unequivocal.

SECTION 2. Arkansas Code § 9-20-121 is amended to read as follows:

9-20-121. Availability of custody and protective services records.

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials, including protected health information, compiled or gathered by the Department of Human Services regarding a maltreated adult in the custody of the department or receiving protective services from the department shall be confidential and shall not be released or otherwise made available except:

(1) To the maltreated adult;

(2) To the attorney representing the maltreated adult in a custody or protective services case when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult;

(3) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(4) To law enforcement agencies, a prosecuting attorney, or the Attorney General;

(5)(A) To any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(B) Information released under subdivision (5)(A) of this section shall be maintained as confidential;

(6) To a circuit court under this chapter;

(7) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(8) To a person or provider currently providing care or services to the adult;

(9) To a person or provider identified by the department as having services needed by the adult;

(10)(A)(i) To individual federal and state representatives and senators in their official capacity when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult.

(ii) ~~who~~ Federal and state representatives and senators shall not redisclose the information.

(B) No disclosure may be made to any committee or legislative body of any information that identifies by name or address any recipient of services; ~~and~~

(11) In the discretion of the department, ~~with family members~~ if the adult is in the custody of the department, the department may share:

(A) Information as permitted by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, when the disclosure of information is:

(i) To family, friends, or anyone else authorized by the maltreated adult;

(ii) Needed to assist with the care of the maltreated adult;

(iii) Needed to notify a person of the maltreated adult's location and general condition; and

(iv) Not objected to by the maltreated adult;

(B) Appropriate information when the maltreated adult is incapacitated when it is in the best interest of the maltreated adult;

(12) To the Office of Medicaid Inspector General; and

(13) To an individual authorized by the maltreated adult in an executed authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, or valid court order.

(b) Except for the maltreated adult, no person or agency to whom disclosure is made may disclose to any other person reports or other information obtained under this section.

(c) A disclosure of information in violation of this section shall be a Class C misdemeanor.

(d)(1) Data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services:

(A) Are confidential;

(B) Shall be sealed; and

(C) Shall not be redisclosed without a protective order.

(2) Data, records, reports, or documents released under this section are confidential and are items of evidence for which there is a reasonable expectation of privacy that the items will not be distributed to persons or institutions without a legitimate interest in the evidence.

(3) This chapter does not contain language that is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

SECTION 3. Arkansas Code § 12-12-1703(9), concerning the defined terms used in the Adult and Long-Term Care Facility Resident Maltreatment Act, is amended to read as follows:

(9)(A) "Impaired person" means a person:

(i) ~~eighteen~~ Eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation; or

(ii) Who is a long-term care facility resident and who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

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

(C) For purposes of this subchapter, a person who has a representative payee appointed for the person by the Social Security Administration or another authorized agency is presumed to be an impaired person in relation to adult maltreatment through financial exploitation;

SECTION 4. Arkansas Code § 12-12-1703, concerning the defined terms used in the Adult and Long-Term Care Facility Resident Maltreatment Act is amended to add an additional subdivision to read as follows:

(21) "Negligently" means a person's failure to exercise the degree of care that a person of ordinary prudence would have exercised in the

same circumstances.

SECTION 5. Arkansas Code § 12-12-1717(a), concerning the release of information in a founded report of adult maltreatment or long-term care facility resident maltreatment, is amended to add an additional subdivision to read as follows:

(18) The Office of Medicaid Inspector General.

SECTION 6. Arkansas Code § 12-12-1717, concerning the release of information in a founded report of adult maltreatment or long-term care facility resident maltreatment, is amended to add an additional subsection to read as follows:

(f)(1) Data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services:

(A) Are confidential;

(B) Shall be sealed; and

(C) Shall not be redisclosed without a protective order.

(2) Data, records, reports, or documents released under this section are confidential and are items of evidence for which there is a reasonable expectation of privacy that the items will not be distributed to persons or institutions without a legitimate interest in the evidence.

(3) This subchapter does not abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

SECTION 7. Arkansas Code § 12-12-1718 is amended to read as follows:  
12-12-1718. Availability of screened out, pending, and unfounded reports.

(a) A record of a screened-out report of adult maltreatment or long-term care facility resident maltreatment shall not be disclosed except to the office of the Attorney General, the prosecuting attorney, and an appropriate law enforcement agency and may be used only within the Department of Human Services for purposes of administration of the program.

(b)(1) A pending report, including protected health information, is confidential and shall be made available only to:

(A) The department, including the Death Review Committee of the Department of Human Services;

(B) A law enforcement agency;

(C) A prosecuting attorney;

(D) The office of the Attorney General;

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

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

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

(H) Any applicable licensing or registering authority;

(I) Any employer, legal entity, or board responsible for the person named as the offender;

(J) Any legal entity or board responsible for the maltreated person; and

(K) ~~{Repealed.}~~ The Office of the Medicaid Inspector General.

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

(c) Upon satisfaction of due process and if an allegation was determined to be unfounded, the investigative report, including protected health information, is confidential and shall be made available only to:

(1) The department, including the committee;

(2) A law enforcement agency;

(3) A prosecuting attorney;

(4) The office of the Attorney General;

(5) Any applicable licensing or registering authority;

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

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

(8) A grand jury or court, upon a finding that the information

in the record is necessary for the determination of an issue before the grand jury or court;

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

(10) Any employer, legal entity, or board responsible for the person named as the offender;

(11) Any legal entity or board responsible for the maltreated person; and

(12) ~~{Repealed.}~~ The Office of the Medicaid Inspector General.

(d) The department may retain automated information on unfounded reports for statistical purposes, to assess future risk, and to identify false reporting.

(e)(1) Except for the subject of the report, no person or agency to which disclosure is made may disclose to any other person or agency a report or other information obtained under this section.

(2) Upon conviction, any person disclosing information in violation of this subsection is guilty of a Class C misdemeanor.

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

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

(A) To prevent commission of a crime; or

(B) For prosecution of a crime.

(g)(1) Data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services:

(A) Are confidential;

(B) Shall be sealed; and

(C) Shall not be redisclosed without a protective order.

(2) Data, records, reports, or documents released under this section are confidential and are items of evidence for which there is a reasonable expectation of privacy that the items will not be distributed to persons or institutions without a legitimate interest in the evidence.

(3) This subchapter does not abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

*/s/J. Woods*