

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 519

By: Senator Irvin

For An Act To Be Entitled

AN ACT TO CREATE THE VULNERABLE PERSON PROTECTION ACT; TO EXPAND PROTECTION OF CERTAIN TYPES OF VULNERABLE PERSONS IN THIS STATE BY ESTABLISHING ADDITIONAL CRIMINAL PENALTIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE VULNERABLE PERSON PROTECTION ACT; AND TO EXPAND PROTECTION OF CERTAIN TYPES OF VULNERABLE PERSONS IN THIS STATE BY ESTABLISHING ADDITIONAL CRIMINAL PENALTIES.

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

SECTION 1. Arkansas Code Title 5, is amended to add an additional chapter to read as follows:

Chapter 29 – Vulnerable Persons

Subchapter 1 – [Reserved]

Subchapter 2 – Vulnerable Person Protection Act

5-29-201. Title.

This subchapter shall be known and may cited as the "Vulnerable Person Protection Act."



5-29-202. Definitions.

As used in this subchapter:

(1) "Abuses" means any act or omission that causes or is likely to cause the following to a vulnerable person:

(A) Mental anguish, physical pain, or physical injury;

(B) Unlawful sexual contact or sexual contact induced by fear of retribution or hardship;

(C) The use of a physical restraint, chemical restraint, medication, or isolation as punishment, for convenience of inpatient facility staff, or in conflict with a physician's order or treatment plan;

(D) Any threatening or menacing conduct toward a vulnerable person that results or might reasonably be expected to result in fear or emotional mental distress; or

(E) Withholding healthcare goods or services ordered or prescribed by a physician or other healthcare provider with authority to direct care or as required by the vulnerable person's current treatment plan;

(2) "Assets" means any type of personal property or real property, including without limitation funds;

(3) "Caregiver" means a person who is not a healthcare provider but has assumed the responsibility for the protection, care, or custody of a vulnerable person including without limitation a non-healthcare employee of a healthcare provider, a volunteer, a person with a power of attorney for the person, or a guardian;

(4) "Exploits" means an act or omission involving:

(A) The unlawful use or management of a vulnerable person's assets or the unlawful use of a vulnerable person's power of attorney or guardianship for the profit or advantage of the actor or another person; or

(B) The misappropriation of the assets of a vulnerable person;

(5)(A) "Healthcare provider" means a person who receives pay or other compensation to deliver or arrange for the delivery of healthcare goods or services.

(B) "Healthcare provider" includes without limitation:

(i) A physician;

(ii) A dentist;

- (iii) A physician assistant;
- (iv) A certified nurse practitioner;
- (v) A nurse;
- (vi) A certified nurse midwife;
- (vii) A clinical social worker;
- (viii) A licensed therapist;
- (ix) A licensed counselor;
- (x) A certified nursing assistant;
- (xi) A direct care staff of an inpatient facility;
- (xii) A home healthcare worker;
- (xiii) A durable medical supply provider; or
- (xi) Any enrolled Medicaid or Medicare provider;

(6)(A) "Inpatient facility" means any medical, treatment, or rehabilitation facility or part of a medical, treatment, or rehabilitation facility that provides healthcare services or treatment on a twenty-four-hour basis, other than a facility operated by the Department of Corrections.

(B) "Inpatient facility" does not include outpatient medical, treatment, or rehabilitation facilities, outpatient clinics, doctor's offices, or other medical, treatment, or rehabilitation facilities where patients do not depend on the medical, treatment, or rehabilitation facility for twenty-four (24) hour care;

(7)(A) "Misappropriation" means the unlawful temporary or permanent use of a vulnerable person's assets.

(B) "Misappropriation" includes without limitation the use of the assets for the actor's own benefit, the benefit of a person other than the vulnerable person, or in any way that is harmful to the vulnerable person;

(8) "Neglects" means an act or omission by a healthcare provider or caregiver that:

(A) Fails to provide to a vulnerable person or deprives a vulnerable person of treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services as required by a care plan, prescription label or instructions, or provider contract;

(B) Fails to report a health problem or a change in a health problem or a change in a health condition of a vulnerable person to the appropriate healthcare provider;

(C) Fails to carry out a prescribed treatment plan of a vulnerable person ; or

(D) Fails to provide to a vulnerable person or deprives a vulnerable person of a good or service necessary to avoid physical injury, mental anguish, or mental illness as defined in rules promulgated by a regulatory agency that is required to certify an inpatient facility to receive Medicaid funding;

(9) "Sexual contact" means the same as defined in § 5-14-101;
and

(10) "Vulnerable person" means any person who is:

(A) Sixty-nine (69) years of age or older; or

(B) In an inpatient facility receiving twenty-four (24) hour care.

5-29-203. Abuse of a vulnerable person.

(a) A person commits abuse of a vulnerable person if, being a healthcare provider or caregiver, he or she purposely abuses a vulnerable person under his or her care or to whom he or she has access due to his or her position as a healthcare provider or caregiver.

(b) Abuse of a vulnerable person is a:

(1) Class B felony if the abuse causes serious physical injury or a substantial risk of death to the vulnerable person;

(2) Class D felony if the abuse causes physical injury to the vulnerable person; or

(3) Class B misdemeanor if otherwise committed.

(c) It is an affirmative defense to a prosecution under this section for the use of a physical restraint or chemical restraint if the physical restraint or chemical restraint was necessary for the immediate safety of the vulnerable person, another patient, or staff in the inpatient facility.

5-29-204. Neglect of a vulnerable person.

(a) A person commits neglect of a vulnerable person if, being a healthcare provider or caregiver, he or she purposely neglects a vulnerable person under his or her care or to whom he or she has access due to his or her position as a healthcare provider or caregiver.

(b) Neglect of a vulnerable person is a:

(1) Class D felony if the neglect causes serious physical injury or a substantial risk of death to the vulnerable person;

(2) Class B misdemeanor if the neglect causes physical injury to the vulnerable person; or

(3) Class C misdemeanor if otherwise committed.

5-29-205. Exploitation of a vulnerable person.

(a) A person commits exploitation of a vulnerable person if, being a healthcare provider or caregiver, he or she exploits a vulnerable person under his or her care or to whom he or she has access due to his or her position as a healthcare provider or caregiver.

(b) Exploitation of a vulnerable person is a:

(1) Class B felony if the value of the exploited assets is two thousand five hundred dollars (\$2,500) or more;

(2) Class C felony if the value of the exploited assets is more than two hundred dollars (\$200) but less than two thousand five hundred dollars (\$2,500); or

(3) Class A misdemeanor if the value of the exploited assets is two hundred dollars (\$200) or less.