

ARKANSAS ADULT ABUSE ACT

Subchapter 1 – General Provisions

§ 5-28-101. Definitions.

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

1. "**Endangered adult**" means:

- A. An adult eighteen (18) years of age or older who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to that person and who demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or
- B. A resident eighteen (18) years of age or older of a long-term care facility which is required to be licensed under § 20-10-224 who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to such person and who demonstrates the lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(2) "**Abuse**" means:

- A. Any intentional and unnecessary physical act which inflicts pain on or causes injury to an endangered or impaired adult, including sexual abuse; or
- B. Any intentional or demeaning act which subjects an endangered or impaired adult to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(3) "**Neglect**" means:

- A. Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult;
- B. Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered or impaired adult to the appropriate medical personnel; or
- C. Negligently failing to carry out a prescribed treatment plan;

(4) "**Exploitation**" means the illegal use or management of an endangered or impaired adult's funds, assets, or property, or the use of an endangered or impaired adult's power of attorney or guardianship or person for the profit or advantage of himself or another;

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

(6)(A) "**Physical injury**" means the impairment of physical condition or the infliction of substantial pain.

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

(7) "**Serious physical injury**" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(8)(A) "**Imminent danger to health or safety**" means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

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

(9)(A) "Protective services" means services to protect the endangered adult from himself and others.

(B) Protective services shall include, but not be limited to, evaluation of the need for services, arrangements for appropriate services, assistance in obtaining financial benefits to which the person is entitled, or securing medical and legal services.

(C) In situations where exploitation, prevention of injury, and protection of the person and his property are at issue, protective services shall include seeking the appointment of a guardian or seeking protective custody;

(10)(A) "**Department**" means the Department of Human Services.

(B) The director of the department may assign responsibilities for administering the various duties imposed upon the department under this chapter to respective divisions of the department which, in his opinion, are best able to render service or administer the provisions of this chapter; and

(11) "Impaired adult" means an adult eighteen (18) years or older who suffers from mental or physical disease or defect and as a consequence thereof is unable to protect himself from abuse, neglect, or exploitation.

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

History. Acts 1983, No. 452, § 1; A.S.A. 1947, § 59-1301; Acts 1988 (4th Ex. Sess.), No. 5, § 1; 1988 (4th Ex. Sess.), No. 15, § 1; 1993, No. 1292, § 1; 1995, No. 1338, § 2; 1997, No. 1034, § 1.

§ 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.
- 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.

History. Acts 1983, No. 452, § 2; A.S.A. 1947, § 59-1302; Acts 1995, No. 1338, § 2.

§ 5-28-103. Criminal penalties for adult abuse.

(a) It shall be unlawful for any person or caregiver to abuse, neglect, or exploit any person subject to protection under the provisions of this chapter.

(b)(1) Any person or caregiver who purposely abuses an endangered or impaired adult in violation of the provisions of this chapter, if the abuse causes serious physical injury or substantial risk of death, shall be guilty of a Class B felony and shall be punished as provided by law.

(2) Any person or caregiver who purposely abuses an endangered or impaired adult in violation of the provisions of this chapter, if such abuse causes physical injury, shall be guilty of a Class D felony and shall be punished as provided by law.

(c)(1) Any person or caregiver who neglects an endangered or impaired adult in violation of the provisions of this chapter, causing serious physical injury or substantial risk of death, shall be guilty of a Class D felony and shall be punished as provided by law.

(2) Any person or caregiver who neglects an endangered or impaired adult in violation of the provisions of this chapter, causing physical injury, shall be guilty of a Class B misdemeanor and shall be punished as provided by law.

(d) Any person or caregiver who abuses an endangered or impaired adult shall be guilty of a Class B misdemeanor and shall be punished as provided by law.

(e)(1) Any person or caregiver who exploits a person in violation of the provisions of this chapter shall be guilty of a Class B felony and shall be punished as provided by law, where the value of the property, assets, or resources is two thousand five hundred dollars (\$2,500) or more.

(2) Any person or caregiver who exploits a person in violation of the provisions of this chapter shall be guilty of a Class C felony and shall be punished as provided by law, where the value of the property, assets, or resources is less than two thousand five hundred dollars (\$2,500), but more than two hundred dollars (\$200).

(3) Any person or caregiver who exploits a person in violation of the provisions of this chapter shall be guilty of a Class A misdemeanor and shall be punished as provided by

law, where the value of the property, assets, or resources is two hundred dollars (\$200) or less.

History. Acts 1983, No. 452, § 3; A.S.A. 1947, § 59-1303; Acts 1993, No. 1292, § 2; 1995, No. 1338, § 2.

§ 5-28-104. Privilege not grounds for exclusion of evidence.

Any privilege between husband and wife or between any professional person, except lawyer and client, including, but not limited to, physicians, members of the clergy, counselors, hospitals, clinics, rest homes, nursing homes, and their clients, shall not constitute grounds for excluding evidence at any proceedings regarding adult abuse, sexual abuse, or neglect of an endangered or impaired adult, or the cause thereof.

History. Acts 1983, No. 452, § 12; A.S.A. 1947, § 59-1312; Acts 1995, No. 1338, § 2.

§ 5-28-105. Spiritual treatment alone not abusive.

Nothing in this chapter shall be construed to imply that a reported endangered or impaired adult, who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof, is for this reason alone an endangered, abused, neglected, maltreated, or exploited person.

History. Acts 1983, No. 452, § 4; A.S.A. 1947, § 59-1304; Acts 1995, No. 1338, § 2.

§ 5-28-106. Civil penalties.

(a)(1) The State of Arkansas and the Attorney General may institute a civil action against any long-term care facility caregiver necessary to enforce any provision of this chapter.

(2) Notwithstanding any criminal penalties assessed under this chapter, any caregiver against whom any civil judgment is entered as the result of a civil action brought or threatened to be brought by the State of Arkansas through the Attorney General on a complaint alleging that caregiver to have abused, neglected, or exploited an endangered or impaired adult in a long-term care facility required to be licensed under § 20-10-224 shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each violation judicially found to have occurred.

(b) In any action brought pursuant to this section, the State of Arkansas shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(c) Any penalty shall be paid into the Treasury of the State of Arkansas and credited to the General Revenue Fund Account of the State Apportionment Fund.

(d) Any caregiver against whom any civil judgment is entered as the result of a civil action brought or threatened to be brought under this section by the State of Arkansas

through the Attorney General shall be required to pay to the Attorney General all reasonable expenses which the court determines have been necessarily incurred in the enforcement of this chapter.

History. Acts 1993, No. 1292, § 3; 1995, No. 1338, § 2.

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

(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.

History. Acts 1993, No. 1292, § 3; 1995, No. 1338, § 2.

§ 5-28-108. Special deputy prosecutor.

(a) An attorney employed in the office of the Attorney General may be designated a special deputy prosecutor, by the prosecuting attorney having criminal jurisdiction in the matter, for the purposes of prosecuting in a court of competent jurisdiction actions brought under this chapter or other actions for the physical or mental abuse or exploitation of residents of long-term care facilities.

(b)(1) As a special deputy prosecutor, such attorney shall have the power to issue subpoenas and to administer oaths as provided in § 25-16-705

(2) The subpoena shall be substantially in the form set forth in § 25-16-705(b)

(c) A special deputy prosecutor appointed and functioning as authorized under this section shall be entitled to the same immunity granted by law to the prosecuting attorney.

(d)(1) Appointment as a special deputy prosecutor shall not enable such attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(2) Expenses of the special prosecutor and any fees and costs incurred thereby in the prosecution of cases as herein provided shall be the responsibility of the Attorney General.

(e) The prosecuting attorney may revoke the appointment of a special prosecutor at any time.

History. Acts 1995, No. 894, § 1.

Subchapter 2 – Reporting

§ 5-28-201. Central registry.

(a) Pursuant to this chapter, there shall be established within the department a statewide central registry for abuse, neglect, and exploitation.

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

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1993, No. 1292, § 4; 1995, No. 1338, § 2.

§ 5-28-202. Penalties for failure to report abuse.

(a) Any person or caregiver required by this chapter to report a case of suspected abuse, neglect, or exploitation who purposely fails to do so shall be guilty of a Class B misdemeanor and shall be punished as provided by law.

(b) Any person or caregiver required by this chapter to report a case of suspected abuse, neglect, or exploitation who purposely fails to do so shall be civilly liable for damages proximately caused by the failure.

History. Acts 1983, No. 452, § 13; A.S.A. 1947, § 59-1313; Acts 1993, No. 1292, § 5; 1995, No. 1338, § 2.

§ 5-28-203. Persons required to report abuse.

(a)(1) Whenever any physician, surgeon, coroner, dentist, osteopath, resident intern, registered nurse, hospital personnel who are engaged in the administration, examination, care, or treatment of persons, social worker, case manager, case worker, mental health professional, peace officer, law enforcement officer, facility administrator, employee in a facility, or employee of the Department of Human Services has reasonable cause to suspect that an adult has been subjected to conditions or circumstances which would reasonably result in abuse, neglect, or exploitation, as defined in this chapter, he shall immediately report or cause a report to be made in accordance with the provisions of this section.

(2) Whenever a person is required to report under this chapter in his capacity as a member of the staff, an employee in a facility, or an employee of the Department of Human Services, he shall immediately notify the person in charge of the institution, facility, or agency, or his designated agent, who shall then become responsible for making a report or cause a report to be made.

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

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

(2) A report for abused or neglected adults residing in a long-term care facility shall be made immediately to the local law enforcement agency for the jurisdiction in which the facility is located, and to the Office of Long-Term Care of the Division of Economic and Medical Services of the Department of Human Services pursuant to regulations of that office.

(3) The Office of Long-Term Care shall notify the central registry and the office of the Attorney General.

History. Acts 1983, No. 452, § 5; A.S.A. 1947, § 59-1305; Acts 1988 (4th Ex. Sess.), No. 5, § 2; 1988 (4th Ex. Sess.), No. 15, § 2; 1993, No. 1292, § 6; 1995, No. 1296, § 4; 1995, No. 1338, § 2.

§ 5-28-204. Report of death caused by abuse.

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

(b) The medical examiner or coroner shall accept the report for investigation and shall report his findings to the police, the appropriate prosecuting attorney, and, if the institution making the report is a hospital, to the hospital.

History. Acts 1983, No. 452, § 6; A.S.A. 1947, § 59-1306; Acts 1995, No. 1338, § 2.

§ 5-28-205. Photographs and X rays.

(a) Any person who is required to report cases of adult abuse, sexual abuse, or negligence may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the adult and, if medically indicated, cause to be performed radiological examination of the adult.

(b) Whenever a person is required to report under this chapter in his capacity as a member of the staff of any private or public institution or agency, he shall immediately notify the person in charge of the institution or agency or his designated delegate, who shall then take or cause to be taken, at public expense, color photographs of physical trauma and shall, if medically indicated, cause to be performed radiological examination of the adult.

(c) Any photographs or X rays taken shall be sent to the department as soon as possible.

History. Acts 1983, No. 452, § 7; A.S.A. 1947, § 59-1307; Acts 1995, No. 1338, § 2.

§ 5-28-206. Reporting procedures generally.

(a) A report of abuse, sexual abuse, or negligence of an abused or neglected adult may,

pursuant to this chapter, be made by telephone and shall be followed by a written report within forty-eight (48) hours, if so requested by the receiving agency.

(b) The receiving agency shall immediately forward a copy of the report to the statewide central registry on forms supplied by the registry.

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

History. Acts 1983, No. 452, § 9; A.S.A. 1947, § 59-1309; Acts 1995, No. 1338, § 2.

§ 5-28-207 Contents of central registry.

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

- (1) Information in the written report;
- (2) Records of final disposition of the report, including services offered and services accepted;
- (3) The plan for rehabilitation treatment;
- (4) The names and identifying data, dates, and circumstances of persons requesting or receiving information from the registry; and
- (5) Any other information which might be helpful in furthering the purposes of this chapter.

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1995, No. 1338, § 2.

§ 5-28-208. Telephone reporting – Determination of prior records.

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

(b) The oral telephone report shall immediately be transmitted by the central registry to the local adult protective services agency.

(c) If the records indicate a previous report concerning the subject of the report or other pertinent information, the appropriate local protective agency shall be notified of these facts.

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1995, No. 1338, § 2.

§ 5-28-209. Contents of report.

Reports shall include the following information:

- (1) The names and addresses of the next of kin or persons responsible for care, if known;
- (2) The person's age, sex, and race;
- (3) The nature and extent of the injury, sexual abuse, or negligence, including any

- evidence of previous injury, sexual abuse, or negligence to the person;
- (4) The names and addresses of the persons responsible for the injury, sexual abuse, or negligence, if known;
 - (5) Family composition;
 - (6) The source of the report;
 - (7) The person making the report;
 - (8) His reporting source, including the taking of photographs and x rays, removal or keeping of the person of the abused adult, or notifying the coroner or medical examiner; and
 - (9) Other information that the person making the report believes may be helpful in the furtherance of the purposes of this chapter.

History. Acts 1983, No. 452, § 9; A.S.A. 1947, § 59-1309; Acts 1995, No. 1338, § 2.

§ 5-28-210. Investigation.

(a)(1) In cases involving an endangered adult residing in a long-term care facility certified pursuant to Title XIX of the Social Security Act, the local law enforcement agency or the office of the Attorney General shall make a thorough investigation.

(2) In all other cases involving endangered adults, the department shall make a thorough investigation

(b) The primary purpose of such investigation is to protect the abused adult.

(c) The investigation shall include:

(1) The nature, extent, and cause of the abuse, sexual abuse, or negligence of the endangered adult;

(2) The identity of the person responsible;

(3) The names and conditions of other adults in the home;

(4) The evaluation of the persons responsible for the care of the abused adult, if any;

(5) The home environment and relationship of the adult to the next of kin or other person responsible for his care, and all other pertinent data; and

(6)(A) A visit to the abused adult's home and an interview with the abused adult. The investigators shall interview the abused adult alone and out of hearing of any next of kin or other persons responsible for his care. An interpreter may be present during the interview of the abused adult, if necessary.

(B) If the admission to the home, institution, or other place that the abused adult may be, or permission of the next of kin or other person responsible for the adult or in charge of any place where the abused adult may be, cannot be obtained, then the probate court, upon cause shown, shall order the next of kin or person responsible and in charge of any place where the abused adult may be to allow entrance for the examination and investigation.

(d) The investigation may include a medical, psychological, social, vocational, financial, and educational evaluation and review, where necessary. The medical, mental health, or other records regarding the abused adult maintained by any facility whose administrator is required by § 5-28-203 to report suspected abuse, neglect, or exploitation or maintained by any person required by § 5-28-203 to report suspected

abuse, neglect, or exploitation shall be made available to the department for the purposes of conducting an evaluation or review under this subsection.

(e)(1)(A) If, before the investigation is completed, the opinion of the investigators is that the immediate removal of the endangered adult is necessary to protect him from further abuse or neglect, the investigators may petition the probate court for an order of temporary protective custody. The probate court, upon good cause being shown, may issue an order for temporary protective custody in the manner and procedures provided in § 5-28-303.

(B) If, before the investigation is completed, the opinion of the investigators is that the abused or neglected adult is in imminent danger, that services have been offered to alleviate the danger and have been refused, and the abused or neglected adult's capacity to comprehend the nature and consequences of remaining in the situation or condition cannot be adequately assessed in the home, the investigators may petition the probate court for an order of temporary protective custody for the purpose of having the adult evaluated. The probate court, upon good cause being shown, may issue an order for temporary custody for the purpose of having the adult evaluated. The petition shall be filed and the order issued in the manner and procedures provided in § 5-28-303.

(2) The investigative reports of the department shall be made available to the probate court upon request.

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

History. Acts 1983, No. 452, § 10; A.S.A. 1947, § 59-1310; Acts 1988 (4th Ex. Sess.), No. 5, § 3; 1988 (4th Ex. Sess.), No. 15, § 3; 1993, No. 401, § 2; 1993, No. 1292, § 7; 1995, No. 1338, § 2; 1997, No. 1033, § 1; 1997, No. 1034, § 2.

§ 5-28-211. Rights of subject of report.

(a) At any time, the subject of a report may receive, upon request, a report of all information contained in the central registry. However, the director of the department or his authorized agent is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation if the director reasonably finds the data to be detrimental to the interest or safety of the person.

(b)(1) At any time subsequent to the completion of the investigation, but in no event later than ninety (90) days after the receipt of a report, a subject of the report may request the director of the department to amend, seal, or expunge the record of the report.

(2) If the director refuses or does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.

(3) The burden, in such a hearing, shall be on the department and appropriate adult protective services.

(4) Notice shall be given to all parties concerned, and in the hearings the fact that there was a finding of adult abuse, sexual abuse, or negligence shall be presumptive evidence that the report was substantiated.

(c)(1) Written notice of any amendment or expungement made pursuant to the provisions of this chapter shall be served on each subject of such report and to the appropriate local adult protective service.

(2) The latter, upon receipt of this notice, shall take similar action regarding any central registry for adult abuse, sexual abuse, or negligence.

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1995, No. 1338, § 2.

§ 5-28-212. Expungement of information.

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

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1995, No. 616, § 1; 1995, No. 1338, § 2.

§ 5-28-213. Availability of reports of adult abuse.

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

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

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

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

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

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

(6) A prosecuting attorney, law enforcement official, or coroner conducting a criminal investigation or investigating a death or the Attorney General when conducting an investigation of abuse or neglect;

(7) A person who has made a report of suspected abuse, neglect, or exploitation only to the extent that he may be informed after completion and closure of the investigation whether legal action was taken, services were provided, or no action was taken. No

further information shall be released and the person shall be informed of the confidentiality of the information and the penalties for disclosure.

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

(c) A person given access to names or other information identifying a subject of the report, except the subject of a report, shall not divulge or make public identifying information unless he is the prosecuting attorney or other law enforcement official and the purpose is to initiate court action.

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

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

History. Acts 1983, No. 452, § 14; A.S.A. 1947, § 59-1314; Acts 1995, No. 1338, § 2; 1997, No. 1034, § 3.

§ 5-28-214. Reports as evidence

A written report from persons or officials required by this chapter to report shall be admissible in evidence in any proceeding relating to adult abuse, sexual abuse, or negligence.

History. Acts 1983, No. 452, § 9; A.S.A. 1947, § 59-1309; Acts 1995, No. 1338, § 2.

§ 5-28-215. Immunity for investigation participants.

(a) Any person, official, or institution participating in good faith in the making of a report, the taking of photographs, or the removal of an abused adult pursuant to this chapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of such actions.

(b) The good faith of any person required to report cases of adult abuse, sexual abuse, or neglect shall be presumed.

History. Acts 1983, No. 452, § 11; A.S.A. 1947, § 59-1311; Acts 1991, No. 542, § 1; 1995, No. 1338, § 2.

Subchapter 3 – Protective Placement and Custody

§ 5-28-301. Emergency custody.

(a)(1) The department or a law enforcement official, may take an endangered adult into emergency protective custody, or any person in charge of a hospital or similar institution or any physician treating any such adult may keep that adult in his custody, whether or not medical treatment is required, if the circumstances or condition of the adult are such that continuing at his place of residence or in the care or custody of a parent, guardian, or other person responsible for the adult's care presents imminent danger to that adult's health or safety and the adult lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents imminent danger to his health or safety.

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

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

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

History. Acts 1983, No. 452, § 8; A.S.A. 1947, § 59-1308; Acts 1993, No. 401, § 3; 1995, No. 1338, § 2; 1997, No. 1034, § 4.

§ 5-28-302. Voluntary placement.

(a) Any person may request voluntary protective placement under this chapter.

(b) No civil rights are relinquished as a result of such placement.

History. Acts 1983, No. 452, § 8; A.S.A. 1947, § 59-1308; Acts 1995, No. 1338, § 2.

§ 5-28-303. Temporary custody.

(a) The Department may file a petition requesting the probate court to find that there is probable cause to place an endangered adult in temporary custody for a period of up to fourteen (14) days.

(b) During the period the endangered adult is in temporary custody the court may order the department to obtain medical treatment or physical or psychological evaluations, or investigate the endangered adult's financial affairs, or simply order a hearing for long-term protective custody be held within fourteen (14) days.

History. Acts 1983, No. 452, § 8; A.S.A. 1947, § 59-1308; Acts 1995, No. 1338, § 2.

§ 5-28-304. Long-term custody - Notice.

(a)(1) The department may file a petition requesting that an endangered adult be placed in the department's long-term protective custody.

(2) The petition requesting long-term protective custody may be combined with the petition requesting temporary protective custody.

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

(c) Upon service of the notice, the respondent will be given notice of the long-term hearing, a copy of the petition, and a copy of the order for the hearing.

(d) In addition, the respondent will be advised of the following rights:

(1) The right to effective assistance of counsel;

(2) The right to be present at the hearing;

(3) The right to present evidence on his own behalf;

(4) The right to cross-examine witnesses who testify against him;

(5) The right to present witnesses in his own behalf;

(6) The right to remain silent; and

(7) The right to view and copy all petitions, reports, and documents retained in the court file.

(e) The persons serving the notice shall return the certificate of notice to the probate court verifying that the petition and copy of rights have been delivered and notice given.

(f) Additionally, notice shall be given to:

(1) The legal counsel;

(2) The next of kin whose names and addresses are known to the petitioner;

(3) The person having physical custody of the respondent;

(4) Any person named in the petition;

(5) The department of any governmental agency or private group from whom the respondent is known to be receiving aid; and

(6) Such other persons or entities as the court may require.

(g) The probate clerk shall not charge or collect a filing fee from the department when it files a petition for temporary or long-term protective custody.

History. Acts 1983, No. 452, § 8; A.S.A. 1947, § 59-1308; Acts 1995, No. 1338, § 2; 1997, No. 1034, § 5.

§ 5-28-305. Contents of petition.

The petition shall set forth the following:

(1) The name, address, and date of birth of the endangered adult;

(2) The endangered adult's current location;

(3) The name and address of the endangered adult's closest adult relative, if known;

(4) The facts which, if proven, cause the person to be an endangered adult. The facts

may be set out in an affidavit attached to the petition and incorporated therein; and
(5) The relief requested by the petitioner.

History. Acts 1995, No. 1338, § 2.

§ 5-28-306. Long-term custody - Hearing - Placement - Appeal.

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

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

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

(1) The court shall make a finding in connection with the determination of the least drastic alternative to be considered proper under the circumstances, including the finding for noninstitutional care wherever possible.

(2) Where there are services available to remedy the imminent danger to the endangered adult, the court may order the endangered adult or the caregiver for the adult to accept the services in lieu of placing the endangered adult in protective custody.

(c) In the order, the court shall specify:

(1) The placement or care plan to be followed;

(2) The reason for the placement or care to be given;

(3) The scope and duration of the order;

(4) That the department periodically review the case every six (6) months, or more frequently if warranted;

(5) That the department monitor the services being received in lieu of protective custody as often as is necessary to prevent the recurrence of the danger; and

(6) The requirement of judicial court review of the case, either formal or informal as determined by the court, at least once a year.

(d) No long-term protective custody may be ordered unless there is a determination by the court that:

(1) The person is lacking the capacity to comprehend the nature and consequence of remaining in a situation that presents an imminent danger to his health or safety;

(2) The individual is unable to provide for his own protection from abuse or neglect; or

(3) The court finds clear and convincing evidence that the individual to be placed is in need of placement as provided in this chapter.

(e) Placement may be in such facilities as nursing homes, boarding homes, medical institutions, foster care services, or other facilities that provide either medical or personal supervision.

(f) Placement under this section does not replace commitment of a person in need of acute psychiatric treatment.

(g) Any person aggrieved by any order for long-term protective custody may appeal to a court of competent jurisdiction in the manner and procedures now provided by law.

History. Acts 1983, No. 452, § 8; A.S.A. 1947, § 59-1308; Acts 1995, No. 1338, § 2; 1997, No. 1034, § 6.