



# **Adult Protective Services**

**Report to the  
Arkansas Public Health, Welfare & Labor  
Committee**

**September 14, 2006**



# **Adult Protective Services Report to the Arkansas Public Health, Welfare & Labor Committee**

## **Executive Summary**

Abuse, neglect and exploitation of older Americans is a national problem with as many as 5,000,000 victims a year.

Following the death of a client referred to DHHS Adult Protective Services (APS) unit, in conjunction with the Public Health Committee, a group was established to review the assessment/protocols, staffing standards, community education, and laws governing adult maltreatment. The Task Force Members worked diligently to examine current processes and protocols of the Adult Protective Services, reviewed the current laws on Adult Maltreatment, and reviewed the Adult Protective Services staff structure and how it compared to other states. After 5 months of full task force meetings and work group meetings, the APS Task Force developed the following recommendations.

**Amend the Adult and Long-Term Care Facility Resident Maltreatment Act and Adult Maltreatment Custody Act** to give Adult Protective Services (APS) greater authority to act. The current law requires that a case referred to APS “poses an imminent risk of death or serious bodily harm.” Proposed legislation would change that to “poses a danger to himself or herself.” Other proposed revisions give increased powers for APS workers to evaluate individuals for emergency medical/psychological assessments. Seven new groups are added as mandatory reporters.

**Implement a comprehensive assessment tool.** The new instrument will more thoroughly document the condition of the individual, and will also allow the worker to establish a rapport with the victim.

**Improve after hours, weekend and holiday coverage.** There is only one worker on call for after hours, nights and weekends to cover the entire state. Eight workers are recommended with support from Area Agencies on Aging and Home Health Agencies.

**Increase FTE positions in APS from the current 28 workers to 69.** Currently there are only 20 field workers to cover Arkansas’ 75 counties. Current staff does not have adequate time to make multiple visits to alleged victims homes, talk to knowledgeable parties, track down relatives, work with local social service agencies and perform other tasks necessary to properly investigate and resolve cases of abuse, neglect and exploitation. Compared to other states Arkansas APS staffing is anemic.

**Increase Community Education to protect vulnerable citizens.** There are literally hundreds of independent law enforcement authorities, Sheriffs, City Police Departments and in some cases Constables that should inter act with APS. Additionally, there are other partners in the community who provide services or have relationships with aging citizens. All these entities, mandatory reporters and the public need to be aware of APS—its ability to protect citizens and its limitations to protect individual freedoms.

## **Adult Protective Services Taskforce**

The Task Force Members are to be commended for their dedication and work to product this report. The Task Force Members are:

**Representative Shirley Borhauer**  
**Representative Horace Hardwick**  
**Representative Sandra Prater**  
**Senator Mary Anne Salmon**  
**Senator Barbra Horn**  
**Delbra Caradine, MD, UAMS**  
**Elizabeth Andreoli, Arkansas Health Association**  
**John Baureis, Attorney General's Office**  
**Dr. Sue Griffin, UAMS, Alzheimer's Research**  
**Mike Feehan, Health and Welfare Attorney**  
**Lisa McGee, DHHS Office of Chief Counsel**  
**Judge Van Smith, Pulaski County**  
**Lloyd Warford, Pulaski County Public Defender**  
**Dr. A.J. Zolton, Psychologist, St. Vincent Hospital**  
**Raymond Vining, United Methodist Minister**  
**Rita Nunn Jones, Veterans Administration Social Worker**  
**Carole Cromer, DHHS Division of Developmental Disabilities**  
**Dorothy Plumb, Arkansas State Police**  
**Candace Greenlee, UALR Senior Justice Institute**  
**Dr. David Montague, UALR Senior Justice Institute**  
**Phyllis Gouin, White River Area Agency on Aging**  
**Lynn Pence, Center for Arkansas Legal Services**  
**Ivy Renfro, UALR Senior Justice Institute**  
**Phyllis Watkins, Alzheimer's Arkansas**  
**Herb Sanderson, DHHS Division of Aging and Adult Services**  
**Connie Parker, DHHS Division of Aging and Adult Services**  
**Joe Adams, DHHS Division of Aging and Adult Services**  
**Carolyn Singleton, DHHS Division of Aging and Adult Services**

# **Adult Protective Services Report to the Arkansas Public Health, Welfare & Labor Committee**

Abuse, neglect and exploitation of older Americans is a national problem with perhaps as many as 5,000,000 victims a year. Last year over 3,300 referrals were made to the Arkansas Adult Protective Services Hotline **1-800-482-8049**. We anticipate that referrals will increase as the aging population increases. The U.S. Bureau of Census, Population Division states that “the population of Arkansas’s population classified as elderly is expected to increase to 23.9% in 2025, and is projected to be the 5<sup>th</sup> highest state in proportion of elderly by 2025.

Following the death of a client referred to DHHS Adult Protective Services (APS) unit, in conjunction with the Public Health Committee, a group was established to review the assessment/protocols, staffing standards, community education, and laws governing adult maltreatment. The Task Force Members worked diligently to examine current processes and protocols of the Adult Protective Services, reviewed the current laws on Adult Maltreatment, and reviewed the Adult Protective Services staff structure and how it compared to other states. After 5 months of full task force meetings and work group meetings, the APS Task Force developed the following recommendations.

Increase FTE positions in APS from the current 28 workers to 69. Currently there are only 20 field workers to cover Arkansas’ 75 counties. There is only one worker on call for after hours, nights and weekends. Current staff does not have adequate time to make multiple visits to alleged victims homes, talk to knowledgeable parties, track down relatives, work with local social service agencies and perform other tasks necessary to properly investigate and resolve cases of abuse, neglect and exploitation. Compared to other states Arkansas APS staffing is anemic. Even after adding 38 new workers Arkansas’ APS staff will lag behind other states. For example, if Arkansas had the same ratio of APS workers as Oklahoma, the Arkansas APS staff would total 107. If Arkansas used the same ratio as Missouri, staffing would total 120. Increased staffing is necessary to appropriately respond to current referrals, increase night and weekend coverage and to staff up for the increased referrals we anticipate due to proposed changes in the law and the proposed community education plan, and increases in the aging population. See Attachment 1 and Attachment 2.

An increase in FTE positions provides a foundation for providing improved on call services. Currently APS has one worker on-call after hours, weekends and holidays, which is in effect next to nothing. The proposed staffing would provide for 8 workers to be on call after hours, weekends and holidays. The On Call procedures provide levels of on call support based on the situation, ranging from technical assistance via telephone intervention to physical intervention by the APS worker on call. See Attachment 3.

Procure and use PC tablets for real time assessment entry to save time for workers. The PC tablet will allow the worker to enter assessment information during the interview process. Additionally, the assessment information will be up loaded to the APS data base when the worker returns to the work station.

Implement the use of comprehensive assessment tool. The assessment instrument is dramatically improved and comprehensive. It is 14 pages compared to the 3-page assessment document now in use. The new instrument will more thoroughly document the condition of the individual, and will also allow the worker to establish a rapport with him/her. See Attachment 4.

Revised language is proposed to the Adult and Long-Term Care Facility Resident Maltreatment Act and Adult Maltreatment Custody Act. The current law requires that a case referred to APS “poses an imminent risk of death or serious bodily harm” to the alleged victim before APS can act. The proposed legislation would change that to “poses a danger to himself or herself.” This will allow APS to take action where it cannot under the existing statute. Other proposed revisions give increased powers for APS workers to evaluate individuals for emergency medical/psychological assessments. Seven new groups are added as mandatory reporters which include clergy, code enforcement personnel, and employees or volunteers who enter the home or has contact with the elderly. See Attachment 5 (Adult and Long-Term Care Facility Resident Maltreatment Act and proposed revisions to it) and Attachment 6 (Adult Maltreatment Custody Act and proposed revisions to it).

Community Education is key to protecting our vulnerable citizens. APS works integrally with local law enforcement. There are literally hundreds of independent law enforcement authorities, Sheriffs, City Police Departments and in some cases Constables. Each of these offices needs periodic training. Additionally, there are other partners in the community who provide services or have relationships with aging citizens. Community Education will be geared to the specific audience. As Community Education will increase the number of referrals APS receives, it is important to have the capacity to respond. Consequently, the Community Education Plan is a phased in approach. See Attachment 7.

## **ATTACHMENTS**

Attachment 1	Adult Protective Services Staffing
Attachment 2	Proposed FTE Increase
Attachment 3	On Call Protocol
Attachment 4	Comprehensive Assessment Tool
Attachment 5	Adult and Long Term Care Facility Resident Maltreatment Act and proposed revisions
Attachment 6	Adult Maltreatment Custody Act and proposed revisions
Attachment 7	Community Education Plan

**Attachment 1: Adult Protective Services Staffing**

State	Population	Population Per 100,000	APS Field Staff	Ratio Per 100,000	Staff if Pop = AR	Avg w/o AR	Avg w/o High/Low
Arkansas	2,673,400	27	21	0.79	21.21		
Alabama	4,447,100	44	102	2.29	61.93	2.29	2.29
Florida	12,937,926	129	259	2.00	54.05	2.00	2.00
Missouri	5,117,073	51	227	4.44	119.78	4.44	
Oklahoma	3,405,565	34	136	3.99	107.82	3.99	3.99
South Carolina	4,012,012	40	150	3.74	100.95	3.74	3.74
Tennessee	4,877,185	49	93	1.91	51.48	1.91	1.91
Texas	16,986,510	170	618	3.64	98.23	3.64	3.64
<b>Average Staff</b>						<b>3.14</b>	<b>2.93</b>

	Low	High	Avg w/o AR	Avg w/o High/Low
	1.91	4.44	3.14	2.93
<b>Arkansas 21</b>	93	119.88	84.78	79.11

## Attachment 2 - Proposed FTE increase

<b>Current Staff</b>	<b>Grade</b>	<b># of Staff</b>
DHS Program Administrator	23	1
Office on Aging Supervisor	21	2
Family Service Worker Specialist	20	1
Social Service Worker III	18	8
Family Service Worker	19	12
Administrative Assistant II	17	2
Administrative Assistant I	15	1
<b>Total</b>		<b>27</b>
<b>Yr 1 Phase In</b>		
Assistant Chief Program Administrator	25	1
Area Manager	24	2
Field Manager	22	2
Field Manager (Custody Coordinator)	22	1
Family Service Worker	19	10
Family Service Worker (Education Coordinator)	19	1
Family Service Worker (Custody Worker)	19	4
Administrative Assistant I	15	2
<b>Total</b>		<b>23</b>
<b>Yr 2 Phase In</b>		
Field Manager	22	2
Family Service Worker	19	15
Administrative Assistant I	15	2
<b>Total</b>		<b>19</b>
<b>Staff - By End of Year 2</b>		
Assistant Chief Program Administrator	25	1
Area Manager	24	2
DHS Program Administrator	23	1
Field Manager	22	4
Field Manager (Custody Coordinator)	22	1
Office on Aging Supervisor	21	2
Family Service Worker Specialist	20	1
Family Service Worker	19	37
Social Service Worker III	18	8
Family Service Worker (Custody Worker)	19	4
Family Service Worker (Education Coordinator)	19	1
Administrative Assistant I	15	5
Administrative Assistant II	17	2
<b>Total</b>		<b>69</b>

<b>PHASE-IN</b>	<b>Total</b>	<b>Salary &amp; Fringe</b>	<b>M &amp; O, Equipt., Training</b>	<b>SGR</b>	<b>Medicaid</b>
<b>CURRENT STAFF</b>	\$1,266,482	\$1,088,430	\$178,052	\$ 949,862	\$316,620
<b>YEAR 1 PHASE-IN</b>	\$2,098,626	\$1,618,771	\$479,855	\$1,573,970	\$ 524,656
<b>YEAR 2 PHASE-IN</b>	\$2,135,474	\$1,618,771	\$516,703	\$1,601,606	\$ 533,868
	\$4,234,100	\$3,237,542	\$996,558	\$3,175,576	\$1,058,524
<b>Total All Phases</b>	<b>\$5,500,582</b>	<b>\$4,325,972</b>	<b>\$1,174,610</b>	<b>\$4,125,438</b>	<b>\$1,375,144</b>



## Attachment 3 – On Call Protocol

**Arkansas Department of Health and Human Services**  
**Division of Aging and Adult Services**  
**Adult Protective Services**

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### **APS On-Call Protocol**

The primary purpose of the on-call protocol is to assist APS staff to:

- Identify situations of after hours adult abuse, neglect, and exploitation that require immediate on site assessment.
- Clarify the role of law enforcement related to these types of maltreatment.
- Clarify statutory responsibilities for proper reporting of all known or suspected adult maltreatment.
- Facilitate the provision of protection and support services in order to remedy or prevent the abuse, neglect or exploitation;

#### **On-Call Guidelines.**

- Two APS workers be on-call in each area (4 areas of the state – total of 8 workers on call statewide). In each area, there will be on call worker in the north of the area and in the south of the area.
- APS will request a welfare check by law enforcement with jurisdiction in the area of the emergency situation. APS worker will emphasize that the call is an emergency; ACA 9-20-114 states “The Department of Human Services or **a law enforcement official** may take a maltreated adult into emergency custody.
- Provided Law Enforcement agrees to make the welfare check, the Law enforcement will survey situation and report back to APS on-call staff to determine if plan of action will include emergency custody. If Law Enforcement declines to make welfare check, APS proceed to Level 4 response.
- APS worker will advise law enforcement official to transport maltreated adult to the nearest hospital, or call for an ambulance if necessary.
- APS worker will call the hospital and advise that a maltreated adult is enroute and that APS has taken emergency custody.
- APS will talk to the ER doctor, describe situation and request maltreated adult be admitted for observation and assessment.
- If hospital refuses to admit, on-call worker will call the APS worker closest geographically and request worker go to the hospital to begin an APS case.
- When placement is problematic APS will call county administrator and Area Agency on Aging to assist with emergency placement.

## **On-Call Areas**

<b>Area 1</b>	<b>Area 2</b>	<b>Area 3</b>	<b>Area 4</b>
1. Benton	Fulton	Polk	Pulaski
2. Carroll	Izard	Montgomery	Lonoke
3. Boone	Sharp	Pike	Jefferson
4. Newton	Independence	Howard	Arkansas
5. Marion	Randolph	Sevier	Monroe
6. Baxter	Clay	Little River	Phillips
7. Stone	Greene	Miller	Lee
8. Searcy	Lawrence	Lafayette	Desha
9. Washington	Jackson	Hempstead	Lincoln
10. Madison	Craighead	Nevada	Cleveland
11. Crawford	Mississippi	Garland	Bradley
12. Sebastian	Poinsett	Saline	Drew
13. Franklin	Cross	Hot Spring	Ashley
14. Scott	Crittenden	Grant	Chicot
15. Logan	St. Francis	Clark	Prairie
16. Yell	White	Dallas	
17. Perry	Woodruff	Ouachita	
18. Pope	Faulkner	Columbia	
19. Johnson	Cleburne	Calhoun	
20. Van Buren	Conway	Union	

## **Levels of On-Call Support**

Level 1: APS walk law enforcement or family through process of removing maltreated adult from harm's way.

Level 2: APS make calls to determine available resources and relay options to law enforcement or family.

Level 3: APS make contact with appropriate agency/unit for placement according to memorandum of understanding.

Level 4: APS physical presence necessary

- a) An adult eighteen (18) years of age or older who is found in a situation or condition that poses an imminent risk of death or serious bodily harm to that person and demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition and law enforcement are not able to respond in a reasonable time.
- b) EMT refuses to transport according to ACA 9-20-114(e)(1) if emergency custody is exercised under this section, the person exercising the custody or the department may consent to having the maltreated adult transported by a law enforcement officer or by an ambulance if medically appropriate, even if the adult objects.
- c) Hospital refuses to admit maltreated adult.

d) Law Enforcement declines to make welfare check.

**Enhancement for APS Emergencies**

RECOMMENDATION #1: Train local law enforcement agencies on the importance of proper response on matters related to adult abuse.

RECOMMENDATION #2: Designate one nursing home in each county to provide respite beds for emergencies.

RECOMMENDATION #3: Develop and implement a memorandum of understanding with the Office of Long Term Care to document support of respite care for APS emergencies.

RECOMMENATION #4: Develop and implement a memorandum of understanding with the Division of Developmental Disabilities to document support of respite care for APS emergencies.

RECOMMENDATION #5: Develop and implement a memorandum of understanding with Arkansas Mental Health Services to document support of assessments for APS emergencies.

RECOMMENDATION #6: Track success of pilot contract with Area Agency on Aging (West) to utilize AAA on-call nurses for APS emergencies.

RECOMMENDATION #7: Develop and implement training materials for first responders with the intent of educating them on their statutory responsibilities.

## Attachment 4 – Comprehensive Assessment Tool

### Assessment Guide

Case ID: _____	Assessment Date: _____
Client Name: _____	Social Security No.: _____ - _____ - _____
Address: _____	Medicaid No.: _____
State: _____	Marital Status: _____
City: _____	Age: _____
Zip: _____	DOB: _____
Phone: _____ Ext: _____	Sex: _____

### Interview

Client Response	Caregiver Response	
<input type="checkbox"/>	<input type="checkbox"/>	Last doctors visit: _____
<input type="checkbox"/>	<input type="checkbox"/>	Doctors name: _____
<input type="checkbox"/>	<input type="checkbox"/>	Is the client taking any prescribed medication: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	How is the clients appetite: _____
<input type="checkbox"/>	<input type="checkbox"/>	What is a typical day for the client: _____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	Is the client receiving services: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	Does the client own his/her home: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	Who manages the clients money and/or who has access to their bank account: _____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Risk Assessment Comp: \_\_\_\_\_

### Orientation Questions

Lack of capacity was self evident:	_____
Where we you born:	_____
What town/community do you live in:	_____
What year is it:	_____
What day of the week is it:	_____
Capacity was not in question:	_____
Who was the first president:	_____
What season is it:	_____
What year were you born:	_____
Who is the president now:	_____
What is your address:	_____
What month is it:	_____
Total Score:	_____
This report prepared by:	_____

Symptoms separately that prompt next level (medical) of assessment in bold print\*

- Neglect**
- Wearing inappropriate clothing
- Untreated medical condition**
- Poor medication management
- Confined to bed
- Completely immobile**
- Limited mobility
- Missing hearing aid
- Inadequate supervision
- No food in home
- Missing glasses
- Medicine laying on the counter / floor
- Missing walker
- Homeless
- Abuse**
- Abandoned
- Cigarette burns on client**
- Client complained of injuries
- Over medicated**
- Unexplained refusal of caregiver to leave the room
- Suspicious untreated broken bones and/or wounds**
- Kicked out of house**
- Missing Hair
- Restrained or locked in**
- Legitimate fear of caregiver**
- Rope marks**
- Unexplained multiple or severe bruises**
- Injuries at several stages of healing**
- Forced sexual activity**
- Behavior**
- Suicidal threats / behavior**
- Inappropriate or no response
- Repetitive behavior
- Disoriented to time
- Disoriented to place
- Disoriented to reason
- Easily influenced by others
- Doctor hopping
- Wandering the highways / streets / lost**
- Confusion**
- Doors left unlocked
- Volatile Outbursts
- Excessive paranoia**
- Lack of focus
- Recent memory failure
- Hallucinations**
- Loses things constantly
- Agitated / frustrated**
- Sundowning**

- Personal Hygiene**
- Strong body odor
- Incontinence unattended**
- Fecal/urine smell**
- Malnourished / dehydrate
- Unexplained scratches/sores
- Poor personal hygiene
- Environment**
- Infestation of insects / rodents
- Non-functional kitchen
- Inappropriate bathroom facility
- Yard overgrown
- Utilities lacking**
- Multiple animals in the home
- Presence of animal urine/feces
- Cluttered / hoarding
- Bathroom hygiene
- Cigarette burns on furniture or floor
- Illegal activity in the home
- Structural damage that requires condemnation**
- Finance**
- Large amounts of cash in home
- Inaccurate knowledge of finance
- Un-cashed checks
- Misuse of clients funds
- Many credit purchases
- Misuse of POA
- Giving money away
- Failure to pay bills
- Lack of Support**
- No children
- No other family members
- Lack of Power of Attorney
- Lack of Legal Guardian
- Lack of support by friends
- No services in home
- Lack of involvement by neighbors
- Lack of church support

\*Document with explanation and additional information.

**Needed Assistance**

- Ambulating
- Bathing
- Food shopping
- Housing keeping
- Installation of aids
- Laundry Locks
- Eating
- Lawn care
- General shopping
- Meal preparation
- Case management
- Dressing
- Socialization
- Shelter
- Wheelchair ramp
- Transferring
- Grooming
- Medicaid application
- Meals on Wheels
- Transportation to Doctor's office
- Financial aid
- Financial Management
- Transportation
- Contacting family / friends
- Psychiatric aid
- Home repairs
- Medication management

**Initial Assessment**

*This form is not a rating scale. It is intended to assist in recording impressions of an individual's mental abilities.*

**I. Alertness and attention**

*Check the appropriate designation as follows:*

- a = no apparent impairment*
- b = moderate impairment*
- c = major impairment*
- d = unable to assess due so impaired*
- e = I have no opinion*

1. Levels of arousal (lethargic, responds only to vigorous and persistent stimulation, stupor)

- a.       b.       c.       d.       e.

2. Orientation (types of orientation impaired)

Person

- a.       b.       c.       d.       e.

Time (day, date, month, season, year)

- a.       b.       c.       d.       e.

Place (address, town, state)

- a.       b.       c.       d.       e.

Situation

- a.       b.       c.       d.       e.

3. Ability to attend and concentrate (give detailed answers from memory; mental ability to thread a needle)

- a.       b.       c.       d.       e.

**II. Information processing – ability to:**

1. Remember (ability to remember a question before answering: to recall names, relatives, past presidents, and events of the past 24 hours)

Short-term memory

- a.       b.       c.       d.       e.

Long-term memory

- a.       b.       c.       d.       e.

Immediate recall

- a.       b.       c.       d.       e.

2. Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

a.       b.       c.       d.       e.

3. Recognize familiar objects and person (deficits reflected by inability to recognize familiar faces, objects, etc.)

a.       b.       c.       d.       e.

4. Understand and appreciate quantities (deficits reflected by inability to perform simple Calculations)

a.       b.       c.       d.       e.

5. Reason using abstract concepts (deficits reflected by inability to grasp abstract aspects of his/her situation or to interpret idiomatic expressions or proverbs such as he is a bad apple or she broke the ice and got everyone talking)

a.       b.       c.       d.       e.

6. Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break complex tasks down into simple steps and carry them out)

a.       b.       c.       d.       e.

7. Reason logically

a.       b.       c.       d.       e.



### III. Visuo-spatial Skills

Provide client with a piece of paper and read the following instructions to the client:

1. Draw numbers in the circle to make the circle look like the face of a clock.
2. Draw in the hands so that the clock shows the time 10 minutes after eleven.

Source:  
American LegalNet, Inc.: [www.USCourtForms.com](http://www.USCourtForms.com)

Scoring: 1-6 as indicated in chart:

Score	Error(s)	Example
1	No errors	
2	Minor visuospatial errors <ul style="list-style-type: none"> <li>- mildly impaired spacing of numbers</li> <li>- draws numbers outside circle</li> <li>- turns page while writing so some numbers appear upside down</li> <li>- draws in lines (spokes) to orient spacing</li> </ul>	
3	Inaccurate representation of 10 after 11 when visuospatial organization shows only minor deviations <ul style="list-style-type: none"> <li>- minute hand points to 10</li> <li>- patient writes "10 after 11"</li> <li>- unable to make any denotation of time</li> </ul>	
4	Moderate visuospatial disorganization of times such that accurate denotation of 10 after 11 is impossible <ul style="list-style-type: none"> <li>- moderately poor spacing</li> <li>- omits numbers</li> <li>- continues past 12 to 13, 14, 15, etc.</li> <li>- draws numbers counterclockwise</li> </ul>	
5	Severe level of disorganization, as described in scoring of 4	
6	No reasonable representation of clock <ul style="list-style-type: none"> <li>- no attempt made</li> <li>- no semblance of a clock at all</li> <li>- writes a word or name</li> </ul>	

**Interpretation:** A score of 3 or above indicates a need for further evaluation.

#### IV. Judgment

Your are standing on the side of a busy street. There is no pedestrian crossing and no traffic light. Tel me what you would do to get across to the other side of the street **safely**. (If person gives incomplete response that does not address both parts of answer, use prompt: “Is there anything else you would do?”) Record exactly what person says and circle all parts of response that were prompted.

#### V. Thought disorders

1. Severely disorganized thinking (rambling thoughts; nonsensical, incoherent, or nonlinear thinking)

a.       b.       c.       d.       e.

2. Hallucinations (auditory, visual, olfactory)

a.       b.       c.       d.       e.

3. Delusions (demonstrably false belief maintained without or against reason or evidence)

a.       b.       c.       d.       e.

4. Uncontrollable or intrusive thoughts (unwanted compulsive thoughts, compulsive behavior)

a.       b.       c.       d.       e.

## VI. Geriatric depression scale (GDS) and single-item depression indicator

1. Are you basically satisfied with your life?  Yes  No
2. Have you dropped many of your activities and interests?  Yes  No
3. Do you feel that your life is empty?  Yes  No
4. Do you often get bored?  Yes  No
5. Are you in good spirits most of the time?  Yes  No
6. Are you afraid that something bad is going to happen to you?  Yes  No
7. Do you feel happy most of the time?  Yes  No
8. Do you often feel helpless?  Yes  No
9. Do you prefer to stay at home, rather than going out and  
doing new things?  Yes  No
10. Do you feel you have more problems with memory than most?  Yes  No
11. Do you think it is wonderful to be alive now?  Yes  No
12. Do you feel pretty worthless the way you are now?  Yes  No
13. Do you feel full of energy?  Yes  No
14. Do you feel that your situation is hopeless?  Yes  No
15. Do you think that most people are better off than you are?  Yes  No

Score: \_\_\_\_\_ (number of “depressed” answers)

Scoring: “Depressed” answers are:

No – on numbers 1, 5, 7, 11, 13

Yes – on numbers 2, 3, 4, 6, 8, 9, 10, 12, 14, 15

Scale: 1 – 4 “depressed” answers + no cause for concern

5 – 9 “depressed” answers = strong probability of depression

10+ “depressed” answers = indicative of depression

### Sources:

Lachs, M.S., et al. 1990. “A Simple Procedure for General Screening for Functional Disability in Elderly Patients.” *Ann. Intern. Med.* 112(9):669-706.

## VII. Functional Activities

The levels of performance assigned range from dependence to independence and are rated as follows:

- Dependent = 3
- Requires assistance = 2
- Has difficulty, but does by self = 1
- Does by self = 0

Two other response options can also be scored.

- Never did (the activity), but could now = 0
- Never did, and would have difficulty now = 1

1. \_\_\_\_\_ Writing checks, paying bills, balancing checkbook.
2. \_\_\_\_\_ Assembling tax records, business affairs, or papers.
3. \_\_\_\_\_ Shopping alone for clothes, household necessities, or groceries.
4. \_\_\_\_\_ Playing a game of skill, working on a hobby.
5. \_\_\_\_\_ Heating water, making a cup of coffee, turning off stove.
6. \_\_\_\_\_ Preparing a balanced meal.
7. \_\_\_\_\_ Keeping track of current events.
8. \_\_\_\_\_ Paying attention to, understanding, discussing a TV show, book, magazine.
9. \_\_\_\_\_ Remembering appointments, family birthdays, holidays, medications.
10. \_\_\_\_\_ Traveling out of neighborhood, driving, arranging to take buses.

Total \_\_\_\_\_

*A total score is computed by simply summing the scores across the 10 items. Scores range from 0 to 30. A cut point of 9 (dependent in 3 or more activities) is recommended.*

Source:  
Pfeifer, R., T. Kurosaki, C. Harrah, J. Chance, and S. Filos. 1982. "Measurement of Functional Activities of Older Adults in the Community." *Journal of Gerontology* 37 (May):323-9.

### VIII. Activities of Daily Living (ADL)

*Circle the response that best represents the person's ability to do each of the following activities of daily living.*

<b>Activity</b>	<b>Needs no Assistance or supervision</b>	<b>Needs some Assistance or supervision</b>	<b>Totally dependent/ cannot do at all</b>
Eating	0	1	2
Toileting	0	1	2
Bathing (sponge, shower, or tub)	0	1	2
Dressing	0	1	2
Grooming (combing, shampooing hair, shaving, trimming nails)	0	1	2
Transferring	0	1	2

**Total Score** \_\_\_\_\_

Source:  
Katz, S., A.B. Ford, R. W. Moskowitz, B.A. Jackson, and M. W. Jaffe. 1963. "Studies of Illness in the Aged. The Index of ADL; A Standardized Measure of Biological and Psychosocial Function" *Journal of the American Medical Association* 185:914-9.

## IX. Instrumental Activities of Daily Living (IADL)

*Instructions: Circle the scoring point for the statement that most closely corresponds to the patient's current function ability for each task.*

<b>A. Ability to use telephone</b> 1. Operates telephone on own initiative, looks up and dials numbers, etc. 1 2. Dials a few well-know numbers 1 3. Answers telephone but does not dial 1 4. Does not use telephone at all 0	<b>E. Laundry</b> 1. Does personal laundry completely 1 2. Launders small items, rinses stockings, etc. 1 3. All laundry must be done by others 0
<b>B. Shopping</b> 1. Takes care of all shopping needs independently 1 2. Shops independently for small purchases 0 3. Needs to be accompanied on any shopping trip 0 4. Completely unable to shop 0	<b>F. Mode of transportation</b> 1. Travels independently on public transportation or drives own car 1 2. Arranges own travel via taxi, but does not otherwise use public transportation 1 3. Travels on public transportation when assisted or accompanies by another 1 4. Travel limited to taxi or car with assistance of another 0 5. Does not travel at all 0
<b>C. Food preparation</b> 1. Plans, prepares, and serves adequate meals independently 1 2. Prepares adequate meals if supplied with ingredients 0 3. Heats and serves prepared meals, or prepares meals but does not maintain adequate diet 0 4. Needs to have meals prepared and served 0	<b>G. Responsibility for own medications</b> 1. Is responsible for taking medication in correct dosages at correct time 1 2. Takes responsibility if medication is prepared in advance in separate dosages 0 3. Is not capable of dispensing own medication 0
<b>D. Housekeeping</b> 1. Maintains house alone or with occasional assistance (eg. "heavy work domestic help") 1 2. Performs light daily tasks such as dishwashing, bed making 1 3. Performs light daily task but cannot maintain acceptable level of cleanliness 1 4. Needs help with all maintenance tasks 1 5. Does not participate in any housekeeping tasks 0	<b>H. Ability to handle finances</b> 1. Manages financial matters independently (budgets, writes, checks, pays rent and bills, goes to bank), collects and keeps track of income 1 2. Manages day-to-day purchases, but needs help with banking, major purchases, etc. 1 3. Incapable of handling money 0

Scoring: A score of 1 for each item labeled A – H if individual's competence is rated at some minimal level or higher. Add the total points circled for A – H. The total score may range from 0 – 8. A lower score indicates a higher level of dependence.

**Sources:**

Cromwell, D.A., Eagar K, Poulos R. G. The performance of instrumental activities of daily living scale in screening for cognitive impairment in elderly community residents. *J. Clin. Epidemiol.* 2003;56(2):131-137.  
 Lawton, M.P. The functional assessment of elderly people. *J. Am Geriatr Soc.* 1971;19(6):465-481.  
 Lawton, M.P., Brody, E.M. Assessment of older people: self-maintaining and instrumental activities of daily living. *Gerontologist.* 1969;9(3):179-186.

**Instructions:** Words in boldface type should be read aloud clearly and slowly to the examinee. Item substitutions appear in parentheses. Administration should be conducted privately and in the examinee's primary language. Circle 0 if the response is incorrect, or 1 if the response is correct. Begin by asking the following two questions: (1) **Do you have any trouble with your memory?** (2) **May I ask you some questions about your memory?**

<i>Orientation to Time</i>	<i>Response</i>	<i>Score</i> <i>(circle one)</i>
What is the.... year?	_____	0 1
season?	_____	0 1
month of the year?	_____	0 1
day of the week?	_____	0 1
date?	_____	0 1

***Orientation to Place\****

Where are we now? What is the...		
state?	_____	0 1
county (or city/town)?	_____	0 1
city/town (or party of city)?	_____	0 1
building (name or type)?	_____	0 1
floor or the building (room number of address)?	_____	0 1

\*Alternative place words that are appropriate for the setting and increasingly precise may be substituted and noted.

***Registration\****

**Listen carefully. I am going to say three words. You say them back after I stop. Ready? Here they are...APPLE [pause], PENNY [pause], TABLE [pause]. Now repeat those words back to me.**

[Repeat up to 5 times, but score only the first trial.]

APPLE	_____	0 1
PENNY	_____	0 1
TABLE	_____	0 1

**Now keep those words in mind. I am going to ask you to say them again in a few minutes.**

\*Alternative word sets (e.g., PONY QUARTER, ORANGE) may be substituted and noted when retesting an examinee.

**Attention and calculation [Serial 7s]\***

Now I'd like you to subtract 7 from 100. Then keep subtracting 7 from each answer until I tell you to stop.

What is 100 take away 7?	[93]	_____	0	1
<i>If needed, say:</i> Keep going.	[86]	_____	0	1
<i>If needed, say:</i> Keep going.	[79]	_____	0	1
<i>If needed, say:</i> Keep going.	[72]	_____	0	1
<i>If needed, say:</i> Keep going.	[65]	_____	0	1

\*Alternative item (WORLD backward) should only be administered if the examinee refuses to perform the Serial 7s task. →

Substitute and score this item only if the examinee refuses to perform the Serial 7s task.

Spell WORLD forward, then backward.

Correct forward spelling if misspelled, \_\_\_\_\_  
but score only the backward spelling. (D=1) (L=1) (R=1) (O=1) (W=1) (0 to 5)

**Recall Response Score**

What were those three words I asked you to remember? [Do not offer any hints.]

APPLE	_____	0	1
PENNY	_____	0	1
TABLE	_____	0	1

**Naming\***

What is this? [Point to a pencil or pen.]	_____	0	1
What is this? [Point to a watch.]	_____	0	1

\*Alternative common objects (e.g., eyeglasses, chair, keys) may be substituted and noted.

**Repetition**

Now I am going to ask you to repeat what I say. Ready? "NO IFS, ANDS, OR BUTS." Now you say that. [Repeat up to 5 times, but score only the first trial.]

NO IFS, ANDS, OR BUTS	_____	0	1
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**Comprehension**

**Listen carefully because I am going to ask you to do something.**  
**Take this paper in your right hand [pause], and put it on the floor (or table).**

TAKE IN RIGHT HAND	_____	0	1
FOLD IN HALF	_____	0	1
PUT ON FLOOR (or TABLE)	_____	0	1

**Reading**

**Please read this and do what it says. [Show examinee the words.]**

CLOSE YOUR EYES	_____	0	1
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**Writing**

**Please write a sentence.** [If examinee does not respond, say:  
**Write about the weather.**]

Place a blank piece of paper (unfolded) in front of the examinee and provide a pen or pencil. Score 1 point if the sentence is comprehensible and contains a subject and a verb. Ignore errors in grammar or spelling.

		0	1
--	--	---	---

**Drawing**

**Please copy this design.** [Display the intersecting pentagons on the stimulus form.]  
Score 1 point if the drawing consists of two 5-sided figures that intersect to form a 4-sided figure.

		0	1
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**Total Score = \_\_\_\_\_**  
(Sum all item (30 points max)  
scores)

## **Attachment 5 –Adult and Long Term Care Facility Resident Maltreatment Act and proposed revisions (on page 47) to this act**

### **Adult and Long Term Care Facility Resident Maltreatment Act**

#### **12-12-1701. Title.**

This subchapter shall be known and may be cited as the "Adult and Long-Term Care Facility Resident Maltreatment Act".

History. Acts 2005, No. 1812, § 1.

#### **12-12-1702. Purpose.**

The purpose of this subchapter is to:

- (1) Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;
- (2) Ensure the screening, safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;
- (3) Provide for a civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and
- (4) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, and prosecution of maltreated adults and long-term care facility residents.

History. Acts 2005, No. 1812, § 1.

#### **12-12-1703. Definitions.**

As used in this subchapter:

- (1) "Abuse" means:
  - (A) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;
  - (B) Any intentional or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm;
  - (C) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(D) With regard to any long-term care facility resident, any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "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 person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court;

(4) "Department" means the Department of Health and Human Services;

(5) "Endangered person" means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's, power of attorney or guardianship for the profit or advantage of one's own self or another; or

(C) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

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

(8)(A) "Impaired person" means a person 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.

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

(9) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for the mentally retarded; or

(F) Any facility that provides long-term medical or personal care;

(10) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(11) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(12) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(13) "Maltreated person" means a person, regardless of age, who has been abused, exploited, neglected, or sexually abused;

(14) "Neglect" means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a prescribed treatment plan; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

(15)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain on a person.

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

(16) "Serious bodily harm" means sexual abuse, physical injury, or serious physical injury;

(17) "Serious physical injury" means physical injury to an endangered person or an impaired person 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;

(18) "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](#); and

(19) "Subject of the report" means:

(A) The endangered person or impaired person;

(B) The adult's legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

**History.** Acts 2005, No. 1812, § 1.

#### **12-12-1704. Spiritual treatment alone not abusive.**

Nothing in this subchapter shall be construed to mean that an endangered person or an impaired person 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 of the church or religious denomination is for that reason alone an endangered person or an impaired person.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1705. Privilege not grounds for exclusion of evidence.**

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

**History.** Acts 2005, No. 1812, § 1.

**12-12-1706. 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 subchapter.  
(2) Notwithstanding any criminal penalties assessed, any caregiver against whom any civil judgment is entered as the result of a civil action brought by the State of Arkansas through the Attorney General on a complaint alleging that caregiver to have abused, neglected, or exploited an endangered person or an impaired person in a long-term care facility certified under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2005, shall be subject to pay a civil penalty:

(A) Not to exceed ten thousand dollars (\$10,000) for each violation judicially found to have occurred; or

(B) Not to exceed fifty thousand dollars (\$50,000) for the death of a long-term care facility resident that results from a single violation.

(3)(A) The Attorney General shall not be precluded from recovering civil penalties under subdivision (a)(2)(A) of this section for the death of a person that results from multiple violations.

(B) However, the Attorney General may not recover civil penalties under both subdivisions (a)(2)(A) and (B) of this section.

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

(c) Any civil penalty under subdivision (a)(2) of this section shall be paid into the State Treasury and credited to the Arkansas Medicaid Program Trust Fund.

(d) Any caregiver against whom any civil judgment is entered as the result of a civil action under this section by the Attorney General shall be required to pay to the Attorney General all reasonable expenses that the court determines have been necessarily incurred in the enforcement of this subchapter.

(e) A civil action under this section may not be brought more than three (3) years after the date on which the violation of this subchapter is committed.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1707. Adult and long-term care facility resident maltreatment hotline.**

(a) The Department of Health and Human Services shall maintain a single statewide telephone number that all persons, whether mandated by law or not, may use to report a case of suspected adult maltreatment and long-term care facility resident maltreatment.

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

(c)(1) The department shall not release information that would identify the person who made the report unless a court of competent jurisdiction orders release of the information after the court has reviewed in camera the record related to the report and has found that disclosure is necessary:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(2)(A) However, any person to whom the name of the reporter is disclosed is prohibited from redisclosing this information, except as provided in subdivision (c)(2)(B) of this section.

(B)(i) Upon request, the information shall be disclosed to:

(a) The Attorney General;

(b) The prosecuting attorney; or

(c) Law enforcement officers.

(ii) However, the information shall remain confidential until criminal charges are filed.

(d)(1) A report of an allegation of suspected adult maltreatment or long-term care facility resident maltreatment shall be accepted if the allegation, if true, would constitute adult maltreatment or long-term care facility resident maltreatment and so long as sufficient identifying information is provided to identify and locate the victim.

(2) A report to the hotline when the allegation, even if true, would not constitute adult maltreatment or long-term care facility resident maltreatment shall be screened out.

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

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

(3) Upon request from an adult maltreatment or long-term care facility resident maltreatment investigator in another state, the department shall complete courtesy interviews with the victim, offender, or any witness of adult maltreatment who resides in Arkansas.

(f) Upon registration of a hotline report of suspected adult maltreatment or long-term care facility resident maltreatment, the hotline shall refer the matter immediately to the appropriate investigating agency as outlined in this subchapter.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.**

(a)(1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

(A) A physician;

(B) A surgeon;

(C) A coroner;

(D) A dentist;

(E) A dental hygienist;

(F) An osteopath;

(G) A resident intern;

(H) A nurse;

(I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;



- (J) A social worker;
- (K) A case manager;
- (L) A home health worker;
- (M) A mental health professional;
- (N) A peace officer;
- (O) A law enforcement officer;
- (P) A facility administrator or owner;
- (Q) An employee in a facility;
- (R) An employee of the Department of Health and Human Services;
- (S) A firefighter;
- (T) An emergency medical technician; or
- (U) An employee of a bank or other financial institution.

(2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.

(3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.

(b)(1) A report for a long-term care facility resident shall be made:

- (A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and
- (B) To the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services, under regulations of that office.

(2) A report of a maltreated adult who does not reside in a long-term care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § [12-12-1707](#).

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1709. Report of death caused by maltreatment.**

(a)(1) Any person or official who is required to report a case of suspected adult maltreatment or long-term care facility resident maltreatment under this subchapter and who has reasonable cause to suspect that an adult or long-term care facility resident has died as a result of maltreatment shall report the suspected death from maltreatment to the appropriate medical examiner or coroner.

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

(B) The report is required regardless of whether the long-term care facility or the hospice facility believes the death to be from natural causes or the result of maltreatment or any other cause.

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

(B) The report is required regardless of whether the hospital believes the death to be from natural causes, the result of maltreatment, or any other cause.

(b)(1) The medical examiner or coroner shall accept the report for investigation and upon finding reasonable cause to suspect that a person has died as a result of maltreatment shall report the findings to a law enforcement agency and the appropriate prosecuting attorney.

(2) If the institution making the report is a hospital or long-term care facility, the medical examiner or coroner shall report the findings to the hospital or long-term care facility unless the findings are part of a pending or ongoing law enforcement investigation.

(c) If it receives findings under subdivision (b)(2) of this section, the medical examiner, coroner, or hospital shall also report findings under subsection (b) of this section to the Department of Health and Human Services if:

(1) Reasonable cause exists to believe the death resulted from maltreatment; or

- (2) Upon request of the department and there is a pending investigation concerning allegations of maltreatment occurring before death.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1710. Investigation by Department of Health and Human Services.**

(a) The Department of Health and Human Services shall have jurisdiction to investigate all cases of suspected maltreatment of an endangered person or an impaired person.

(b)(1) The Adult Protective Services Unit of the Department of Health and Human Services shall investigate:

(A) All cases of suspected adult maltreatment if the act or omission occurs in a place other than a long-term care facility; and

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

(2) The Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services shall investigate all cases of suspected maltreatment of a long-term care facility resident.

(3) If requested by the department, a law enforcement agency shall assist in the investigation of any case of suspected adult maltreatment or long-term care facility resident maltreatment.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1711. Procedures for investigation by the Department of Health and Human Services.**

(a) The Department of Health and Human Services shall conduct a thorough investigation of all suspected adult maltreatment or long-term care facility resident maltreatment in accordance with this subchapter.

(b)(1) The investigation shall be completed and an investigative determination entered within sixty (60) days.

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

(A) The nature, extent, and cause of the maltreatment;

(B) The identity of the person responsible;

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

(D) An evaluation of the persons responsible for the care of the maltreated person, if any;

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

(F)(i) A visit to the maltreated adult's home, if the incident occurred in the home, and an interview with the maltreated adult.

(ii) An investigator shall interview the maltreated person alone and out of the hearing of any next of kin or other person responsible for the maltreated person's care.

(iii) If necessary, an interpreter may be present during the interview of the maltreated person.

**History.** Acts 2005, No. 1812, § 1.

#### **12-12-1712. Photographs and X-rays.**

(a) Any person who is required to report a case of adult maltreatment or long-term care facility resident maltreatment may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the maltreated person and, if medically indicated, cause to be performed radiological examination of the maltreated person.

(b)(1) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff of any private or public institution or agency, he or she shall immediately notify the person in charge of the institution or agency or his or her designee.

(2) Upon notification under subdivision (b)(1) of this section, the person in charge of the institution or agency or his or her designee shall:

(A) Take or cause to be taken, at public expense, color photographs of physical trauma; and

(B) If medically indicated, cause to be performed a radiological examination of the maltreated person.

(c) Any photograph or X-ray taken shall be sent to the Department of Health and Human Services as soon as possible.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1713. Immunity for investigation participants.**

(a) Any person, official, or institution acting in good faith in the making of a report, the taking of a photograph, or the removal of a maltreated person under this subchapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of those actions.

(b) The good faith of any person required to report a case of adult maltreatment or long-term care facility resident maltreatment shall be presumed.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1714. Investigative powers of the Department of Health and Human Services.**

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

(b) If admission to a home cannot be obtained due to hospitalization or similar absence of the maltreated person and admission to the home is necessary to complete an investigation, a circuit court, upon good cause shown, shall order a law enforcement agency to assist the Department of Health and Human Services to obtain entrance to the home for the required investigation of the home environment.

(c)(1) Upon request, the medical, mental health, or other records regarding the maltreated person, maintained by any facility or maintained by any person required by this subchapter to report suspected adult maltreatment or long-term care facility resident maltreatment, shall be made available to the department for the purpose of conducting an investigation under this subchapter.

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

(3) A circuit court, upon good cause shown, shall order any facility or person that maintains medical, mental health, or other records regarding a maltreated person to tender the records to the department for the purpose of conducting an investigation under this subchapter.

(d) An investigation under this subchapter may include a medical, psychological, social, vocational, financial, and educational evaluation and review, if necessary.

(e) If before an investigation under this subchapter is completed, the Adult Protective Services Unit of the Department of Health and Human Services determines that the immediate removal of a maltreated adult is necessary to protect the maltreated adult from imminent danger to his or her health or safety, the unit may:

(1) Petition a circuit court for an order of temporary custody; or

(2) Exercise a seventy-two-hour hold under the Adult Maltreatment Custody Act, § [9-20-101](#) et seq.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1715. Rights of subject of report - Investigative determination of the Department of Health and Human Services - Notice of finding - Appeal.**

(a) Upon completion of an investigation, the Department of Health and Human Services shall determine that an allegation of adult maltreatment or long-term care facility maltreatment is either:

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

(B)(i) An unfounded report shall be expunged one (1) year after the completion of the investigation.

(ii) Demographic information may be retained for statistical purposes; or

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

(B) A determination of founded shall not be entered solely because an adult practicing his or her religious beliefs is receiving spiritual treatment under § [5-28-105](#) or § [12-12-1704](#).

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

(i)(a) The person identified as the offender.

(b) However, in cases of unfounded self-neglect, no notice is required;

(ii) Either the:

(a) Person identified as the maltreated person;

(b) Legal guardian of the maltreated person; or

(c) Natural or legal guardian of a long-term care facility resident under eighteen (18) years of age;

(iii) The current administrator of the long-term care facility if the incident occurred in a long-term care facility; and

(iv) If known by the Office of Long-term Care, the administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred.

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

- (2) The notification under subdivision (b)(1) of this section shall include the following:
- (A) The investigative determination, exclusive of the source of the notification, including the nature of the allegation and the date and time of occurrence;
  - (B) A statement that an offender of a founded report has the right to an administrative hearing upon a timely request;
  - (C) A statement that the request for an administrative hearing shall be made to the department within thirty (30) days of receipt of the notice of determination;
  - (D) A statement of intent to report in writing after the offender has had an opportunity for an administrative hearing the founded investigative determination to:
    - (i) The adult and long-term care facility resident maltreatment central registry; and
    - (ii) Any applicable licensing authority;
  - (E) A statement that the offender's failure to request an administrative hearing in writing within thirty (30) days from the date of receipt of the notice will result in submission of the investigative report, including the investigative determination, to:
    - (i) The registry; and
    - (ii) Any applicable licensing authority;
  - (F) The consequences of waiving the right to an administrative hearing;
  - (G) The consequences of a finding by a preponderance of the evidence through the administrative hearing process that the maltreatment occurred;
  - (H) The fact that the offender has the right to be represented by an attorney at the offender's own expense; and
  - (I) The name of the person making the notification, his or her occupation, and the location at which he or she can be reached.
- (c)(1) The administrative hearing process shall be completed within one hundred twenty (120) days from the date of the receipt of the request for a hearing unless waived by the offender.
- (2) The department shall hold the administrative hearing at a reasonable place and time.
- (3) For an incident occurring in a long-term care facility, the department may not make a finding that an offender has neglected a long-term care facility resident if the offender demonstrates that the neglect was caused by factors beyond the control of the offender.

(4) A delay in completing the administrative hearing process that is attributable to the offender shall not count against the time limit in subdivision (c)(1) of this section.

(5) Failure to complete the administrative hearing process in a timely fashion shall not prevent the department or a court from:

(A) Reviewing the investigative determination of jurisdiction;

(B) Making a final agency determination; or

(C) Reviewing a final agency determination under the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq.

(d)(1) When the department conducts an administrative hearing, the chief counsel of the department may require the attendance of witnesses and the production of books, records, or other documents through the issuance of a subpoena if the testimony or information is necessary to adequately present the position of the department or the alleged offender in a report.

(2) Failure to obey the subpoena may be deemed a contempt and shall be punishable accordingly.

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

(1) The offender;

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

(3) The administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred;

(4) The appropriate licensing authority;

(5) The adult and long-term care facility resident maltreatment central registry; and

(6) The maltreated person or the legal guardian of the maltreated person.

**History.** Acts 2005, No. 1812, § 1.



**12-12-1716. Adult and long-term care facility resident maltreatment central registry.**

(a)(1) There is established within the Department of Health and Human Services a statewide adult and long-term care facility resident maltreatment central registry.

(2) The registry shall contain investigative determinations made by the department on all founded allegations of adult maltreatment and long-term care facility resident maltreatment.

(3) An offender's name shall be placed in the registry if:

(A) After notice, the offender does not timely request an administrative hearing; or

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

(4) An offender's name shall remain in the registry unless:

(A) The name is removed under a statute;

(B) The name is removed under a rule; or

(C) The offender prevails upon appeal.

(b) The department may adopt rules necessary to encourage cooperation with other states in exchanging reports to effect a national registry system of adult maltreatment.

(c)(1) The department may charge a reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files maintained under this subchapter.

(2) The department may also charge a reasonable fee for reproducing copies of tapes and photographs maintained under this subchapter.

(3) No fee may be charged to a nonprofit or volunteer agency that requests a search of the investigative files maintained under this subchapter.

(4) No fee may be charged under this subchapter to a person who is indigent.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1717. Availability of founded reports of adult or long-term care facility resident maltreatment.**

(a) A report made under this subchapter that is determined to be founded, as well as any other information obtained, and a report written or photograph taken concerning a founded report in the possession of the Department of Health and Human Services shall be

confidential and shall be made available only to:

(1) A physician who has before him or her an endangered person or an impaired person the physician reasonably believes may have been maltreated;

(2) A person authorized to place the adult in protective custody if the person:

(A) Has before him or her an adult the person reasonably believes may have been maltreated; and

(B) 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 an endangered person or an impaired person;

(4) Any person who is the subject of a report or that person's legal guardian;

(5) A grand jury or court, if the grand jury or court determines that the information is necessary for the determination of an issue before the grand jury or court;

(6) A prosecuting attorney, law enforcement official, coroner, or the Attorney General or his or her designated investigator;

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

(B) However, a mandated reporter shall receive the information only to the extent that he or she may be informed after completion and closure of the investigation whether:

(i) Legal action was taken;

(ii) Services were provided; or

(iii) No action was taken.

(C) No further information shall be released to a mandated reporter, and the mandated reporter shall be informed of the confidentiality of the information and the penalties for disclosure;

(8)(A) An employer or volunteer agency for the purpose of screening an employee, applicant, or volunteer upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The only information released to the employer or volunteer agency shall be whether or not the adult and long-term care facility resident maltreatment central registry contains any founded reports naming the employee, applicant, or volunteer as an offender;

(9) The Death Review Committee of the Department of Health and Human Services;

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

(11) The administrator of the long-term care facility that currently employs the offender, if different from the long-term care facility in which the incident occurred;

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

(13) Any applicable licensing or registering authority.

(b)(1) Under no circumstances may the information contained in the registry be released to a person unless the person's capacity is confirmed by the department.

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

(c)(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 execution of a crime; or

(B) For prosecution of a crime.

(d) However, information contained in the registry may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the name of a person be released, nor shall specific circumstances or facts related to a specific person be used in any research report that might be identifiable with the person.

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

**History.** Acts 2005, No. 1812, § 1.

### **12-12-1718. Availability of screened out, pending, and unfounded reports.**

(a)(1) A screened out report or a pending report shall be confidential and shall be made available only to:

(A) The Department of Health and Human Services, including the Death Review Committee of the Department of Health and 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; and
- (H) Any applicable licensing or registering authority.

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

(b) Upon completion of the administrative hearing process and if an allegation was determined to be unfounded, the investigative report shall be 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; and
- (9) A person or provider identified by the department as having services needed by the person.

(c)(1) An unfounded report shall be expunged one (1) year after completion of the investigation.

(2) However, demographic information may be retained for statistical purposes.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1719. Delegation of authority.**

The Director of the Department of Health and Human Services may assign responsibilities for administering the various duties imposed upon the Department of Health and Human Services under this subchapter to respective divisions of the department that in the director's opinion are best able to render service or administer the provisions of this subchapter.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1720. Penalties.**

(a) Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident maltreatment who purposely fails to do so shall be guilty of a Class B misdemeanor.

(b) Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident maltreatment who purposely fails to do so shall be civilly liable for damages proximately caused by the failure.

(c) Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false shall be guilty of a Class A misdemeanor.

(d) Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false and who has been previously convicted of making false allegations shall be guilty of a Class D felony.

(e) Any person who willfully permits and any other person who encourages the release of data or information contained in the adult and long-term care facility resident maltreatment central registry to a person to whom disclosure is not permitted under this subchapter shall be guilty of a Class A misdemeanor.

(f) Any person required to report a death as the result of suspected adult maltreatment or long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a Class C misdemeanor.

(g) Any person required to report suspected adult maltreatment or long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a Class C misdemeanor.

**History.** Acts 2005, No. 1812, § 1.

**12-12-1721. Reports as evidence.**

(a) A written report from a person or official required by this subchapter to report shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

**History.** Acts 2005, No. 1812, § 1.

## Revisions to Adult and Long Term Care Facility Resident Maltreatment Act

12-12-1701. Title.

This subchapter shall be known and may be cited as the "Adult and Long-Term Care Facility Resident Maltreatment Act".

12-12-1702. Purpose.

The purpose of this subchapter is to:

- (1) Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;
- (2) Ensure the screening, safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;
- (3) Provide for a civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and
- (4) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, and assessment, ~~and prosecution~~ of maltreated adults and long-term care facility residents and prosecution of offenders.

12-12-1703. Definitions.

As used in this subchapter:

(1) "Abuse" means:

(A) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(B) Any intentional or demeaning act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm;

(C) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(D) With regard to any long-term care facility resident, any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Adult maltreatment" means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) "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 person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court;

(4) "Department" means the Department of Health and Human Services;

(5) "Endangered person" means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself ~~an imminent risk of death or serious bodily harm to that person~~; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's, power of attorney or guardianship for the profit or advantage of one's own self or another; or

(C) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

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

(8)(A) "Impaired person" means a person 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.

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

(9) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for the mentally retarded; or

(F) Any facility that provides long-term medical or personal care;

(10) "Long-term care facility resident" means a person, regardless of age, living in a long-term care facility;

(11) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(12) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(13) "Maltreated person" means a person, regardless of age, who has been abused, exploited, neglected, or sexually abused;

(14) "Neglect" means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a prescribed treatment plan; or



(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

(15)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain on a person.

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

(16) "Serious bodily harm" means sexual abuse, physical injury, or serious physical injury;

(17) "Serious physical injury" means physical injury to an endangered person or an impaired person 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;

(18) "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](#); and

(19) "Subject of the report" means:

(A) The endangered person or impaired person;

(B) The adult's legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.

(a)(1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

(A) A physician;

(B) A surgeon;

(C) A coroner;

(D) A dentist;

(E) A dental hygienist;

(F) An osteopath;

(G) A resident intern;

(H) A nurse;

(I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;

(J) A social worker;

(K) A case manager;

(L) A home health worker;

(M) A mental health professional;

(N) A peace officer;

(O) A law enforcement officer;

- (P) A facility administrator or owner;
- (Q) An employee in a facility;
- (R) An employee of the Department of Health and Human Services;
- (S) A firefighter;
- (T) An emergency medical technician; ~~or~~
- (U) An employee of a bank or other financial institution; ;
- (V) An employee of the Post Office;
- (W) An employee of a utility company;

elderly;

- (Y) A newspaper carrier;

(Z) A person associated with the care and treatment of animals, such as animal control officers and the humane society;

(AA) An employee who enforces code requirements for a city, township or municipality; or

(BB) Any clergyman, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent he or she:

(i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission.

(2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.

(3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.

(b)(1) A report for a long-term care facility resident shall be made:

(A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and

(B) To the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services, under regulations of that office.

(2) A report of a maltreated adult who does not reside in a long-term care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § [12-12-1707](#).

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

12-12-1714. Investigative powers of the Department of Health and Human Services.

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

(b) If admission to a home cannot be obtained due to hospitalization or similar absence of the maltreated person and admission to the home is necessary to complete an investigation, a circuit court, upon good cause shown, shall order a law enforcement agency to assist the Department of Health and Human Services to obtain entrance to the home for the required investigation of the home environment.

(c)(1) Upon request, the medical, mental health, or other records regarding the maltreated person, maintained by any facility or maintained by any person required by this subchapter to report suspected adult maltreatment or long-term care facility resident maltreatment, shall be made available to the department for the purpose of conducting an investigation under this subchapter.

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

(3) A circuit court, upon good cause shown, shall order any facility or person that maintains medical, mental health, or other records regarding a maltreated person to tender the records to the department for the purpose of conducting an investigation under this subchapter.

(d) An investigation under this subchapter may include a medical, psychological, social, vocational, financial, and educational evaluation and review, if necessary.

(1)(A) The department may file an ex parte petition in circuit court requesting an order of investigation. If the court issues an order of investigation, any subsequent petition for custody shall be filed in this same case.

(B) No fees may be charged or collected by the clerk, including, but not limited to fees for filing, summons or subpoenas.

(2)(A) The department may compel the allegedly maltreated person to be evaluated in the least restrictive environment and least intrusive manner necessary to obtain an assessment if:

(i) The department is unable to secure an order of investigation from the Circuit Court during regular business hours;

(ii) The department has reasonable cause to suspect a significant risk for serious harm to the health or safety of the adult; and

(iii) The department cannot adequately assess:

(a) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(b) The adult's mental or physical impairment and ability to protect himself or herself from maltreatment.

(B) Upon request by the department and without a court order, law enforcement and medical personnel shall assist the department as needed in obtaining an assessment on an allegedly maltreated person which may include emergency treatment.

(C) No later than the next business day, the department shall petition the court for an order of investigation as outlined in this subchapter.

(3)(A) Upon a showing of reasonable cause to suspect an allegedly maltreated person is endangered or impaired, the circuit court shall issue an order of investigation.

(B) Said order of investigation may include the power to compel the allegedly maltreated person to be assessed to determine:

(i) if the person lacks capacity to understand the nature and consequences of remaining in the situation or condition that poses a danger to the person; or

(ii) if the person has a mental or physical impairment such that the person is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(2) Upon good cause shown by the department, the circuit court may order emergency treatment of the allegedly maltreated adult.

(3)(A) The allegedly maltreated adult has a right to counsel, including appointed counsel if indigent, and a right to a hearing within five business days of issuance of an ex parte order of investigation.

(B) If the allegedly maltreated adult is not indigent, the circuit court has the authority to appoint counsel to represent the allegedly maltreated adult and to direct payment from the assets of the adult for legal services received by the adult.

(4)(A) At the five day hearing the court shall determine whether the order of investigation shall continue for an additional period of time or be terminated.

(B) The burden shall be upon the department to show probable cause that the alleged maltreated person is an endangered or impaired person and that additional time is necessary to complete the investigation.

(5) The department and the court shall defer to any declaration executed in conformance with the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act.

(e) If before an investigation under this subchapter is completed, the Adult Protective Services Unit of the Department of Health and Human Services determines that the immediate removal of a maltreated adult is necessary to protect the maltreated adult from imminent danger to his or her health or safety, the unit may:

(1) Petition a circuit court for an order of temporary custody; or

(2) Exercise a seventy-two-hour hold under the Adult Maltreatment Custody Act, § [9-20-101](#) et seq.

## **Attachment 6 - Adult Maltreatment Custody Act and proposed revisions (on page 68) to this act**

### **Adult Maltreatment Custody Act**

#### **9-20-101. Title.**

This chapter shall be known and may be cited as the Adult Maltreatment Custody Act.

**History.** Acts 2005, No. 1811, § 1. 9-20-102. Purpose.

The purposes of this subchapter are to:

- (1) Protect a maltreated adult or long-term care facility resident who is in imminent danger; and
- (2) Encourage the cooperation of state agencies and private providers in the service delivery system for maltreated adults.

**History.** Acts 2005, No. 1811, § 1.

#### **9-20-103. Definitions.**

As used in this chapter:

- (1) "Abuse" means:
  - (A) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered or impaired adult;
  - (B) Any intentional or demeaning act that a reasonable person would believe subjects an endangered or impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm;
  - (C) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered or impaired person except in the course of medical treatment or for justifiable cause; or
  - (D) With regard to any adult resident of a long-term care facility, any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;
- (2) "Adult maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;
- (3) "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 person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the circuit court;

(4) "Department" means the Department of Health and Human Services.

(5) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) An adult resident of a long-term care facility who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means:

(A) The illegal or unauthorized use or management of an endangered or impaired adult's funds, assets, or property or the use of an endangered or impaired adult's person, power of attorney, or guardianship for the profit or advantage of oneself or another; or

(B) Misappropriation of property of an adult resident of a long-term care facility, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;

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

(8)(A) "Impaired adult" means a person 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.

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

(9) "Long-term care facility" means:

(A) A nursing home;

- (B) A residential care facility;
- (C) A post-acute head injury retraining and residential facility;
- (D) An assisted living facility;
- (E) An intermediate care facility for the mentally retarded; or
- (F) Any facility that provides long-term medical or personal care;

(10) "Long-term care facility resident" means a person eighteen (18) years of age or older living in a long-term care facility;

(11) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult resident of a long-term care facility;

(12) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(13) "Neglect" means:

(A) An act or omission by an endangered or impaired adult, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered or impaired adult constituting negligent failure to:

(i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult;

(ii) 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;

(iii) Carry out a prescribed treatment plan; or

(iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

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

(B) If the person is an endangered or impaired adult, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(15)(A) "Protective services" means services to protect an endangered or impaired adult from:

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

(B) Protective services may include:

- (i) Evaluation of the need for services;
- (ii) Arrangements or referrals for appropriate services available in the community;
- (iii) Assistance in obtaining financial benefits to which the person is entitled; or
- (iv) As appropriate, referrals to law enforcement or prosecutors;

(16) "Resident of a long-term care facility" means a person eighteen (18) years of age or older living in a long-term care facility;

(17) "Serious bodily harm" means physical abuse, sexual abuse, physical injury, or serious physical injury;

(18) "Serious physical injury" means physical injury to an endangered or impaired adult that:

- (A) Creates a substantial risk of death; or
- (B) Causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(19) "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](#); and

(20) "Subject of the report" means:

- (A) The endangered or impaired adult;
- (B) The adult's legal guardian; and
- (C) The offender.

**History.** Acts 2005, No. 1811, § 1.

**9-20-104. Spiritual treatment alone not abusive.**



Nothing in this chapter implies that an 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 or impaired adult.

**History.** Acts 2005, No. 1811, § 1.

**9-20-105. Privilege not grounds for exclusion of evidence.**

Any privilege between husband and wife or between any professional persons, 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 an endangered or impaired adult, or the cause of the proceeding.

**History.** Acts 2005, No. 1811, § 1.

**9-20-106. Immunity for investigation participants.**

Any person, official, or institution participating in good faith in the removal of a maltreated 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.

**History.** Acts 2005, No. 1811, § 1.

**9-20-107. Reports as evidence.**

(a) A written report from persons or officials required to report under the Adult and Long-Term Care Facility Resident Maltreatment Act, § [12-12-1601](#) et seq. , shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

**History.** Acts 2005, No. 1811, § 1.

**9-20-108. Jurisdiction - Venue - Eligibility.**

(a)(1) The probate division of circuit court shall have jurisdiction over proceedings for:

- (A) Custody;
- (B) Temporary custody for purposes of evaluation;
- (C) Court-ordered protective services; or
- (D) An order of investigation pursuant to this chapter.

(2) The probate division of circuit court shall retain jurisdiction for one hundred eighty (180) days after the death of an adult in the custody of the Department of Health and Human Services to enter orders concerning disposition of any assets of the adult, including the ability to order payment for services rendered or goods purchased by or for the adult while in the custody of the department before the death of the adult.

(b) A proceeding under this chapter shall be commenced in the probate division of the circuit court of the county where:

- (1) The maltreated adult resides; or
- (2) The maltreatment occurred.

(c) Eligibility for services from the department, including custody, for aliens and nonaliens shall be the same eligibility requirements for the Arkansas Medical Assistance Program.

(d) No person may be taken into custody or placed in the custody of the department under this section if that person is in need of:

- (1) Acute psychiatric treatment;
- (2) Chronic mental health treatment;
- (3) Alcohol or drug abuse treatment;
- (4) Protection from domestic abuse if that person is mentally competent; or
- (5) Casework supervision by mental health professionals.

(e) No adult may be taken into custody or placed in the custody of the department for the sole purpose of consenting to the adult's medical treatment.

**History.** Acts 2005, No. 1811, § 1.

**9-20-109. Commencement of proceedings.**

- (a) Proceedings shall be commenced by filing a petition with the clerk of the probate division of the circuit court or by transfer by another court.
- (b) Only the Department of Health and Human Services may file a petition seeking ex parte emergency relief.
- (c) No fees may be charged or collected by the clerk in cases brought by the department, including, but not limited to:
  - (1) Fees for filing;
  - (2) Summons; or
  - (3) Subpoenas.

**History.** Acts 2005, No. 1811, § 1.

**9-20-110. Petition.**

A petition shall set forth the following:

- (1) The name, address, and if known, the date of birth of the maltreated adult who shall be designated as the respondent;
- (2) The maltreated adult's current location;
- (3) The name and address of the maltreated adult's closest adult relative, if known;
- (4)(A) The facts intended to prove the person to be maltreated.
  - (B) The facts may be set out in an affidavit attached to the petition and incorporated into the petition; and
- (5) The relief requested by the petitioner.

**History.** Acts 2005, No. 1811, § 1.

**9-20-111. Notification.**

- (a) All maltreated adults named as the respondent shall be served with a copy of the petition under the Arkansas Rules of Civil Procedure.
- (b) The Department of Health and Human Services shall provide immediate notice of the date, time, and location of the probable cause hearing to:

- (1) The respondent;
  - (2) The person from whom physical custody of the respondent was removed; and
  - (3) Counsel for the respondent.
- (c) The pleadings served on the respondent shall include a statement of the right to:
- (1) Effective assistance of counsel;
  - (2) Be present at the hearing;
  - (3) Present evidence on the respondent's own behalf;
  - (4) Cross-examine witnesses who testify against him or her;
  - (5) Present witnesses in the respondent's own behalf;
  - (6) Remain silent; and
  - (7) View and copy all petitions, reports, and documents retained in the court file.
- (d) Notice of the long-term custody hearing shall be given to:
- (1) The legal counsel of the respondent;
  - (2) The next of kin of the respondent 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; and
  - (5) Any other persons or entities that the court may require.

**History.** Acts 2005, No. 1811, § 1.

**9-20-112. Voluntary placement.**

- (a) Any adult may request voluntary protective placement under this chapter.
- (b) No civil rights are relinquished as a result of voluntary protective placement.
- (c) Procedures for hearings under this chapter shall be followed with regard to voluntary protective placement.

**History.** Acts 2005, No. 1811, § 1.

**9-20-113. Petition for evaluations.**

(a) The Department of Health and Human Services may petition the circuit court for an order of temporary custody for the purpose of having an adult evaluated if during the course of an investigation under the Adult and Long-Term Care Facility Resident Maltreatment Act, § [12-12-1601](#) et seq., the department determines that:

(1) The adult is in imminent danger of death or serious bodily harm;

(2) Available protective services have been offered to alleviate the danger and have been refused; and

(3) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition cannot be adequately assessed in the adult's place of residence.

(b) Upon good cause being shown, the court may issue an order for temporary custody for the purpose of having the adult evaluated.

**History.** Acts 2005, No. 1811, § 1.

**9-20-114. Emergency custody.**

(a) The Department of Health and Human Services or a law enforcement official may take a maltreated adult into emergency custody, or any person in charge of a hospital or similar institution or any physician treating any maltreated adult may keep the adult in custody, whether or not medical treatment is required, if the circumstances or condition of the adult are such that returning to or continuing at the adult's 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 the 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 or her health or safety.

(b) Emergency custody shall not exceed seventy-two (72) hours unless the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody shall be extended through the next business day following the weekend or holiday.

(c) A person who takes a maltreated adult into emergency custody shall notify the department immediately upon taking the adult into emergency custody.

(d) The department may release custody of an adult within the seventy-two (72) hours if the adult is no longer in circumstances or conditions that present imminent danger to the adult's health or safety.

(e)(1) If emergency custody is exercised under this section, the person exercising the custody or the department may consent to having the maltreated adult transported by a law enforcement officer or by ambulance if medically appropriate, even if the adult objects.

(2) No court order shall be required for law enforcement or ambulance transport.

(3) If an ambulance driver or company or a law enforcement officer acts in good faith under this section, the immunity provisions of § 5-28-207 shall apply.

(4) The good faith of the ambulance driver or company or law enforcement officer shall be presumed.

**History.** Acts 2005, No. 1811, § 1.

### **9-20-115. Emergency order of custody.**

(a) If there is probable cause to believe that immediate emergency custody is necessary to protect a maltreated adult, the probate division of circuit court shall issue an ex parte order for emergency custody to protect the maltreated adult.

(b) The Department of Health and Human Services shall obtain an emergency ex parte order of custody on a maltreated adult within seventy-two (72) hours of taking the maltreated adult into emergency custody unless the expiration of the seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody may be extended through the next business day following the weekend or holiday.

(c) The emergency order shall include notice to the maltreated adult and the person from whom physical custody of the respondent was removed of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order.

**History.** Acts 2005, No. 1811, § 1.

### **9-20-116. Probable cause hearing.**

(a) Following issuance of an emergency order, the probate division of circuit court shall hold a hearing within five (5) business days to determine whether probable cause to issue the emergency order continues to exist.

(b)(1) At the probable cause hearing, the court shall make the following inquiries of the maltreated adult or other witnesses:

(A) Whether the maltreated adult has the financial ability to retain counsel; and

(B) If the maltreated adult does not have the financial ability to retain counsel, whether the maltreated adult is indigent.

- (2) The court shall:
  - (A) Inform the maltreated adult of the right to effective assistance of counsel; and
  - (B) If the maltreated adult is indigent, appoint counsel for the maltreated adult.
- (c) The hearing shall be limited to the purpose of determining whether probable cause:
  - (1) Existed to protect the maltreated adult; and
  - (2) Still exists to protect the maltreated adult.
- (d) The court may enter orders:
  - (1) Regarding protection of assets of the maltreated adult; or
  - (2) Ordering or authorizing the Department of Health and Human Services to obtain treatment, evaluations, or services for the maltreated adult.
- (e) The probable cause hearing shall be a miscellaneous hearing.
- (f)(1) Upon a finding of probable cause, the court may order temporary custody for up to thirty (30) days pending the hearing for long-term custody.
- (2) However, the court may extend the time under subdivision (f)(1) of this section upon a finding that extenuating circumstances exist.

**History.** Acts 2005, No. 1811, § 1.

**9-20-117. Long-term custody and court-ordered protective services hearings.**

- (a) A hearing for long-term custody or court-ordered protective services shall be held no later than thirty (30) days after the date of the probable cause hearing or the date the order for emergency custody was signed.
  - (2) However, the probate division of circuit court may extend the time during which the hearing must be held upon a finding that extenuating circumstances exist.
- (b) The court may hold a hearing for long-term custody or protective services anywhere in the judicial district.
- (c) The court may order long-term custody with the Department of Health and Human Services if the court determines that:
  - (1) The adult lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents an imminent danger to his or her health or safety;

(2) The adult is unable to provide for his or her own protection from maltreatment; and

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

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

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

(e)(1) The court may order that treatment, evaluations, and services be obtained for the maltreated adult.

(2) However, the court may not specify a particular provider for services or placement unless the adult is paying for the service or placement.

**History.** Acts 2005, No. 1811, § 1.

#### **9-20-118. Review hearings.**

(a) The Department of Health and Human Services shall periodically review the case of an adult in the custody of the department, but not less often than one (1) time every six (6) months.

(b) The circuit court shall review the case of an adult in the custody of the department, either formally or informally as determined by the court, at least one (1) time every twelve (12) months.

(c) Notice for review hearings shall be by regular mail to the attorney for the respondent and to the administrator of the facility in which the respondent is placed.

**History.** Acts 2005, No. 1811, § 1.

#### **9-20-119. Assets of a maltreated adult.**

(a)(1) The probate division of circuit court may enter orders as needed to identify, secure, and protect the assets of any adult in the custody of the Department of Health and Human Services or any maltreated adult receiving court-ordered protective services from the department.

(2) If the court orders the adult placed in the custody of the department, the court shall address the issue of the adult's residence, whether rented or owned by the adult, including the cleaning, vacating, selling or leasing of the residence, and the disposition of the property in the residence.



(3) After review of the assets, the court may order the sale of any assets if it is in the best interest of the adult.

(b) The court may also direct payment from the assets of the adult in department custody or receiving protective services from the department for services rendered or goods purchased by or for the adult in the custody of the department or receiving services from the department.

(c)(1) The court may appoint the department only as custodian of the adult and not of the estate of the adult.

(2) The court has jurisdiction in this matter to hear and grant a petition for guardianship of the estate of an adult in the custody of the department.

**History.** Acts 2005, No. 1811, § 1.

### **9-20-120. Duties and responsibilities of custodian.**

(a)(1) If the probate division of circuit court appoints the Department of Health and Human Services as the legal custodian of a maltreated adult, the department shall:

(A) Secure care and maintenance for the person;

(B) Honor any advance directives, such as living wills, if the legal documents were executed in conformity with applicable laws; and

(C) Find a person to be guardian of the estate of the adult if a guardian of the estate is needed.

(2) If the court appoints the department as the legal custodian of a maltreated adult, the department may:

(A) Consent to medical care for the adult;

(B) Obtain physical or psychological evaluations; and

(C) Obtain medical, financial, and other records of the adult.

(b) The department as custodian shall not make any of the following decisions without receiving express court approval:

(1) Consent to abortion, sterilization, psychosurgery, or removal of bodily organs unless a procedure is necessary in a situation threatening the life of the maltreated adult;

(2) Consent to withholding life-saving treatment;

(3) Authorize experimental medical procedures;

- (4) Authorize termination of parental rights;
- (5) Prohibit the adult from voting;
- (6) Prohibit the adult from obtaining a driver's license;
- (7) Consent to a settlement or compromise of any claim by or against the adult or his or her estate;
- (8) Consent to the liquidation of assets of the adult through such activities as an estate sale; or
- (9) Amputation of any part of the body.

**History.** Acts 2005, No. 1811, § 1.

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

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials compiled or gathered by the Department of Health and Human Services regarding a maltreated adult in the custody of the department or receiving 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;
- (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) To individual federal and state representatives and senators who 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.

(b) 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.

**History.** Acts 2005, No. 1811, § 1.

## Revisions to Adult Maltreatment Custody Act

### Adult Maltreatment Custody Act

#### **9-20-101. Title.**

This chapter shall be known and may be cited as the Adult Maltreatment Custody Act.

**History.** Acts 2005, No. 1811, § 1.

#### **9-20-102. Purpose.**

The purposes of this subchapter are to:

- (1) Protect a maltreated adult or long-term care facility resident who is in imminent danger; and
- (2) Encourage the cooperation of state agencies and private providers in the service delivery system for maltreated adults.

**History.** Acts 2005, No. 1811, § 1.

#### **9-20-103. Definitions.**

As used in this chapter:

(1) "Abuse" means:

(A) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered or impaired adult;

(B) Any intentional or demeaning act that a reasonable person would believe subjects an endangered or impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm;

(C) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered or impaired person except in the course of medical treatment or for justifiable cause; or

(D) With regard to any adult resident of a long-term care facility, any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Adult maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;

(3) "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 person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the circuit court;

(4) "Department" means the Department of Health and Human Services.

(5) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) An adult resident of a long-term care facility who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) "Exploitation" means:

(A) The illegal or unauthorized use or management of an endangered or impaired adult's funds, assets, or property or the use of an endangered or impaired adult's person, power of attorney, or guardianship for the profit or advantage of oneself or another; or

(B) Misappropriation of property of an adult resident of a long-term care facility, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent;

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

(8)(A) "Impaired adult" means a person 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.

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

(9) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for the mentally retarded; or

(F) Any facility that provides long-term medical or personal care;

(10) "Long-term care facility resident" means a person eighteen (18) years of age or older living in a long-term care facility;

(11) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult resident of a long-term care facility;

(12) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(13) "Neglect" means:

(A) An act or omission by an endangered or impaired adult, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered or impaired adult constituting negligent failure to:

(i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or impaired adult;

(ii) 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;

(iii) Carry out a prescribed treatment plan; or

(iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Health and Human Services;

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

(B) If the person is an endangered or impaired adult, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(15)(A) "Protective services" means services to protect an endangered or impaired adult from:

(i) Self-neglect or self-abuse; or

(ii) Abuse or neglect by others.

(B) Protective services may include:

(i) Evaluation of the need for services;

- (ii) Arrangements or referrals for appropriate services available in the community;
  - (iii) Assistance in obtaining financial benefits to which the person is entitled; or
  - (iv) As appropriate, referrals to law enforcement or prosecutors;
- (16) "Resident of a long-term care facility" means a person eighteen (18) years of age or older living in a long-term care facility;
- (17) "Serious bodily harm" means physical abuse, sexual abuse, physical injury, or serious physical injury;
- (18) "Serious physical injury" means physical injury to an endangered or impaired adult that:
- (A) Creates a substantial risk of death; or
  - (B) Causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;
- (19) "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](#); and
- (20) "Subject of the report" means:
- (A) The endangered or impaired adult;
  - (B) The adult's legal guardian; and
  - (C) The offender.

**History.** Acts 2005, No. 1811, § 1.

**9-20-107. Reports as evidence.**

- (a) A written report from persons or officials required to report under the Adult and Long-Term Care Facility Resident Maltreatment Act, § ~~12-12-1601~~ [12-12-1701](#) et seq. , shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.
- (b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

**History.** Acts 2005, No. 1811, § 1.

**9-20-113. ~~Petition for evaluations~~ Evaluations.**

- (a) The Department of Health and Human Services may petition the circuit court for an order of temporary custody for the purpose of having an adult evaluated if during the course of an investigation under the Adult and Long-Term Care Facility Resident Maltreatment Act, § ~~12-12-1601~~ [12-12-1701](#) et seq., the department determines that:
  - (1) The adult is in imminent danger of death or serious bodily harm; Immediate removal is necessary to protect the adult from imminent danger to his or her health or safety;
  - (2) Available protective services have been offered to alleviate the danger and have been refused; and
  - (3) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition cannot be adequately assessed in the adult's place of residence; or
    - (B) The adult's mental or physical impairment and ability to protect himself or herself from adult maltreatment cannot be adequately assessed in the adult's place of residence.
- (b) Upon good cause being shown, the court may issue an order for temporary custody for the purpose of having the adult evaluated.

**History.** Acts 2005, No. 1811, § 1.

**9-20-114. Emergency custody.**

(a) The Department of Health and Human Services or a law enforcement official may take a maltreated adult into emergency custody, or any person in charge of a hospital or similar institution or any physician treating any maltreated adult may keep the adult in custody, whether or not medical treatment is required, if the circumstances or condition of the adult are such that returning to or continuing at the adult's 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 the 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 or her health or safety or the adult has a mental or physical impairment that prevents the adult from protecting himself or herself from imminent danger to his or her health or safety.

(b) Emergency custody shall not exceed seventy-two (72) hours unless the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody shall be extended through the next business day following the weekend or holiday.

(c) A person who takes a maltreated adult into emergency custody shall notify the department immediately upon taking the adult into emergency custody.

(d) The department may release custody of an adult within the seventy-two (72) hours if the adult is no longer in circumstances or conditions that present imminent danger to the adult's health or safety.

(e)(1) If emergency custody is exercised under this section, the person exercising the custody or the department may consent to having the maltreated adult transported by a law enforcement officer or by ambulance if medically appropriate, even if the adult objects.

(2) No court order shall be required for law enforcement or ambulance transport.

(3) If an ambulance driver or company or a law enforcement officer acts in good faith under this section, the immunity provisions of § 5-28-207 shall apply.

(4) The good faith of the ambulance driver or company or law enforcement officer shall be presumed.

**History.** Acts 2005, No. 1811, § 1.

## **Attachment 7 – Community Education Plan**

Phase I – By December 31, 2006, a resource packet developed. Packet would include prevention, recognition, reporting procedures, what APS can do and what individuals/community can do. A link to this information will be established on the APS web site. The packet will be used in train the trainer as well as community education events.

Phase II – January 2007-July 2008 – MOU established between UALR Senior Justice Center and APS for train the trainer using students. We will pilot this in at least 2 areas and measure any increase in referrals received to determine if we can continue or if we need to wait until additional resources are in place.

Phase III – Beginning July 2008 – Media campaign (after additional resources (APS staff are in place, and trained). Recommend one position in APS be designated as the Community Education Coordinator. This position would develop and coordinate community education. Community Education would be provided by APS staff or by volunteers and students.