

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 354

By: Brown

COMMITTEE SUBSTITUTE

( Crimes and punishments, mental health and public health  
and safety - prohibited acts, inspections, violations  
and liability to residents -

emergency )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 701.8, is amended to read as follows:

Section 701.8 Homicide is murder in the second degree in the following cases:

1. When perpetrated by an act imminently dangerous to another person and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual; ~~or~~

2. When perpetrated by a person engaged in the commission of any felony other than the unlawful acts set out in ~~Section 1, subsection B, of this act~~ subsections B, C and D of Section 701.7 of this title; or

3. When, pursuant to Section 843.1 of this title, a caretaker abuses a person entrusted to his care and such abuse is a primary contributing factor in the cause of death of said person.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 701.9, is amended to read as follows:

Section 701.9 A. A person who is convicted of or pleads guilty or nolo contendere to murder in the first degree shall be punished by death, by imprisonment for life without parole or by imprisonment for life.

B. A person who is convicted of or pleads guilty or nolo contendere to murder in the second degree shall be punished by imprisonment in a state penal institution for not less than ten

(10) years nor more than life, or by a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or by both such fine and imprisonment.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 716, is amended to read as follows:

Section 716. A. Any killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of Section 681 of this chapter title, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

B. Any caretaker who violates any provision of Section 843.1 of this title relating to neglect of a person entrusted to the care of a caretaker and such neglect is a primary contributing factor in the cause of death of such person commits manslaughter in the second degree.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 722, is amended to read as follows:

Section 722. A. Any person guilty of manslaughter in the second degree pursuant to subsection A of Section 716 of this title is punishable by imprisonment in the State Penitentiary not more than four (4) years and not less than two (2) years, or by imprisonment in a county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both fine and imprisonment.

B. A person who is convicted of or pleads guilty or nolo contendere to manslaughter in the second degree pursuant to subsection B of Section 716 of this title shall be punished by imprisonment in the State Penitentiary for not less than two (2) years nor more than twenty (20) years, or by a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or by both such fine and imprisonment.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 843.1, is amended to read as follows:

Section 843.1 A. ~~No caretaker as defined in Section 803 of Title 43A of the Oklahoma Statutes shall:~~

1. Shall willfully abuse, neglect, or financially exploit any person entrusted in his care, or shall willfully cause, secure, or permit any of said acts to be done; and

2. Who has actual knowledge of abuse, neglect or exploitation of any person entrusted to his care shall willfully fail to take reasonable, appropriate and immediate action under the circumstances to prevent further abuse, neglect or exploitation of such person.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by a fine of not ~~more~~ less than Ten Thousand Dollars (\$10,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00), or by imprisonment in the State Penitentiary for not less than one (1) year nor more than ten (10) years, or by both ~~said~~ such fine and imprisonment.

C. As used in this section:

1. "Caretaker":

a. has the same meaning as such term is defined in Section 10-103 of Title 43A of the Oklahoma Statutes,

b. means an owner, operator, administrator, licensee or employee of a "residential care home", as such term is defined in Section 1-820 of Title 63 of the Oklahoma Statutes, or

c. means an owner, operator, administrator, licensee or employee of a "nursing facility" or "specialized facility", as such terms are defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

2. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish, or the deprivation of adequate and appropriate food, water, clothing, shelter or medical care, or the use of chemical or physical restraints in any manner that is prohibited by law;

3. "Neglect" means the failure to provide reasonable protection from foreseeable physical or mental injury, or the failure to provide reasonably adequate and appropriate food, water, clothing, shelter, medical care or personal care; and

4. "Exploit" and "exploitation" mean an unjust or improper use of the resources of a person entrusted to the care of a caretaker for the profit or advantage, pecuniary or otherwise, of the caretaker or any other person.

D. Nothing in this section shall be construed to mean that a person is abused, neglected, exploited or in need of emergency or protective services for the sole reason that he or she is being furnished or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of that person's recognized church or religious denomination. Nor shall anything in this section be construed to authorize, permit or require any medical care or treatment in contravention of the stated or implied objection of such a person.

SECTION 6. AMENDATORY 43A O.S. 1991, Section 10-103, is amended to read as follows:

Section 10-103. A. When used in the Protective Services for the Elderly and for Incapacitated Adults Act, Section 10-101 et seq. of this title:

1. "Protective services" means services which are necessary to aid an elderly or incapacitated person in meeting the essential requirements for his mental or physical health and safety which such person is unable to provide or obtain without assistance and includes services provided to or obtained for such person in order to prevent or remedy the abuse, neglect, or exploitation of such person;

2. "Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" include but shall not be limited to the identification of adults in need of the services, the provision of medical care for physical and mental health needs, provision of social services assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, guardianship referral, outreach and transportation necessary to secure any of such needs. The term shall not include taking the person into physical custody without the consent of said person except as provided for in

Section ~~807~~ 10-107 of this title, and evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness is likely to occur;

4. "Elderly person" means any person aged sixty-five (65) or over residing in this state;

5. "Incapacitated person" means any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, advanced age, mental retardation, developmental disability or other cause and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that they lack the capacity to manage their financial resources or to meet essential requirements for their mental or physical health or safety without assistance;

6. "Adult in need of protective services" means an individual who, because of physical or mental disability, incapacity or other disability, is substantially impaired in his ability to provide adequately for his own care or custody, or is unable to manage his property and affairs effectively, or to carry out the activities of daily living, or to protect himself from abuse, neglect, or exploitation without assistance from others;

7. "Caretaker" means a person ~~who has the responsibility for the care of the adult in need of protective services as a result of family relationship or who has assumed the responsibility for the care of the elderly person or incapacitated adult voluntarily, by contract, or as a result of the ties of friendship~~ or any type of business entity who has either:

- a. voluntarily assumed responsibility for the personal care of an elderly person who is unable to protect his own interest, an incapacitated person, or an adult in need of protective services, as a result of family relationships or friendship, or

b. undertaken responsibility for the personal care of an elderly person who is unable to protect his own interest, an incapacitated person, or an adult in need of protective services by any kind of written or oral agreement, third-party agreement, expressed or implied agreement, or by actions or under circumstances by which intent to be responsible for the care of such person may be inferred. As used in this paragraph, the term "business entity" means any type of business, in the broadest sense of the term, whether or not it is properly licensed to do business in the State of Oklahoma or licensed to carry on the particular business which it is in fact conducting, and the following persons within the business entity:

- (1) board members or directors,
- (2) managing officers,
- (3) personnel who exercise management authority by whatever title or designation for the business entity,
- (4) managing partners and general partners,
- (5) persons who make or are responsible for making policy or procedural decisions affecting persons in the care of the business entity, or who implement or are responsible for implementing such policies or procedural decisions, and
- (6) employees, agents and subcontractors of the business entity, who have any duty or responsibility for the medical or personal care of an elderly person who is unable to protect his own interest, an incapacitated person, or an adult in need of protective services;

8. "Department" means the Department of Human Services;

9. "Evaluation Service" means a team of medical, psychological, psychiatric, and social work professionals established by the Department for the purpose of conducting a

comprehensive physical, mental, and social evaluation of an elderly person or an incapacitated adult for whom a petition has been filed in a court for continued protective services on an involuntary basis;

10. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish, or the deprivation of adequate or appropriate food, clothing, shelter, or medical care by a caretaker or other person responsible for providing these services;

11. ~~"Exploitation"~~ "Exploit" or "exploitation" means an unjust or improper use of the resources of an elderly person or incapacitated adult for the profit or advantage, pecuniary or otherwise, of another person; and

12. "Neglect" means the failure to:

- a. provide reasonable protection from foreseeable physical injury under the circumstances for an elderly person or incapacitated adult who is unable to protect his own interest; ~~or the failure to, an adult in need of protective services, or an incapacitated adult in need of protective services, or an incapacitated adult due to the action or inaction of another or that of such person to be protected,~~
- b. provide reasonably adequate shelter, appropriate temperate living conditions, or appropriate clothing; ~~or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of his lack of awareness, incompetence, or incapacity,~~ under the circumstances for an elderly person who is unable to protect his own interest, an adult in need of protective services, or an incapacitated adult which has resulted or may result in physical or mental injury to such person,
- c. provide:

- (1) reasonably adequate and appropriate hydration or nutrition under the circumstances,
  - (2) hydration or nutrition resulting in violation of the Hydration and Nutrition for Incompetent Patients Act, Section 3080.1 et seq. of Title 63 of the Oklahoma Statutes,
  - (3) hydration or nutrition resulting in violation of the applicable rules of the Department of Human Services, or
  - (4) hydration or nutrition resulting in violation of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, Section 3101.1 et seq. of Title 63 of the Oklahoma Statutes,
- for an elderly person who is unable to protect his own interest, an adult in need of protective services, or an incapacitated adult which has resulted or may result in physical or mental injury to such person,

d. provide:

- (1) reasonably adequate and appropriate medical care or personal care under the circumstances,
  - (2) medical care resulting in violation of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, Section 3101.1 et seq. of Title 63 of the Oklahoma Statutes,
  - (3) medical care or personal care resulting in violation of the applicable rules of the Department of Human Services, or
  - (4) medical care or personal care resulting in violation of the applicable rules of the State Department of Health,
- for an elderly person who is unable to protect his own interest, an adult in need of protective services, or an incapacitated adult which has resulted or may result in physical or mental injury to such person, or

e. promptly notify, by reasonable means, appropriate medical personnel, under the circumstances, for an elderly person who is unable to protect his own interest, an adult in need of protective services, or an incapacitated adult, and such failure to promptly notify causes or aggravates physical illness or injury to such person.

B. Nothing in this section shall be construed to mean that a person is abused, neglected, exploited or in need of emergency or protective services for the sole reason that he or she is being furnished or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of that person's recognized church or religious denomination. Nor shall anything in this section be construed to authorize, permit or require any medical care or treatment in contravention of the stated or implied objection of such a person.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-832, is amended to read as follows:

Section 1-832. A. No person shall willfully:

1. Fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction pursuant to the provisions of the Residential Care Act, Section 1-820 et seq. of this title, as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension; or

2. Prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department in the investigation and enforcement of the Residential Care Act; or

3. Prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties pursuant to the provisions of the Residential Care Act; or

4. Prevent or interfere with any such representative in the preserving of evidence of any violation of the Residential Care Act or the rules promulgated pursuant to the provisions of the Residential Care Act; or

5. Retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized pursuant to the provisions of the Residential Care Act; or

6. File any false, incomplete, or intentionally misleading information required to be filed pursuant to the provisions of the Residential Care Act, or willfully fail or refuse to file any information required by the Department pursuant to the provisions of the Residential Care Act; or

7. Open or operate a home without a license.

B. No employee of a state or unit of a local government agency shall aid, abet, assist, conceal, or conspire with an administrator, operator or other employee of a home in a violation of any provision of the Residential Care Act or any rule, regulation, or standard promulgated by the Board pursuant to the Residential Care Act.

C. Any person who violates any of the provisions of the Residential Care Act, upon conviction, shall be guilty of a misdemeanor. Each day upon which such violation occurs shall constitute a separate violation.

D. Notwithstanding any other provisions of the Residential Care Act, Section 1-819 et seq. of this title, any person who knowingly:

1. Obstructs, impedes, unlawfully prevents or delays an investigation by the State Department of Health, Department of Human Services, Attorney General, district attorney or other law enforcement agency into the possible homicide, abuse, neglect or exploitation of a resident;

2. Destroys, hides, obliterates, falsifies or omits accurate entries in relation to the medical records pertaining to a resident, or destroys, hides, obliterates, falsifies or omits accurate entries in relation to the financial records pertaining to a resident, with intent to obstruct, impede, unlawfully prevent or delay investigation of the possible homicide, abuse, neglect or exploitation of the resident; or

3. Gives investigators or employees of the State Department of Health, Department of Human Services, the Attorney General, district attorney or other law enforcement agency intentionally false or misleading statements concerning the medical records or past or present physical condition of a resident, or concerning the past or present financial records of a resident, shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for up to three (3) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1916, is amended to read as follows:

Section 1-1916. A. No person shall:

1. Intentionally fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction under this act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

2. Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department in the investigation and enforcement of this act;

3. Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties under this act;

4. Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of this act or the rules promulgated under this act;

5. Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this act;

6. Willfully file any false, incomplete or intentionally misleading information required to be filed under this act, or willfully fail or refuse to file any information; or

7. Open or operate a facility without a license.

B. A violation of this section is a misdemeanor.

C. The district attorney of the county in which the facility is located, or the Attorney General, may be requested by the Department to initiate prosecutions under this section.

D. Any person who knowingly:

1. Obstructs, impedes, unlawfully prevents or delays an investigation by the State Department of Health, Department of Human Services, Attorney General, district attorney or other law enforcement agency into the possible homicide, abuse, neglect or financial exploitation of a resident;

2. Destroys, hides, obliterates, falsifies or omits accurate entries in relation to the medical records pertaining to a resident, or destroys, hides, obliterates, falsifies or omits accurate entries in relation to the financial records pertaining to a resident, with intent to obstruct, impede, unlawfully prevent or delay investigation of the possible homicide, abuse, neglect or exploitation of the resident; or

3. Gives investigators or employees of the State Department of Health, Department of Human Services, the Attorney General, district attorney or other law enforcement agency intentionally false or misleading statements concerning the medical records or past or present physical condition of a resident, or concerning the past or present financial records of a resident,  
shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary for up to three (3) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-1939, is amended to read as follows:

Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. Also, any state employee that aids, abets, assists, or conspires with an owner or

licensee to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under this act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or his legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, ~~under this act,~~ participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any civil liability, ~~civil or criminal,~~ or any other civil proceedings, ~~civil or criminal,~~ as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A facility employee or agent who becomes aware of abuse or neglect of a resident prohibited by this act shall immediately report the matter to the facility administrator. A facility administrator who becomes aware of abuse or neglect of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-0831

CJ