

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1302

By: Eddins of the House

and

Weedn of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to mental health; amending 43A O.S. 1991, Section 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 1-109), which relates to confidentiality and privilege; requiring that facility inquire regarding release of information after certain period of time; amending 43A O.S. 1991, Section 5-204, which relates to treatment and medication of person during detention period by Department of Mental Health and Substance Abuse Services; modifying provisions regarding use of seclusion or restraint; providing exception; amending 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1996, Section 5-401), which relates to involuntary commitment procedures; requiring attorney appointed for person subject to involuntary commitment procedure to provide certain information to the court and the district attorney; amending 43A O.S. 1991, Sections 10-101, 10-102, 10-103, as amended by Section 1, Chapter 244, O.S.L. 1994, 10-104, as amended by Section 1, Chapter 159, O.S.L. 1993, 10-105, as last amended by Section 2, Chapter 244, O.S.L. 1994, 10-106, as amended by Section 3, Chapter 159, O.S.L. 1993, 10-107, as last amended by Section 3, Chapter 244, O.S.L. 1994, 10-108, as last amended by Section 4, Chapter 244, O.S.L. 1994, 10-109 and 10-110 (43A O.S. Supp. 1996, Sections 10-103, 10-104, 10-105, 10-106, 10-107 and 10-108), which relate to protective services for the elderly and incapacitated adults; modifying title; modifying and deleting definitions; modifying terms; modifying list of individuals required to make certain reports; authorizing court to enter order for attorney fees for violation of act; requiring interviews of caretakers; requiring certain findings to be forwarded to court or facility operator; providing for accounting and freezing assets if wrongdoing alleged; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 1-109, as amended by Section 41, Chapter 298, O.S.L. 1992 (43A O.S. Supp. 1996, Section 1-109), is amended to read as follows:

Section 1-109. A. All medical records and all communications between physician or psychotherapist and patient are both privileged and confidential. Such information is available only to persons or agencies actively engaged in treatment of the patient or in treatment of a minor child of the patient, or in related administrative work.

1. Except as provided in this section and Section 19 of Title 76 of the Oklahoma Statutes, privileged or confidential information shall not be released to anyone not involved in the treatment programs without a written release by the patient or, if a guardian has been appointed for the patient, the guardian of the patient, or an order from a court of competent jurisdiction. If the patient is a minor child, the written consent of the parent, as defined by the Inpatient Mental Health Treatment of Children Act, or public or private child care agency having legal custody of the child is required. Provided, however, confidential information may be released as provided by Sections ~~1125~~ 7005-1.1 through ~~1125.2~~ 7005-1.3 of Title 10 of the Oklahoma Statutes. Upon admission and after a person has been an inpatient for seventy-two (72) hours, the facility shall inquire, at least once, whether the person wishes to authorize the release of information regarding the inpatient status of the person.

2. Individuals and agencies holding a contract with the Department of Mental Health and Substance Abuse Services to provide mental health or drug or alcohol treatment services and who have signed a qualified service agreement as provided by ~~said~~ such contract may transmit records and information as necessary and appropriate for the care and treatment of patients pursuant to rules ~~and regulations~~ adopted by the Board of Mental Health and Substance Abuse Services.

3. The Board of Mental Health and Substance Abuse Services shall adopt rules ~~and regulations~~ providing for the transmittal of records and information if necessary and appropriate to other

public and private agencies which are actively providing services to minor patients, former patients who are minors, or the minor children of adult patients.

B. A person who is or has been a patient of a physician, psychotherapist, mental health institution or facility, a drug or alcohol abuse treatment facility or service, a community mental health service or agency or a community social service agency for the purpose of mental health or drug or alcohol abuse care and treatment shall not be entitled to personal access to the information contained in ~~his~~ such person's psychiatric or psychological records or to copies of ~~said~~ such records unless access to ~~said~~ such records is consented to by the treating physician or practitioner or is ordered by a court. ~~Said~~ Such person shall, upon request, be provided with information contained in ~~said~~ such records as appropriate as determined by the person in charge of the care and treatment of the patient. ~~Said~~ Such information shall be provided to the patient in a manner consistent with the best interest of the patient as determined by the person in charge of the care and treatment of the patient.

C. Upon request, a responsible family member of a patient or former patient, the attorney, guardian or conservator of a patient or former patient, is entitled to the following information from the Department, individuals or agencies holding contracts with the Department to provide mental health or drug or alcohol treatment services, and facilities certified by the Department as mental health or drug or alcohol treatment facilities regarding the person who is the subject of the request:

1. Information as to whether ~~or not~~ the person is or was a patient;
2. If the person is receiving inpatient care and treatment, a statement as to the probable duration of ~~said~~ such inpatient care;
3. A summary of the diagnosis and prognosis of the person;
4. A listing of the medications the person has received or is receiving, a copy of the treatment plan of the person, and, when the person making the request is a responsible family member, guardian or conservator, any other information necessary in order

for the responsible family member to assist in the implementation of the discharge planning required pursuant to Section 7-102 of this title; and

5. As requested, such other information as may be necessary to determine whether ~~or not~~ guardianship or conservatorship proceedings should be initiated.

For the purposes of this subsection, "responsible family member" means the parent, spouse, adult child, adult sibling, or other adult relative who is actively involved in providing care to or monitoring the care of a person who is a current or former patient as verified by the physician, psychologist or other person responsible for the care and treatment of ~~said~~ such person. Except in an emergency, as determined by the person verifying the involvement of the responsible family member, the request shall be made in writing.

The person verifying the involvement of the responsible family member shall notify the patient or former patient of the request and, except with regard to a parent as to his or her minor child or in case of an emergency, obtain the consent of the patient prior to the release of the information.

SECTION 2. AMENDATORY 43A O.S. 1991, Section 5-204, is amended to read as follows:

Section 5-204. A. During the detention periods authorized by the Mental Health and Substance Abuse Services Law, Section 1-101 et seq. of this title, or during the time set forth in the Mental Health and Substance Abuse Services Law for the precommitment screening examination, or while in the custody of the Department of Corrections appropriate treatment and medication, including psychotropic medication, may be administered to a consenting individual.

B. Treatment and medication may be administered to a nonconsenting individual upon the written order of a physician who has personally examined the patient and who finds such medication or treatment is necessary to protect the patient, the facility or others from serious bodily harm, and who so notes in the individual's medication record, with an explanation of the facts

leading up to the decision to administer treatment and medication including psychotropic medication.

C. Any physician who orders medication in good faith and any employee of the facility who administers medication in good faith pursuant to the written order of a physician, under the provision of this section, shall be immune from civil suits for damages that occur from ~~said~~ such administration of medication.

~~D. If seclusion or restraint is feasible and would also be effective to avoid such an injury, and the individual expresses a preference for seclusion or restraint instead of medication, it shall be honored if practical~~ Seclusion or restraint may be administered to a nonconsenting individual upon the written order of a physician who has personally examined the patient and who finds that seclusion or restraint is necessary to protect the patient, the facility, or other persons. The physician shall note in the chart of the patient an explanation of the decision to administer seclusion or restraint, including administration of psychotropic medication. This shall not prohibit emergency seclusion or restraint pending notification of a physician.

~~E. It shall be the responsibility of the facility providing psychotropic medication to an individual pursuant to this section to assure that such person is not, without such person's consent, on the day preceding or on the day of any court hearing, given any psychotropic medication.~~

~~F.~~ If the individual is under the influence of psychotropic medication during any court hearing held pursuant to Section 5-401 of this title, the court, and the jury, if any, shall be advised by the district attorney at the beginning of such hearing that ~~said~~ such individual is under the influence of psychotropic medication, the purpose of the medication, and the effect which ~~said~~ such medication may have on the individual's actions, demeanor and participation at the hearing.

~~G. Subsection D of this section shall have no application to trials or hearings of patients charged with crimes and found incompetent to stand trial, and who are receiving psychotropic~~

~~drugs or other medication which enable the individual to be able to stand trial.~~

H. F. If an inmate in the custody of the Department of Corrections has been properly assigned and committed to the Special Care Unit at the State Penitentiary the provisions of this section shall apply.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 5-401, as amended by Section 3, Chapter 389, O.S.L. 1992 (43A O.S. Supp. 1996, Section 5-401), is amended to read as follows:

Section 5-401. A. The father, mother, husband, wife, brother, sister, guardian or child, over the age of eighteen (18) years, of a person alleged to be a person requiring treatment, or the parent, father, mother, guardian or person having custody of a minor child, a physician or person in charge of any facility or correctional institution, or any peace officer within the county in which the person alleged to be a person requiring treatment resides or may be found or the district attorney in whose district the person requiring treatment resides or may be found, may petition the district court, upon which is hereby conferred jurisdiction, to determine whether the person is a person requiring treatment and to order the least restrictive appropriate treatment for ~~him~~ that person. The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts. The petition shall be verified and made under penalty of perjury.

B. Upon the filing of a petition, the district court shall determine, based upon clear and convincing evidence, whether there is probable cause to detain the person requiring treatment prior to a hearing on the petition. If the court finds that probable cause does exist, an order may be entered authorizing any peace officer to take that person into custody and to detain such person in a suitable facility prior to the hearing on the petition; provided that ~~said~~ such period of temporary detention shall not exceed seventy-two (72) hours, excluding days when the district court is not in session. Such detention shall be extended to

coincide with any order of continuance entered by the court at the first hearing. A certified copy of the order of continuance shall constitute authority for the facility to continue to detain the subject individual during the period of continuance.

C. Upon receiving the petition, the court shall fix a day for the hearing thereof and shall forthwith appoint an attorney and an examining commission. A copy of the petition and notice as hereinafter described shall be served personally at least one (1) day before the examining commission is scheduled to hold its proceedings, and as many additional days as are requested by the person alleged to be a person requiring treatment or ~~his~~ the person's attorney as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost. The notice shall contain the following information:

1. The definition provided by the Mental Health Law of a mentally ill person and a person requiring treatment;

2. ~~That~~ A statement that the court has appointed an examining commission composed of two ~~(2)~~ qualified examiners to examine the mental condition of the person allegedly requiring treatment and execute a certificate of their findings;

3. The time and place of any examination to be conducted by the examining commission, and the hearing on the petition;

4. ~~That~~ A statement that, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six ~~(6)~~ persons having the qualifications required of jurors in courts of record;

5. ~~That~~ A statement that the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;

6. ~~That~~ A statement that the court has appointed an attorney for the person alleged to be a person requiring treatment who shall represent ~~him~~ the person until final disposition of the case;

7. ~~That~~ A statement that if the person alleged to be a person requiring treatment is indigent, the court shall pay the ~~attorney's~~ attorney fees;

8. ~~That~~ A statement that if the person is found at the hearing or at a jury trial to be mentally ill and a person requiring treatment under this act, that the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the patient's right to refuse psychotropic medications; and

9. ~~That~~ A statement that the person alleged to be a person requiring treatment shall be afforded such other rights as are guaranteed by state and federal law and that such rights include a trial by jury, if demanded. The notice shall be served upon the person alleged to be a person requiring treatment, ~~his~~ the person's father, mother, husband, wife, ~~or~~ or guardian or, in their absence, some of the next of kin, of legal age, if any such persons are known to be residing within the county, and upon such ~~of said~~ person's relatives residing outside of the county, as may be ordered by the court, and also upon the person with whom the person alleged to be a person requiring treatment may reside, or at whose house ~~he~~ the person may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.

D. 1. The attorney appointed by the court shall be a licensed and actively practicing attorney who shall represent the person alleged to be a person requiring treatment until final disposition of the case. The court may appoint a public defender where available. The attorney shall meet and consult with the person within one (1) day of notification of his appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of ~~his~~ the person's rights, including all rights afforded to ~~him~~ the person by the Oklahoma and United States Constitutions. The attorney shall be required to notify the court

of any current and unrevoked advance directive that has been executed by the person alleged to be a person requiring treatment pursuant to the Advance Directives for Mental Health Treatment Act and to provide a written copy of the advance directive to the court and a representative of the district attorney's office, if available.

2. The court-appointed attorney shall be replaced by another attorney if:

- ~~1.~~ The a. the person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for him~~†~~†
- ~~2.~~ The b. the preferred attorney agrees to accept the responsibility~~†~~† and
- ~~3.~~ The c. the person alleged to be a person requiring treatment or the attorney whom ~~he~~ the person prefers notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person alleged to be a person requiring treatment within one (1) day of ~~his~~ the employment of the attorney. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

E. The ~~attorney's~~ attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent, and unable to pay ~~attorney's~~ attorney fees, the ~~attorney's~~ attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.

F. The district court shall in each case appoint an examining commission composed of two ~~(2)~~ qualified examiners, one of whom may be a licensed clinical psychologist. The qualified examiners shall make a careful personal examination and inquiry into the

mental condition of the person alleged to be a person requiring treatment and execute a certificate of their findings. The examining commission appointed by the court shall have the right to conduct an examination of the mental condition of the person alleged to be a person requiring treatment, either prior to or at the time of the hearing on the petition. Any examination that is conducted prior to the hearing shall be on proper notice to the person and ~~his~~ the appointed or selected attorney for the person.

G. The examining commission forms shall be printed or written on eight and one-half inch by eleven inch (8 1/2" x 11") sheets of paper and shall be substantially as follows:

EXAMINER'S CERTIFICATE

We, the undersigned, together and in the presence of each other, have made a personal examination of _____, a person alleged to be a person requiring treatment, and do hereby certify that we did on the _____ day of _____, 19__, make a careful personal examination of the actual condition of the said person and have interrogated _____, the person seeking the commitment of _____, and _____, the witness(es) identified in the petition, and on such examination we find that she/he is/not a person requiring treatment. The facts and circumstances on which we base our opinions are stated in the following report of symptoms and history of case, which is hereby made a part hereof.

We are duly licensed to practice in the State of Oklahoma, are not related to _____ by blood or marriage, and have no interest in her/his estate.

Witness our hands this _____ day of _____, 19__.

_____, M.D., D.O., Ph.D., Other
_____, M.D., D.O., Ph.D., Other

Subscribed and sworn to before me this _____

day of _____, 19__.

Notary Public

REPORT OF SYMPTOMS AND HISTORY OF
CASE BY EXAMINERS

1. GENERAL

Complete name

Place of residence

Sex _____ Color _____

Age _____

Date of Birth

Place of Birth

Length of residency in Oklahoma

Single, married, widowed, separated, divorced

Number of children living

Number dead

Occupation

Date of last employment

Education

Religion

Name, relationship, address, and telephone number of
correspondents:

2. HISTORY OF FAMILY

Name of father

Birthplace

Maiden name of mother

Birthplace

Name of ~~husband~~ spouse (or maiden name of wife)

Birthplace

General characteristics of family

What relatives have had mental or nervous trouble?

3. HISTORY OF PATIENT PREVIOUS TO PRESENT ILLNESS

Describe the general health, development, sickness and accidents

prior to the present disorder

Personality, school record, and social habits

Previous attacks and hospitalization for mental health:

Place and date

4. HISTORY OF PRESENT ILLNESS

Supposed cause

Date of onset and course

Abnormal talk

Suicidal tendencies

Abnormal conduct

History of violence

Special and unusual symptoms

Use of alcohol

Use of narcotics

Diagnosis, if determined

Dangerous? Yes _____ No _____ If Yes,
explain basis for opinion

State the least restrictive treatment which is appropriate to
condition

State the least restrictive treatment which is available
within the catchment area

Is the patient competent to refuse treatment that is
ordered?

5. NAME AND RELATIONSHIPS OF INFORMANTS

Other data

Dated at _____, Oklahoma, this _____ day of
_____, 19__

_____, M.D., D.O., Ph.D., Other

Address

_____, M.D., D.O., Ph.D., Other

Address

H. The members of the examining commission making an examination and certifying the condition of the person alleged to be a person requiring treatment shall, regardless of whether or not they find such person mentally ill, be entitled to receive for such services a reasonable sum set by the court, and twenty cents (\$0.20) per mile for travel necessarily performed in going to the place of such examination and such further sum for expenses as the judge of the district court shall allow, ~~said~~ such sums to be paid from the local court fund. Any private fees or funds received or recovered in connection with ~~said~~ such hearing shall be deposited to the credit of the local court fund.

I. The person alleged to be a person requiring treatment shall have the right to be present at the hearing on the petition or jury trial unless it is made to appear to the court that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that ~~his~~ the presence of the person would be injurious to ~~his~~ the health or well-being of the person. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining commission, that the person alleged to be a person requiring treatment should not be allowed nor required to appear. It shall be made to appear to the court based upon clear and convincing evidence that alternatives to exclusion were attempted before the court renders ~~his~~ the removal for that purpose or determines that ~~his~~ the appearance at such hearing would be improper and unsafe.

J. The court, at the hearing on the petition, shall determine by clear and convincing evidence if the person is a person requiring treatment, and the court will take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the patient's right to refuse medication. If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits and reports of the examining commission, without further evidence being presented. If the court deems it necessary, or if the person alleged to be a person requiring treatment shall so demand, the court shall schedule the hearing on the petition as a jury trial to be held within seventy-two (72) hours of the demand, excluding days when the court is not officially in session, or within as much additional time as is requested by the attorney of the person requiring treatment, upon good cause shown.

K. At the hearing on the petition, when it is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined. No statement, admission or confession made by the person alleged to be a person requiring treatment may be used for any purpose except for proceedings under this section. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

L. If any person admitted under this section or any other provision of law is not found at the hearing on the petition to be a person requiring treatment after ~~he~~ the person is admitted to a facility, ~~he~~ the person shall be discharged immediately.

M. If any person admitted under this section or any other provision of law is found at the hearing on the petition to be a person requiring treatment, such person shall be delivered to the

custody of the Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs.

N. The court shall make and keep records of all cases brought before it. No records of proceedings under the Mental Health Law shall be open to public inspection except by order of the court or to employees of the Department of Mental Health and Substance Abuse Services, the person's attorney of record, or persons having a legitimate treatment interest.

O. Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

SECTION 4. AMENDATORY 43A O.S. 1991, Section 10-101, is amended to read as follows:

Section 10-101. Sections 10-101 through 10-110 of ~~the Mental Health Law~~ this title may be cited as the "Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act".

SECTION 5. AMENDATORY 43A O.S. 1991, Section 10-102, is amended to read as follows:

Section 10-102. The Legislature recognizes that many citizens of this state, because of the infirmities of aging, incapacity, or other disability are unable to manage their own affairs or to protect themselves from exploitation, abuse, or neglect and are in need of protective services. Said services provided pursuant to the provisions of the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act shall guarantee, to the maximum degree of feasibility, the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse, or neglect. The Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act is designed to establish protective services and to assure availability of said services to persons in need of those services.

SECTION 6. AMENDATORY 43A O.S. 1991, Section 10-103, as amended by Section 1, Chapter 244, O.S.L. 1994 (43A O.S. Supp. 1996, Section 10-103), is amended to read as follows:

Section 10-103. When used in the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act:

1. "Protective services" means services which are necessary to aid ~~an elderly or incapacitated person~~ a vulnerable adult 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 vulnerable 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~~ the person except as provided for in Section 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~~ dementia or related disease, 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 from others;

~~6.~~ 5. "~~Adult in need of protective services~~ Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity or other disability, is substantially impaired in ~~his~~ the ability to provide adequately for ~~his own~~ the care or custody of self, or is unable to manage his or her property and financial affairs effectively, or to ~~carry out the activities of daily living~~ meet essential requirements for mental or physical health or safety, or to protect ~~himself~~ self from abuse, neglect, or exploitation without assistance from others;

~~7.~~ 6. "Caretaker" means a person who has the responsibility for the care of the person or financial management of the resources of the vulnerable adult ~~in need of protective services~~ as a result of a family relationship or who has assumed the responsibility for the care of the ~~elderly person or incapacitated~~ vulnerable adult voluntarily, by contract, or as a result of the ties of friendship;

~~8.~~ 7. "Department" means the Department of Human Services;

~~9.~~ 8. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to a vulnerable adult by a caretaker or other person responsible for providing these services;

~~10.~~ 9. "Exploitation" means an unjust or improper use of the resources of ~~an elderly person or incapacitated~~ a vulnerable adult for the profit or advantage, pecuniary or otherwise, of ~~another~~ a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense; and

~~11.~~ 10. "Neglect" means the failure to provide protection for ~~an elderly person or incapacitated~~ a vulnerable adult who is unable to protect ~~his~~ the person's own interest; or the failure to provide adequate shelter or 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~~ a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury.

SECTION 7. AMENDATORY 43A O.S. 1991, Section 10-104, as amended by Section 1, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1996, Section 10-104), is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that ~~an elderly person or incapacitated~~ a vulnerable adult is suffering from abuse, neglect, or financial exploitation shall make a report to either the Department of Human Services or the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred as soon as ~~said~~ such person is aware of the situation. If a report is made to the Department of Human Services, the county office, after investigating the report, shall forward its findings to the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred. Persons required to make reports pursuant to this section shall include, but not be limited to: ~~physicians, operators~~

1. Physicians;

2. Operators of emergency response vehicles and other medical professionals, ~~social;~~

3. Social workers and other mental health professionals, ~~law;~~

4. Law enforcement officials, ~~staff;~~

5. Staff of domestic violence programs ~~and nursing home;~~

6. Long-term care facility personnel; and

7. Representatives of financial institutions.

B. The report shall contain the name and address of the ~~elderly person or incapacitated~~ vulnerable adult, the name and address of the caretaker, if any, and a description of the situation of the ~~elderly person or incapacitated~~ vulnerable adult.

C. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

D. Any person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

E. Any person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section shall be ~~liable in a civil suit~~ civilly liable for any actual damages suffered by the person or persons being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.

F. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any ~~elderly or incapacitated~~ vulnerable adult may be the result of abuse or neglect as defined by Section 10-103 of this title shall make a report to the district attorney of the county in which the death occurred. The report shall include the name of the person making the report, the name of the deceased person, the facts or other evidence supporting ~~said~~ such suspicion, and any other information that may be of assistance to the district attorney in conducting an investigation into the matter.

G. No employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

SECTION 8. AMENDATORY 43A O.S. 1991, Section 10-105, as last amended by Section 2, Chapter 244, O.S.L. 1994 (43A O.S. Supp. 1996, Section 10-105), is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of ~~an elderly person or incapacitated a~~ a

vulnerable adult pursuant to the provisions of the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act, Section 10-101 et seq. of this title, the Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

1. Every reasonable effort to notify the next of kin of the ~~person~~ vulnerable adult who may be in need of protective services;

2. Diagnostic evaluation to determine whether the person needs protective services;

3. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;

4. ~~What~~ A statement of the least restrictive services ~~are~~ needed;

5. Whether services are available from the Department or in the community and how the services can be provided;

6. Whether the person would be capable of obtaining services for ~~himself~~ self and could bear the cost or would be eligible for services from the Department;

7. Whether a caretaker would be willing to provide services or would agree to their provision;

8. Whether the person desires the services;

9. ~~What~~ A statement of any follow-up investigation ~~and~~ or monitoring of the services ~~will~~ that may be needed; and

10. Other relevant ~~data~~ information.

C. The Department's investigation shall include a visit to the home or other place of residence of ~~said~~ the person who is the subject of the report, a private interview with ~~said~~ such person, and consultation with persons who have knowledge of the circumstances. If, in the course of an investigation of this nature, the Department is denied entrance to the home or other place of residence of a person believed to be ~~an~~ a vulnerable adult in need of protective services, or is denied a private interview, or documentation, or access to records, or other information relating to ~~said~~ such person as provided by paragraph 10 of subsection B of this section, the Department may petition

the court for an order allowing entry or access. The petition shall state the name and address of the person who is the subject of the report and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer. The Department shall make all reasonable attempts to interview the caretaker or other persons alleged to be involved in the abuse, neglect or exploitation in order to enhance service provision and to prevent additional incidents of abuse, neglect or exploitation.

D. When a report is received pertaining to a vulnerable adult who has a guardian, a copy of the report of the Department shall be filed with the court to which the guardian is accountable.

E. 1. In the case of a report pertaining to ~~an elderly person or incapacitated~~ a vulnerable adult who is a resident of a nursing facility or residential care facility, the Department shall immediately notify the State Department of Health of such report in writing, and shall forward to the State Department of Health a copy of the Department's final investigative report. Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate action pursuant to the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes, and the Residential Care Act, Section 1-820 et seq. of Title 63 of the Oklahoma Statutes.

2. When a report is received pertaining to a vulnerable adult residing in a facility other than a home, where persons are employed to provide care and those employees have been named as persons responsible for the abuse, neglect or exploitation, the Department shall forward its findings to the owner or operator of the facility to prevent further incidents.

SECTION 9. AMENDATORY 43A O.S. 1991, Section 10-106, as amended by Section 3, Chapter 159, O.S.L. 1993 (43A O.S. Supp. 1996, Section 10-106), is amended to read as follows:

Section 10-106. A. If the Department of Human Services determines, as a result of its investigation, that ~~an elderly person or incapacitated~~ a vulnerable adult needs protective services, the Department shall immediately provide or arrange for the provision of protective services in the least restrictive manner, provided the person affirmatively consents to receive these services.

B. When a caretaker of ~~an elderly person or incapacitated~~ a vulnerable adult who consents to the receipt of protective services refuses to allow the provision of such services to the person, the Department may petition to the court for a decree enjoining the caretaker from interfering with the provision of protective services to the person. The complaint must allege specific facts sufficient to show that ~~said~~ the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services. If the court finds that the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services, the court may enter a decree enjoining the caretaker from interfering with the provision of protective services to the ~~person~~ vulnerable adult.

C. If ~~an elderly person or incapacitated~~ a vulnerable adult does not consent to the receipt of protective services, or ~~if said person~~ withdraws ~~his~~ consent to the receipt of such services, the services shall be terminated, unless the Department determines that the person lacks capacity to consent, in which case the Department may seek court authorization to provide services pursuant to Section 10-108 of this title.

D. 1. ~~The~~ Payment for the costs of providing protective services shall be made from either:

- a. the assets of the ~~person~~ vulnerable adult consenting to the receipt of voluntary protective services, or
- b. any private or public assistance programs for which the ~~person~~ vulnerable adult is eligible.

2. If no assets or other private or public funds are available to the person, payment shall be made from a fund established by the Department for the purpose of providing emergency adult protective services.

SECTION 10. AMENDATORY 43A O.S. 1991, Section 10-107, as last amended by Section 3, Chapter 244, O.S.L. 1994 (43A O.S. Supp. 1996, Section 10-107), is amended to read as follows:

Section 10-107. A. If ~~an elderly person or incapacitated a~~ vulnerable adult lacks the capacity to consent to receive protective services recommended by the Department of Human Services, these services may be ordered by a court on an involuntary basis through an emergency order.

B. 1. In ordering emergency involuntary protective services for a vulnerable adult, the court shall authorize only that intervention which it finds to be least restrictive of the liberty and rights of ~~said~~ such person, while consistent with ~~his~~ the welfare and safety of the person. The basis for such finding shall be stated in the record by the court.

2. Whenever it is consistent with the welfare and safety of the person, the court shall authorize that involuntary protective services be administered to the ~~elderly person or incapacitated~~ vulnerable adult in ~~his~~ the present living accommodations of that person.

C. 1. Payment for involuntary protective services provided to ~~an elderly person or incapacitated a~~ vulnerable adult determined by the court to be in need of involuntary protective services pursuant to this section or Section 10-108 of this title shall be made:

~~a. from~~ 1. From assets of the ~~person~~ vulnerable adult receiving emergency involuntary protective services, if the court so orders after a showing by the Department that the person has adequate assets to make such payment, and that payment for the involuntary protective services will not cause the person to go without other necessities of life ti

~~b. from 2.~~ From any private or public assistance programs for which the person is eligible; or
~~e. as 3.~~ As provided by paragraph 2 of subsection D of Section 10-106 of this title if the person has inadequate assets to make such payments as ordered by the court, and no private or public funds are available to the person, from a fund established by the Department for the purpose of providing emergency adult protective services.

2. The person has a right to be present and represented by counsel at the hearing. If he is indigent or, in the determination of the court, lacks capacity to waive the right to counsel, the court shall appoint counsel. If the person is indigent, the cost of representation by counsel shall be borne by this state.

D. Upon the request of an authorized representative of the Department, the district attorney of the county in which the person alleged or found by a court to be in need of involuntary protective services resides shall provide any assistance required by the Department in any local proceedings related to the provision of involuntary protective services pursuant to this section or Section 10-108 of this title.

SECTION 11. AMENDATORY 43A O.S. 1991, Section 10-108, as last amended by Section 4, Chapter 244, O.S.L. 1994 (43A O.S. Supp. 1996, Section 10-108), is amended to read as follows:

Section 10-108. A. If the Department of Human Services determines that ~~an elderly person or incapacitated~~ a vulnerable adult is suffering from abuse, neglect, or exploitation presenting a substantial risk of death, or immediate and serious physical harm to ~~himself~~ the person or the estate of the person to the extent that an emergency exists, and the person lacks mental capacity to consent to receive protective services and no consent can be obtained, the Department may petition the district court in the county in which ~~said~~ such person resides, or in the district court in the county where any of the protective services are to be provided, for an order ~~authorizing~~:

1. Authorizing involuntary protective services and appointing a temporary guardian;

2. Freezing the assets of the vulnerable adult and directing a full accounting and investigation of the person alleged to be improperly managing the estate of the vulnerable adult; or

3. Revoking the powers of an attorney-in-fact.

B. The petition shall be sworn to and include the name, age, and address of the ~~elderly person or incapacitated~~ vulnerable adult who the Department ~~determines~~ has determined is in need of emergency protective services, the nature of the abuse, neglect, or exploitation, the services needed, and information relating to the capacity of the person to consent to services and the attempts of the Department to obtain consent and the name of the person or organization proposed to be appointed as temporary guardian.

C. The ~~elderly person or incapacitated~~ vulnerable adult shall receive a forty-eight-hour notice of the hearing. The court may waive the forty-eight-hour notice requirement upon showing that immediate and reasonably foreseeable death or serious physical harm to the person will result from the forty-eight-hour delay. The person has a right to be present and represented by counsel at the hearing. If ~~he~~ the person is indigent or, in the determination of the court, lacks capacity to waive the right to counsel, the court shall appoint counsel. If the person is indigent, the cost of representation by counsel shall be borne by this state.

D. ~~In issuing an~~ 1. After a hearing on the petition, the court may:

a. issue an order for involuntary protective services and appoint a temporary guardian,

b. issue an order freezing all assets of the vulnerable adult and order a full accounting and investigation of the person alleged to be improperly managing the vulnerable adult's estate, or

c. revoke powers of attorney upon a finding that the attorney-in-fact failed to act appropriately on behalf of the vulnerable adult.

2. Whenever the court issues an order for involuntary protective services, the court shall adhere to the following limitations:

- ~~1.~~ a. ~~Only~~ only such protective services as are necessary to remove the conditions creating the emergency shall be ordered, and the court shall specifically designate the approved services in the order of the court~~;~~.
- ~~2.~~ b. ~~Protective~~ protective services authorized by an involuntary protective services order shall not include a change of residence unless the court specifically finds such action is necessary to remove the conditions creating the emergency and gives specific approval for such action in the order of the court. Emergency placement may be made to such facilities as nursing homes, personal medical institutions, foster care services and other home placements, or to other appropriate facilities~~;~~. Emergency; provided, however, emergency placement shall not be made to facilities for the acutely mentally ill~~;~~.
- ~~3.~~ c. ~~Involuntary~~ involuntary protective services may be provided for a period not to exceed ten (10) calendar days. The original order may be renewed once for a ten-day period upon a showing to the court that continuation of the original order for involuntary protective services is necessary to remove the emergency~~;~~ and
- ~~4.~~ d. ~~In~~ in the court order, the court shall appoint the Department or an interested person or organization as temporary guardian of the person with responsibility for the welfare of ~~said~~ such person and authority to give consent ~~for~~ on behalf of the person for the approved protective services until the expiration of the order for involuntary protective services~~;~~.

~~5.~~ 3. The issuance of an order for involuntary protective services and the appointment of a temporary guardian shall not deprive the ~~elderly person or incapacitated~~ vulnerable adult of any rights except to the extent validly provided for in the order or appointment; ~~and.~~

~~6.~~ 4. To implement an order for involuntary protective services, the court may authorize forcible entry of the premises of the vulnerable adult to be protected for the purpose of rendering protective services or transporting the person to another location for the provision of such services only after a showing to the court that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. Persons making authorized forcible entry shall be accompanied by a peace officer.

E. The ~~elderly person or incapacitated~~ vulnerable adult, the temporary guardian, or any interested person may petition the court to have the emergency order set aside or modified at any time.

F. 1. If the ~~elderly person or incapacitated~~ vulnerable adult continues to need protective services after the renewal order provided in paragraph 2 of subsection D of this section has expired, the temporary guardian shall immediately petition the court to order either or both of the following:

- a. appointment of a guardian as provided by Title 30 of the Oklahoma Statutes, or
- b. application for commitment of the ~~elderly person or incapacitated~~ vulnerable adult to a nursing home, personal medical institution, foster care service ~~and~~ or other home placement, or to some other appropriate facility other than a facility for the acutely mentally ill, for a period not to exceed six (6) months.

2. ~~In order to make the finding that a need exists for continued services~~ Prior to a hearing on a petition for continued involuntary protective services for up to six (6) months, the court shall direct that a comprehensive physical, mental and

social evaluation of the ~~elderly person or incapacitated~~ vulnerable adult alleged to be in need of continued services be conducted. The evaluation shall include at least the following information:

- a. the address of the place where the person is residing and the person or agency which is providing care, treatment, or services at present,
- b. a ~~resume~~ summary of the professional treatment and services provided to the person by the Department or agency, if any, in connection with the problem creating the need for emergency protective services, and
- c. a medical and social evaluation, including the Department's assessment of the person's capacity to consent to services, a psychological or psychiatric evaluation and review if the mental state of the person is in question, and any recommendations for or against maintenance of partial legal rights. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

3. ~~The~~ After a hearing, the court may authorize continued protective services on an involuntary basis for ~~an elderly person or incapacitated~~ a vulnerable adult for a period not to exceed six (6) months.

4. At the time of the expiration of an order for continued protective services on an involuntary basis for ~~an elderly person or incapacitated~~ a vulnerable adult, the guardian, the original petitioner, or any interested person may petition the court to extend its order for protective services for an additional period not to exceed six (6) months. The contents of the petition shall state the factual basis for the need for continued protective services of the person. Notice of the petition for the extension of protective services shall be made in conformity with subsection C of this section.

G. The petitioner shall not be liable for filing the petition if the petition was filed in good faith.

SECTION 12. AMENDATORY 43A O.S. 1991, Section 10-109, is amended to read as follows:

Section 10-109. A. In providing any of the duties set forth in this act, the Department of Human Services may provide direct protective services.

B. The Department may contract with any public or private agency for the provision of protective services.

C. The Department shall utilize to the extent appropriate and available existing resources and services of public and nonprofit private agencies in providing protective services. The Department shall make maximum use of volunteers and church groups whenever feasible.

SECTION 13. AMENDATORY 43A O.S. 1991, Section 10-110, is amended to read as follows:

Section 10-110. The reports, records, and working papers used or developed in an investigation of the circumstances of ~~an elderly person or incapacitated~~ a vulnerable adult pursuant to the provisions of the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act are confidential and may be disclosed only pursuant to ~~regulations adopted~~ rules promulgated by the ~~Department~~ Commission for Human Services or by order of the court.

SECTION 14. This act shall become effective November 1, 1997.

46-1-7606 LAC