

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2397

By: Steidley, Hastings and  
Gilbert of the House

and

Smith of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to vulnerable adults and minors; amending 30 O.S. 1991, Section 1-111, which relates to the Oklahoma Guardianship and Conservatorship Act; adding definitions relating to abuse, neglect and exploitation; providing for construction of section; clarifying intent; requiring certain persons to make reports concerning abuse, neglect or exploitation of those persons subject to a guardian; providing for procedures; providing certain exceptions; providing for immunity; prohibiting certain false reports; providing for penalties; prohibiting employees from imposing sanctions for making certain reports; amending 43A O.S. 1991, Sections 10-103, as last amended by Section 6, Chapter 195, O.S.L. 1997, 10-104, as last amended by Section 7, Chapter 195, O.S.L. 1997, 10-108, as last amended by Section 11, Chapter 195, O.S.L. 1997, and 10-110, as amended by Section 13, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Sections 10-103, 10-104, 10-108 and 10-110), which relate to the Protective Services for Vulnerable Adults Act; modifying and adding definitions; providing for construction of section; clarifying intent; providing for assumption of custody; removing certain financial institutions from list; providing for opportunity for hearings; providing for notice and petitions; requiring certain time-lines; authorizing expedited hearings; authorizing closed hearings; prohibiting certain consents or denial of consents; providing for waivers of notice; providing for emergency orders; providing for service; providing for certain terminations and certain temporary orders; providing for appointment of counsel; providing for transportation to hearing; providing exception; requiring certain findings; authorizing continuances; providing for costs; providing for service; providing for evaluations; requiring certain reports; providing for contents; providing for effect of temporary orders; removing certain continuances of protective services on involuntary basis; specifying certain actions of the court; providing for and limiting certain necessary services; providing for release of certain records of the Department of Human Services; listing individuals, agencies, and other entities authorized to obtain certain records; making certain restrictions and prohibitions; requiring confidentiality; making certain actions unlawful; amending 21 O.S. 1991, Section 843.1,

as amended by Section 247, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 843.1), which relates to caretaker abuse; prohibiting certain conduct by caretakers; stating penalties; clarifying applicability of section; scheduling offenses; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 30 O.S. 1991, Section 1-111, is amended to read as follows:

Section 1-111. A. As used in the Oklahoma Guardianship and Conservatorship Act:

1. "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an incapacitated person, partially incapacitated person, or a minor by a guardian or other person responsible for providing these services;

2. "Confidential information" means medical records, physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship plans, reports of guardians, limited guardians and conservators submitted to the court in connection with a proceeding pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act;

~~2.~~ 3. "Court" means a judge of the district court assigned to hear probate matters or assigned to the division of the district court designated to exercise probate jurisdiction;

~~3.~~ 4. "Estate" means the property of the person whose affairs are subject to a guardianship proceeding;

~~4.~~ 5. "Evaluation" means a professional assessment of:

- a. the ability of an adult to receive and evaluate information effectively or communicate decisions,
- b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his physical health or safety, or to manage his financial resources, and

c. the services necessary to provide for the ward;

~~5.~~ 6. "Exploitation" means an unjust or improper use of the resources of an incapacitated person, a partially incapacitated person, or a minor for the profit or advantage, pecuniary or otherwise, of a person other than an incapacitated person, a partially incapacitated person, or a minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;

7. A "guardian of an incapacitated person" means a person who has been appointed by a court to serve as the guardian of an incapacitated person to assure that the essential requirements for the health and safety of said person are met, to manage the estate or financial resources of said person, or both;

~~6.~~ 8. "Guardian ad litem" means, with respect to a guardianship proceeding, a person appointed by the court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;

~~7.~~ 9. "Guardianship plan" means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;

~~8.~~ 10. "Guardianship proceeding" means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a ward;

~~9.~~ 11. "Guardianship report" means any report required by the provisions of Sections 4-305 and 4-306 of this title;

~~10.~~ 12. "Incapacitated person" means a person eighteen (18) years of age or older:

a. who is impaired by reason of:

(1) mental illness as defined by Section 1-103 of Title 43A of the Oklahoma Statutes,

(2) mental retardation or developmental disability as defined by Section 1-818.2 of Title 63 of the Oklahoma Statutes,

- (3) physical illness or disability,
- (4) drug or alcohol dependency as defined by Section 3-403 of Title 43A of the Oklahoma Statutes, or
- (5) such other similar cause, and

b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

- (1) lacks the capacity to meet essential requirements for his physical health or safety, or
- (2) is unable to manage his financial resources.

Whenever in the Oklahoma Statutes the term "incompetent person" appears and refers to a person who has been found by a district court to be an incompetent person because of an impairment or condition described in this paragraph it shall have the same meaning as "incapacitated person" but shall not include a person who is a partially incapacitated person;

~~11.~~ 13. "Least restrictive dispositional alternative" means the form of assistance that least interferes with the legal ability of an incapacitated or partially incapacitated person to act in his own behalf;

~~12.~~ 14. "Intangible personal property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

~~13.~~ 15. "Letters" means a document issued by the court subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he will perform the duties of his office as guardian according to law;

~~14.~~ 16. A "limited guardian" means a person appointed by the court to serve as the guardian of a partially incapacitated person and who is authorized by the court to exercise only:

- a. some of the powers of a guardian of the person or whose power as guardian of the person extends only to certain matters pertaining to the care or control of the ward as specified by the court, or
- b. certain powers as guardian of the property over the estate or financial resources of the ward, or whose powers as guardian of the property extend only to some portion of the estate or financial resources of the ward;

~~15.~~ 17. "Manage financial resources" or "manage the estate" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;

~~16.~~ 18. "Meet the essential requirements for physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury is more likely than not to occur;

~~17.~~ 19. "Minor" means a person under eighteen (18) years of age;

20. "Neglect" means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect 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 a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury;

~~18.~~ 21. "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;

~~19.~~ 22. "Partially incapacitated person" means an incapacitated person whose impairment is only to the extent that without the assistance of a limited guardian said person is unable to:

- a. meet the essential requirements for his physical health or safety, or

- b. manage all of his financial resources or to engage in all of the activities necessary for the effective management of his financial resources.

A finding that an individual is a partially incapacitated person shall not constitute a finding of legal incompetence. A partially incapacitated person shall be legally competent in all areas other than the area or areas specified by the court in its dispositional or subsequent orders. Such person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

~~20.~~ 23. "Party" means the person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a guardianship proceeding; and the guardian, the guardian ad litem and the conservator, if any such persons have been appointed;

~~21.~~ 24. "Person" means an individual;

~~22.~~ 25. "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;

~~23.~~ 26. "Restrictions on the legal capacity of a person to act in his own behalf" means powers of an incapacitated or partially incapacitated person which are assigned to a guardian;

~~24.~~ 27. "Subject of the proceeding" means a minor or an adult:

- a. who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,
- b. for whom a guardian or limited guardian has been appointed by the court, or
- c. an adult for whom a conservator is requested or appointed; and

~~25.~~ 28. "Surcharge" means the imposition of personal liability by a court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

B. 1. Nothing in this section shall be construed to mean an incapacitated person, a partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a minor, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the minor's health or welfare.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-903 of Title 30, unless there is created a duplication in numbering, reads as follows:

A. 1. Any person having reasonable cause to believe that an incapacitated person, a partially incapacitated person, or a minor is suffering from abuse, neglect, or exploitation shall make a report to the Department of Human Services, the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred, or the local municipal police department or sheriff's department as soon as such person is aware of the situation.

2. With regard to minors, the use of ordinary force as a means of discipline pursuant to Section 844 of Title 21 of the Oklahoma Statutes shall not constitute abuse.

3. Reports regarding the abuse, neglect, or exploitation of an incapacitated person, or a partially incapacitated person shall be made and shall be governed by the provisions of the Protective Services for Vulnerable Adults Act. Reports regarding the abuse, neglect, or exploitation of a minor shall be made and shall be governed by the Oklahoma Child Abuse Reporting and Prevention Act.

B. 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.

C. 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.

D. 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 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.

E. 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 provisions of this section. 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 3. AMENDATORY 43A O.S. 1991, Section 10-103, as last amended by Section 6, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-103), is amended to read as follows:

Section 10-103. A. When used in the Protective Services for Vulnerable Adults Act:

1. "Protective services" means services which are necessary to aid a vulnerable adult in meeting the essential requirements for 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 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. "Incapacitated person" means:

- a. any person eighteen (18) years of age or older who is impaired by reason of mental or physical illness or disability, 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, or
- b. a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

5. "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 the ability to provide adequately for the care or

custody of self, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect self from abuse, neglect, or exploitation without assistance from others;

6. "Caretaker" means a person who has:

- a. the responsibility for the care of the person or financial management of the resources of the vulnerable adult as a result of a family relationship ~~or who has,~~
- b. assumed the responsibility for the care of the vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;

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

8. "Abuse" means the intentional infliction of physical pain, injury, sexual abuse, 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;

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

10. "Neglect" means the failure to provide protection for a vulnerable adult who is unable to protect 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 a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury; and

11. "Sexual abuse" means oral, anal, or vaginal penetration by or union with the sexual organ of another, or the anal or vaginal penetration of another by any other object or, for the purpose of sexual gratification, the touching or feeling of the body or private parts of another.

B. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

SECTION 4. AMENDATORY 43A O.S. 1991, Section 10-104, as last amended by Section 7, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-104), is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that 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 or the local municipal police department or sheriff's department as soon as 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:

1. Physicians;
2. Operators of emergency response vehicles and other medical professionals;

3. Social workers and other mental health professionals;
4. Law enforcement officials;
5. Staff of domestic violence programs; and
6. Long-term care facility personnel; ~~and~~
7. ~~Representatives of financial institutions.~~

B. The report shall contain the name and address of the vulnerable adult, the name and address of the caretaker, if any, and a description of the situation of the 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 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 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 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 5. AMENDATORY 43A O.S. 1991, Section 10-108, as last amended by Section 11, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-108), is amended to read as follows:

Section 10-108. A. If the Department of Human Services determines that a vulnerable adult is suffering from abuse, neglect, or exploitation presenting a substantial risk of death, or immediate and serious physical harm to the person or the estate of the person to the extent that an emergency exists, and the vulnerable adult 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 such person resides, or in the district court in the county where any of the protective services are to be provided, for an order:

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 vulnerable adult who the Department 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. 1. The vulnerable adult shall receive ~~a forty-eight-hour notice of the~~ an opportunity for a hearing upon the petition, and shall be personally served with a copy of the petition and a notice scheduling hearing at least forty-eight (48) hours prior to

any such 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.

2. The hearing shall be set by the court on an expedited basis, but no later than five (5) calendar days from the date the notice scheduling hearing is signed by the judge. The vulnerable adult shall have a right to a closed hearing unless such vulnerable adult requests otherwise. Under no circumstances shall the court authorize the Department to consent or deny consent to a Do-Not-Resuscitate order or the withdrawal of hydration or nutrition or other life-sustaining treatment although the court retains jurisdiction to hear such matters under applicable law.

a. Upon sworn testimony of a representative of the Department or law enforcement officer, or statement of a district attorney, that immediate and reasonably foreseeable death or serious physical harm to the vulnerable adult will result, the court may waive prior notice and enter a seventy-two-hour order whether or not during regular courthouse business hours. However, on the date of issuance of the seventy-two-hour order, the vulnerable adult and the attorney of the vulnerable adult, if known, shall be personally served with written notice scheduling a hearing within seventy-two (72) hours.

b. If a hearing on the seventy-two-hour order is declined, or upon conclusion of any such hearing, the court may terminate the temporary guardianship and involuntary services or enter a temporary thirty-day order as provided for in paragraph 2 of subsection D of this section.

3. a. The ~~person~~ vulnerable adult has a right to be present and represented by counsel at the hearing authorized by this subsection. If the ~~person~~ vulnerable adult is indigent or, in the determination of the court, lacks capacity to waive

the right to counsel, the court shall immediately appoint counsel who shall personally contact the vulnerable adult prior to any hearing.

b. If the vulnerable adult is not in attendance, the court shall make a special finding as to why the vulnerable adult is unable to attend, and, upon the request of the vulnerable adult or attorney, may continue the hearing to allow the vulnerable adult to attend.

c. (1) If the ~~person~~ vulnerable adult is indigent, the cost of representation by counsel shall be borne by ~~this state~~ court funds.

(2) If the vulnerable adult is not indigent, the court may order costs of representation paid from the estate in the same manner as currently paid under the Oklahoma Guardianship and Conservatorship Act.

D. 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:

- a. 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,

- b. 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; provided, however, emergency placement shall not be made to facilities for the acutely mentally ill,
- c. involuntary protective services may be provided for a period not to exceed ~~ten (10)~~ thirty (30) 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
- d. 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 such person and authority to give consent on behalf of the person for the approved protective services until the expiration of the order for involuntary protective services.

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

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 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 vulnerable adult continues to need involuntary protective services after the ~~renewal~~ thirty-day order provided in paragraph 2 of subsection D of this section has expired, the temporary guardian shall immediately ~~petition~~ file a verified motion requesting 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 vulnerable adult to a nursing home, personal medical institution, foster care service 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. ~~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 vulnerable adult alleged to be in need of continued services be conducted~~ Service of the verified motion shall be made in conformity with subsection C of this section. Upon filing such motion, the court shall order that a physical, mental, and social evaluation of the vulnerable adult be conducted by the Department and that a report and plan of care be submitted to the court within thirty (30) days thereafter reflecting the evaluation findings and recommended services. The prior temporary order shall remain in effect pending the scheduling of a review hearing at the end of the thirty-day evaluation period. 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 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. After a hearing, the court may authorize continued protective services on an involuntary basis for 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 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. At the conclusion of the hearing, the court shall either terminate the temporary guardianship and all involuntary services or continue the guardianship and specify any necessary services to be provided by the Department for a period not to exceed six (6) months.~~

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

SECTION 6. AMENDATORY 43A O.S. 1991, Section 10-110, as amended by Section 13, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1997, Section 10-110), is amended to read as follows:

Section 10-110. A. The reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult pursuant to the provisions of the Protective Services for Vulnerable Adults Act are confidential and may be disclosed only pursuant to rules promulgated by the Commission for Human Services ~~or~~, by order of the court or as otherwise provided by this section.

B. Department of Human Services agency records pertaining to a vulnerable adult may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials and pursuant to their lawful duties:

1. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against vulnerable adults;

2. The attorney representing a vulnerable adult who is the subject of a proceeding pursuant to the provisions of the Protective Services for Vulnerable Adults Act;

3. Employees of a law enforcement agency of this or another state and employees of protective services for vulnerable adults of another state;

4. A physician who has before him or her a vulnerable adult whom the physician reasonably suspects may have been abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the vulnerable adult or guardian, custodian or other family members of the vulnerable adult; provided the Department may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;

5. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a vulnerable adult who is the subject of a report or record of vulnerable adult abuse or neglect; provided

the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure; and

6. Any person or agency for research purposes, if all of the following conditions are met:

- a. the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.

C. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment or protection of a vulnerable adult alleged to be abused or neglected.

D. Records and their contents disclosed pursuant to this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 843.1, as amended by Section 247, Chapter 133, O.S.L. 1997 (21 O.S. Supp. 1997, Section 843.1), is amended to read as follows:

Section 843.1 A. 1. No caretaker as defined in Section 803 of Title 43A of the Oklahoma Statutes shall willfully abuse, neglect, or financially commit sexual abuse, or exploit any person

entrusted ~~in his~~ to the care of the caretaker, or shall cause, secure, or permit any of ~~said~~ these acts to be done.

2. For purposes of this section, the terms "caretaker", "abuse", "neglect", "sexual abuse", and "exploit" shall have the same meaning as such terms are defined and clarified in Section 10-103 of Title 43A of the Oklahoma Statutes.

B. 1. Any person convicted of ~~violating the provisions a~~ violation of this section, except as provided in paragraph 2 of this subsection, committed before the effective date of Section 20.1 of this title shall be subject to incarceration in the custody of the Department of Corrections for a period not to exceed ten (10) years. Any person convicted of a violation of this section, except as provided in paragraph 2 of this subsection, committed on or after the effective date of Section 20.1 of this title shall be guilty of a Schedule C felony.

2. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony. Any person convicted of a violation of this section committed before the effective date of Section 20.1 of this title shall be subject to incarceration in the custody of the Department of Corrections for a period not to exceed fifteen (15) years. Any person convicted of a violation of this section committed on or after the effective date of Section 20.1 of this title shall be guilty of a Schedule S-1 felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00).

C. Consent shall not be a defense for any violation of this section.

SECTION 8. This act shall become effective November 1, 1998.

46-2-11698            KSM