

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2397

By: Steidley and Hastings of
the House

and

Smith of the Senate

COMMITTEE SUBSTITUTE

[vulnerable adults and minors - Oklahoma

Guardianship and Conservatorship Act - abuse -
neglect - exploitation - reports - procedures -
penalties - Protective Services for Vulnerable
Adults Act - codification -

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 reason that a guardian or other person responsible, in good faith, is furnishing such person or minor spiritual treatment in accordance with the practices of a recognized religious method of healing, in lieu of medical treatment, 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. 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. 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. 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. 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, 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.

B. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the reason the vulnerable adult is relying on, in good faith, spiritual treatment through prayer alone, in lieu of medical treatment, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual treatment in accordance with the practices of a recognized religious method of healing, in lieu of medical treatment, in accordance with the practices of or express consent of the vulnerable adult.

SECTION 4. 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. ~~No caretaker as defined in Section 803 of Title 43A of the Oklahoma Statutes~~ shall willfully abuse, neglect, or financially exploit any person entrusted in ~~his~~ the care of such caretaker, or shall cause, secure, or permit any of ~~said~~ these acts to be done. The terms "caretaker", "abuse", "neglect", 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. Any person convicted of violating the provisions of this section shall be guilty of a felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00).

SECTION 5. This act shall become effective November 1, 1998.

46-2-2952 KSM (<time=system>)