

House Bill No. 1213

HOUSE BILL NO. 1213 -- By LEIST and PETTIGREW of the House and SHURDEN of the Senate.

An Act relating to vulnerable adults; amending 43A O.S. 1991, Sections 10-105, as last amended by Section 8, Chapter 195, O.S.L. 1997, 10-107, as last amended by Section 10, Chapter 195, O.S.L. 1997, 10-108, as last amended by Section 5, Chapter 298, O.S.L. 1998, and 10-110, as last amended by Section 6, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1998, Sections 10-105, 10-107, 10-108 and 10-110), which relate to the Protective Services for Vulnerable Adults Act; requiring notification of certain investigations; providing for content of written notification; requiring notice be given of certain hearing to certain persons; changing placement considerations; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 10-105, as last amended by Section 8, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1998, Section 10-105), is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult pursuant to the provisions of the Protective Services for 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~~ Notification of the caretaker, guardian and next of kin of the vulnerable adult who may be in need of protective services pursuant to Section 2 of this act;
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. A statement of the ~~least restrictive~~ services 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 self and could bear the cost or would be eligible for services from the Department;

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

8. Whether the person desires the services;

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

10. Other relevant information.

C. The Department's investigation shall include a visit to the home or other place of residence of the person who is the subject of the report, a private interview with 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 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 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 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-105.1 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. As soon as possible after initiating an investigation of a vulnerable adult, the Department shall provide to the caretaker, and to the guardian and next of kin of the vulnerable adult a brief oral summary and easily understood written description of the investigation process, whether or not the caretaker, guardian or next of kin is alleged to be the perpetrator of the abuse, neglect or exploitation of the vulnerable adult. Such notice shall include:

1. A statement that the investigation is being undertaken by the Department of Human Services pursuant to the requirements of the Protective Services for Vulnerable Adults Act in response to a report of abuse, neglect or exploitation;

2. A statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the Department since the report could have been made anonymously;

3. A statement that the investigation is required by law to be conducted in order to enable the Department of Human Services to identify incidents of abuse, neglect or exploitation in order to provide protective or preventive social services to vulnerable adults who are in need of such services;

4. A statement that, upon completion of the investigation, the caretaker, guardian and next of kin will receive a letter from the Department which will inform such caretaker, guardian and next of kin:

- a. that the Department has found insufficient evidence of abuse, neglect or exploitation,
- b. that there appears to be probable cause to suspect the existence of abuse, neglect or exploitation in the judgment of the Department, and
- c. the recommendations of the Department concerning the vulnerable adult;

5. An explanation of the procedures of the Department of Human Services for conducting an investigation of alleged abuse, neglect or exploitation, including:

- a. a thorough description of the circumstances under which the Department would seek to remove the alleged vulnerable adult from the residence of the vulnerable adult through the judicial system, and
- b. a thorough explanation that the law requires the Department to refer all reports of alleged criminal abuse, neglect or exploitation to a law enforcement agency for a separate determination of whether a criminal violation occurred;

6. The procedures to follow in the process if there is a complaint regarding the actions of the Department or the procedures to request a review of the findings made by the Department during or at the conclusion of the investigation;

7. The caretaker's, guardian's and next of kin's right to review all records filed with the Department concerning the investigation pursuant to Section 10-110 of Title 43A of the Oklahoma Statutes, provided the review shall not include the name of the person who filed the report and provided the review would not jeopardize an ongoing criminal investigation or adjudicatory hearing;

8. The caretaker's, guardian's and next of kin's right to seek legal counsel;

9. References to the statutory and regulatory provisions governing abuse, neglect or exploitation and how the caretaker, guardian and next of kin may obtain copies of those provisions;

and

10. The procedures concerning the process the caretaker, guardian and next of kin may use to acquire access to the vulnerable adult if the adult is removed from the residence of the vulnerable adult.

B. If the Department determines that an assessment may be needed, the Department shall, at the time of the initial contact, provide the caretaker, guardian, and next of kin of the vulnerable adult with the following information:

1. The purpose of the contact with the vulnerable adult;

2. The name of the Department employee responding and such person's office telephone number; and

3. The assessment process to be followed during the Department's investigation, including the possibility that the vulnerable adult may be referred for prevention or intervention-related services and that the caretaker, guardian and next of kin may be expected to participate in such services.

SECTION 3. AMENDATORY 43A O.S. 1991, Section 10-107, as last amended by Section 10, Chapter 195, O.S.L. 1997 (43A O.S. Supp. 1998, Section 10-107), is amended to read as follows:

Section 10-107. A. If 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 such person, while consistent with 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 vulnerable adult in the present living accommodations of that person.

C. 1. Payment for involuntary protective services provided to 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 assets of the 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. Prior to any hearing on the assets or issuance of an order pursuant to this subparagraph, the next of kin, if known, guardian, guardian ad litem, attorney, conservator, person residing in the residence of the vulnerable adult, and any person so requested by the vulnerable adult shall be notified of such hearing and order;
- b. From any private or public assistance programs for which the person is eligible; or
- c. 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 4. AMENDATORY 43A O.S. 1991, Section 10-108, as last amended by Section 5, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1998, 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 if the vulnerable adult is being exploited 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 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.

2. a. 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.

b. Unless the vulnerable adult objects or the person requiring notification pursuant to this subparagraph is alleged to have abused, neglected or exploited the vulnerable adult, the following persons shall be notified of any hearing held pursuant to this subsection:

- (1) the next of kin of the vulnerable adult, if known,
- (2) the guardian, guardian ad litem or conservator,
- (3) the attorney of the vulnerable adult, and
- (4) any person so requested by the vulnerable adult to be present at the hearing.

c. 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.~~ (1) 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.~~ (2) 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 vulnerable adult has a right to be present and represented by counsel at ~~the~~ any hearing authorized by this subsection. If the 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 vulnerable adult is indigent, the cost of representation by counsel shall be borne by 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 thirty (30) calendar days, 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 thirty-day order provided in paragraph 2 of subsection D of this section has expired, the temporary guardian shall immediately 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. 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 based upon the best interests of the vulnerable adult and consistent with the ~~least restrictive environment required;~~

- (1) desires of the vulnerable adult,
- (2) desires of the guardian or caretaker of the vulnerable adult,
- (3) physical and mental health needs of the vulnerable adult,
- (4) available programs and services, and
- (5) health, well-being and welfare of the vulnerable adult and the public.

3. At the conclusion of the hearing, the court shall either terminate the temporary guardianship and all involuntary services or continue the temporary 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 5. AMENDATORY 43A O.S. 1991, Section 10-110, as last amended by Section 6, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1998, 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, 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~~ professional involved in the evaluation or treatment of the vulnerable adult ~~or~~;

~~5. A caretaker,~~ 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;

~~6. 6.~~ 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. 7.~~ 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 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 2-9-99 -- DO PASS, As Coauthored.