

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE BILL 601

By: Smith

AS INTRODUCED

An Act relating to vulnerable adults; amending 43A O.S. 2001, Sections 10-103 and 10-104, which relate to Protective Services for Vulnerable Adults Act, definitions and reporting requirements; modifying definition; including financial institutions in list of mandatory reporting entities; providing for exploitation by guardians or persons having power of attorney; requiring the Oklahoma State Bureau of Investigation to keep certain records and make certain report annually; amending 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2002, Section 843.1), which relates to child abuse; providing for administrative penalty; directing deposit of certain administrative penalty; authorizing notice to certain licensing boards; permitting certain licensing boards to take disciplinary action; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 2001, 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 a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of a 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 causing or permitting:

- a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
- b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

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, power of attorney or guardianship authority;

10. "Neglect" means:

- a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- c. the causing or permitting harm or the risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services; and

11. "Sexual abuse" means:

- a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, ~~or~~
- b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or
- c. indecent exposure by a caretaker or other person providing services to the vulnerable adult;

12. "Indecent exposure" means forcing or requiring a vulnerable adult to:

- a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or
- b. touch or feel the body or private parts of another;

13. "Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential

requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

14. "Sexual exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by state law; and

15. "Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

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 2. AMENDATORY 43A O.S. 2001, 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 exploitation shall make a report to either 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 the 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 mental health professionals;
4. Law enforcement officials;
5. Staff of domestic violence programs; ~~and~~
6. Long-term care facility personnel; and
7. Financial institutions, including but not limited to banking institutions and investment companies, their employees, agents and officers.

B. The report shall contain the name and address of the vulnerable adult, the name and address of the caretaker, guardian, or person having power of attorney over the vulnerable adult's resources or funds, if any, and a description of the current location and current condition of the vulnerable adult and of the situation which may constitute abuse, neglect or exploitation 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 punishable by imprisonment in the county jail for a term not exceeding one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

D. 1. 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.

2. The same immunity from any civil or criminal liability shall also be extended to previous employers of a person employed to be responsible for the care of a vulnerable adult, who in good faith report to new employers or prospective employers of such caretaker any misconduct of the caretaker including, but not limited to, abuse, neglect or exploitation of a vulnerable adult, whether confirmed or not.

E. Any person who willfully or recklessly makes a false report shall be civilly liable for any actual damages suffered by the person 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.

H. The Oklahoma State Bureau of Investigation shall keep a record of reports of abuse, neglect and exploitation of vulnerable adults and publish such a list of any person convicted of any crime of abuse, neglect or exploitation of a vulnerable adult annually.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2002, Section 843.1), is amended to read as follows:

Section 843.1 A. 1. No caretaker or other person shall abuse, neglect, commit sexual abuse, or exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting, or knowingly cause, secure, or permit any of these acts to be done.

2. For purposes of this section, the terms, "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 a violation of this section, except as provided in paragraph 2 of this subsection, shall be guilty of a felony. The violator, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term not to exceed ten (10) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Such person's term shall further be subject to the provisions of Section 13.1 of this title.

2. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony. The person convicted of sexual abuse shall be punished by imprisonment in the State Penitentiary for a term not to exceed fifteen (15) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

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

D. Whenever the court finds, after notice and hearing, that a person has committed exploitation in an amount in excess of Five Hundred Dollars (\$500.00), or abuse or neglect which causes grievous injury to or the death of a vulnerable adult, the court may impose an administrative penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation to be deposited in the Department of Mental Health and Substance Abuse Services Revolving Fund. The court shall notify the office of professional regulation, or any other professional licensing board applicable to the violator, of any decision made pursuant to this subsection. Such board may take disciplinary action with regard to licensing as deemed appropriate.

SECTION 4. This act shall become effective November 1, 2003.

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