

SB 398

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THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 398
As Amended

SENATE BILL NO. 398 - By: ADELSON of the Senate and SULLIVAN of the House.

An Act relating to mental health; amending 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2006, Section 843.1), which relates to caretakers; prohibiting financial neglect of certain persons; modifying definition; amending 43A O.S. 2001, Sections 10-103, as last amended by Section 2, Chapter 332, O.S.L. 2003, 10-104, as amended by Section 1, Chapter 399, O.S.L. 2003, 10-108, as amended by Section 8, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006, Sections 10-103, 10-104 and 10-108), which relate to the Protective Services for Vulnerable Adults Act; adding definition; adding persons required to make certain report; authorizing certain court order; authorizing certain eviction; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2006, Section 843.1), is amended to read as follows:

Section 843.1 A. 1. No caretaker or other person shall abuse, commit financial neglect, 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.

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

5 B. 1. Any person convicted of a violation of this section,
6 except as provided in paragraph 2 of this subsection, shall be
7 guilty of a felony. The violator, upon conviction, shall be
8 punished by imprisonment in the State Penitentiary for a term not to
9 exceed ten (10) years, and by a fine not exceeding Ten Thousand
10 Dollars (\$10,000.00), or by both such fine and imprisonment. Such
11 person's term shall further be subject to the provisions of Section
12 13.1 of this title.

13 2. Any person convicted of violating the provisions of this
14 section by committing sexual abuse shall be guilty of a felony. The
15 person convicted of sexual abuse shall be punished by imprisonment
16 in the State Penitentiary for a term not to exceed fifteen (15)
17 years, and by a fine not exceeding Ten Thousand Dollars
18 (\$10,000.00), or by both such fine and imprisonment.

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

21 SECTION 2. AMENDATORY 43A O.S. 2001, Section 10-103, as
22 last amended by Section 2, Chapter 332, O.S.L. 2003 (43A O.S. Supp.
23 2006, Section 10-103), is amended to read as follows:

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

3 1. "Protective services" means services which are necessary to
4 aid a vulnerable adult in meeting the essential requirements for
5 mental or physical health and safety that the vulnerable adult is
6 unable to provide or obtain without assistance. The term
7 "protective services" includes but is not limited to services
8 provided to or obtained for such person in order to prevent or
9 remedy the abuse, neglect, or exploitation of such person;

10 2. "Services which are necessary to aid an individual to meet
11 essential requirements for mental or physical health and safety"
12 include, but shall not be limited to:

- 13 a. the identification of vulnerable adults in need of the
14 services,
- 15 b. the provision of medical care for physical and mental
16 health needs,
- 17 c. the provision of social services assistance in
18 personal hygiene, food, clothing, and adequately
19 heated and ventilated shelter,
- 20 d. protection from health and safety hazards,
- 21 e. protection from physical mistreatment,
- 22 f. guardianship referral,
- 23 g. outreach programs, and

1 h. the transportation necessary to secure any of such
2 services.

3 The term shall not include taking the person into physical custody
4 without the consent of the person except as provided for in Sections
5 10-107 and 10-108 of this title, and the evaluation, monitoring, and
6 provision of protective placements;

7 3. "Meet essential requirements for mental or physical health
8 and safety" means those actions necessary to provide the health
9 care, food, shelter, clothing, personal hygiene and other care
10 without which physical injury or illness to the vulnerable adult is
11 likely to occur;

12 4. "Incapacitated person" means:

13 a. any person eighteen (18) years of age or older:

14 (1) who is impaired by reason of mental or physical
15 illness or disability, dementia or related
16 disease, mental retardation, developmental
17 disability or other cause, and

18 (2) whose ability to receive and evaluate information
19 effectively or to make and to communicate
20 responsible decisions is impaired to such an
21 extent that such person lacks the capacity to
22 manage his or her financial resources or to meet
23 essential requirements for his or her mental or

1 c. been appointed a guardian, limited guardian, or
2 conservator pursuant to the Oklahoma Guardianship and
3 Conservatorship Act;

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

5 8. "Abuse" means causing or permitting:

6 a. the infliction of physical pain, injury, sexual abuse,
7 sexual exploitation, unreasonable restraint or
8 confinement, or mental anguish, or

9 b. the deprivation of nutrition, clothing, shelter,
10 health care, or other care or services without which
11 serious physical or mental injury is likely to occur
12 to a vulnerable adult by a caretaker or other person
13 providing services to a vulnerable adult;

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

19 10. "Financial neglect" means the repeated instances by a
20 caretaker who has assumed the role of financial management, of
21 failure to use the resources available to restore or maintain the
22 health and physical well-being of a vulnerable adult, including, but
23 not limited to:

- 1 a. squandering or negligently mismanaging a vulnerable
2 adult's money, property, or accounts,
3 b. refusing to pay for necessities or utilities in a
4 timely manner, or
5 c. providing substandard care to a vulnerable adult
6 despite the availability of adequate financial
7 resources;

8 11. "Neglect" means:

- 9 a. the failure to provide protection for a vulnerable
10 adult who is unable to protect his or her own
11 interest,
12 b. the failure to provide a vulnerable adult with
13 adequate shelter, nutrition, health care, or clothing,
14 or
15 c. negligent acts or omissions that result in harm or the
16 unreasonable risk of harm to a vulnerable adult
17 through the action, inaction, or lack of supervision
18 by a caretaker providing direct services;

19 ~~11.~~ 12. "Sexual abuse" means:

- 20 a. oral, anal, or vaginal penetration of a vulnerable
21 adult by or through the union with the sexual organ of
22 a caretaker or other person providing services to the
23 vulnerable adult, or the anal or vaginal penetration

1 of a vulnerable adult by a caretaker or other person
2 providing services to the vulnerable adult with any
3 other object, or

4 b. for the purpose of sexual gratification, the touching,
5 feeling or observation of the body or private parts of
6 a vulnerable adult by a caretaker or other person
7 providing services to the vulnerable adult, or

8 c. indecent exposure by a caretaker or other person
9 providing services to the vulnerable adult;

10 ~~12.~~ 13. "Indecent exposure" means forcing or requiring a
11 vulnerable adult to:

12 a. look upon the body or private parts of another person
13 or upon sexual acts performed in the presence of the
14 vulnerable adult, or

15 b. touch or feel the body or private parts of another;

16 ~~13.~~ 14. "Self-neglect" means the action or inaction of a
17 vulnerable adult which causes that person to fail to meet the
18 essential requirements for physical or mental health and safety due
19 to the vulnerable adult's lack of awareness, incompetence or
20 incapacity;

21 ~~14.~~ 15. "Sexual exploitation" includes, but is not limited to,
22 a caretaker's causing, allowing, permitting or encouraging a
23 vulnerable adult to engage in prostitution or in the lewd, obscene,

1 or pornographic photographing, filming or depiction of the
2 vulnerable adult as those acts are defined by state law; and

3 ~~15.~~ 16. "Verbal abuse" means the use of words, sounds, or other
4 communication including, but not limited to, gestures, actions or
5 behaviors, by a caretaker or other person providing services to a
6 vulnerable adult that are likely to cause a reasonable person to
7 experience humiliation, intimidation, fear, shame or degradation.

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

19 SECTION 3. AMENDATORY 43A O.S. 2001, Section 10-104, as
20 amended by Section 1, Chapter 399, O.S.L. 2003 (43A O.S. Supp. 2006,
21 Section 10-104), is amended to read as follows:

22 Section 10-104. A. Any person having reasonable cause to
23 believe that a vulnerable adult is suffering from abuse, neglect, or

1 exploitation shall make a report as soon as the person is aware of
2 the situation to:

3 1. The Department of Human Services; or

4 2. The municipal police department or sheriff's office in the
5 county in which the suspected abuse, neglect, or exploitation
6 occurred.

7 B. Persons required to make reports pursuant to this section
8 shall include, but not be limited to:

9 1. Physicians;

10 2. Operators of emergency response vehicles and other medical
11 professionals;

12 3. Social workers and mental health professionals;

13 4. Law enforcement officials;

14 5. Staff of domestic violence programs;

15 6. Long-term care facility personnel; ~~and,~~ including staff of
16 nursing facilities, intermediate care facilities for persons with
17 mental retardation, assisted living facilities, and residential care
18 facilities;

19 7. Other health care professionals;

20 8. Representatives of financial institutions, including banks
21 and credit unions;

1 9. Staff of residential care facilities, group homes, or
2 employment settings for individuals with developmental disabilities;
3 and

4 10. Job coaches, community service workers, and personal care
5 assistants.

6 C. 1. If the report is not made in writing in the first
7 instance, as soon as possible after it is initially made by
8 telephone or otherwise, the report shall be reduced to writing by
9 the Department of Human Services, in accordance with rules
10 promulgated by the Commission for Human Services, or the local
11 municipal police or sheriff's department whichever entity received
12 the initial report. The report shall contain the following
13 information:

- 14 a. the name and address of the vulnerable adult,
- 15 b. the name and address of the caretaker, guardian, or
16 person having power of attorney over the vulnerable
17 adult's resources if any,
- 18 c. a description of the current location of the
19 vulnerable adult,
- 20 d. a description of the current condition of the
21 vulnerable adult, and

1 e. a description of the situation which may constitute
2 abuse, neglect or exploitation of the vulnerable
3 adult.

4 2. If federal law specifically prohibits the disclosure of any
5 of the information required by this subsection, that information may
6 be excluded from the report.

7 D. If the initial report is made to the local municipal police
8 department or sheriff's office, such police department or sheriff's
9 office shall notify, as soon as possible, the Department of Human
10 Services of its investigation.

11 E. Any person who knowingly and willfully fails to promptly
12 report any abuse, neglect, or exploitation as required by the
13 provisions of subsection A of this section, upon conviction, shall
14 be guilty of a misdemeanor punishable by imprisonment in the county
15 jail for a term not exceeding one (1) year or by a fine of not more
16 than One Thousand Dollars (\$1,000.00), or by both such fine and
17 imprisonment.

18 F. 1. Any person participating in good faith and exercising
19 due care in the making of a report pursuant to the provisions of
20 this section shall have immunity from any civil or criminal
21 liability that might otherwise be incurred or imposed. Any such
22 participant shall have the same immunity with respect to
23 participation in any judicial proceeding resulting from the report.

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

8 G. Any person who willfully or recklessly makes a false report
9 shall be civilly liable for any actual damages suffered by the
10 person being reported and for any punitive damages set by the court
11 or jury which may be allowed in the discretion of the court or jury.

12 H. 1. Every physician or other health care professional making
13 a report concerning the abuse, neglect or exploitation of a
14 vulnerable adult, as required by this section, or examining a
15 vulnerable adult to determine the likelihood of abuse, neglect or
16 exploitation, and every hospital in which a vulnerable adult is
17 examined or treated for abuse, neglect or exploitation shall
18 disclose necessary health information related to the case and
19 provide, upon request by either the Department of Human Services or
20 the local municipal police or sheriff's department receiving the
21 initial report, copies of the results or the records of the
22 examination on which the report was based, and any other clinical

1 notes, x-rays or photographs and other health information which is
2 related to the case if:

3 a. the vulnerable adult agrees to the disclosure of the
4 health information, or

5 b. the individual is unable to agree to the disclosure of
6 health information because of incapacity; and

7 (1) the requesting party represents that the health
8 information for which disclosure is sought is not
9 intended to be used against the vulnerable adult
10 in a criminal prosecution but to provide
11 protective services pursuant to the Protective
12 Services for Vulnerable Adults Act,

13 (2) the disclosure of the information is necessary to
14 conduct an investigation into the alleged abuse,
15 neglect or exploitation of the vulnerable adult
16 subject to the investigation, and

17 (3) immediate enforcement activity that depends upon
18 the disclosure:

19 (a) is necessary to protect the health, safety
20 and welfare of the vulnerable adult because
21 of incapacity, or

1 (b) would be materially and adversely affected
2 by waiting until the vulnerable adult is
3 able to agree to the disclosure.

4 2. If federal law specifically prohibits the disclosure of any
5 of the information required by this subsection, that information may
6 be excluded from the disclosed health information.

7 I. After investigating the report, either the county office of
8 the Department of Human Services or the municipal police department
9 or sheriff's office, as appropriate, shall forward its findings to
10 the office of the district attorney in the county in which the
11 suspected abuse, neglect, or exploitation occurred.

12 J. Any state or county medical examiner or physician who has
13 reasonable cause to suspect that the death of any vulnerable adult
14 may be the result of abuse or neglect as defined by Section 10-103
15 of this title shall make a report to the district attorney or other
16 law enforcement official of the county in which the death occurred.
17 The report shall include the name of the person making the report,
18 the name of the deceased person, the facts or other evidence
19 supporting such suspicion, and any other health information that may
20 be of assistance to the district attorney in conducting an
21 investigation into the matter.

22 K. No employer shall terminate the employment, prevent or
23 impair the practice or occupation of or impose any other sanction on

1 any employee solely for the reason that the employee made or caused
2 to be made a report or cooperated with an investigation pursuant to
3 the Protective Services for Vulnerable Adults Act. A court, in
4 addition to other damages and remedies, may assess reasonable
5 attorney fees against an employer who has been found to have
6 violated the provisions of this subsection.

7 SECTION 4. AMENDATORY 43A O.S. 2001, Section 10-108, as
8 amended by Section 8, Chapter 332, O.S.L. 2003 (43A O.S. Supp. 2006,
9 Section 10-108), is amended to read as follows:

10 Section 10-108. A. 1. If the Department of Human Services
11 determines that a vulnerable adult is suffering from abuse, neglect,
12 or exploitation presenting a substantial risk of death or immediate
13 and serious physical harm to the person or financial exploitation of
14 the estate of the person, and the vulnerable adult lacks mental
15 capacity to consent to receive protective services and no consent
16 can be obtained, the Department may petition the district court in
17 the county specified by paragraph 3 of this subsection for an order:

- 18 a. authorizing involuntary protective services and
19 appointing a temporary guardian of the person and/or
20 the estate,
21 b. freezing the assets of the vulnerable adult, if the
22 vulnerable adult is being exploited, establishing any
23 new accounts necessary to pay the daily living

1 expenses of the vulnerable adult, and directing a full
2 accounting and investigation of the person alleged to
3 be improperly managing the estate of the vulnerable
4 adult, or

5 c. suspending or revoking the powers of an attorney-in-
6 fact granted by a durable power of attorney, or
7 revoking an irrevocable trust, or terminating a
8 guardianship or conservatorship established pursuant
9 to the Oklahoma Guardianship and Conservatorship Act.

10 2. Under no circumstances shall the court authorize the
11 Department, pursuant to this subsection, to consent or deny consent
12 to a Do-Not-Resuscitate order or the withdrawal of hydration or
13 nutrition or other life-sustaining treatment although the court
14 retains jurisdiction to hear such matters under applicable law.

15 3. The district court which may be petitioned by the Department
16 for an order pursuant to paragraph 1 of this subsection is:

- 17 a. the district court in the county in which the
18 vulnerable adult resides,
- 19 b. the district court in the county in which the
20 vulnerable adult is receiving inpatient services, or
- 21 c. the district court in the county where the vulnerable
22 adult is located when any delay caused by taking the
23 petition to the district court in the county of the

1 residence of the vulnerable adult would result in
2 greater substantial risk of death or greater serious
3 physical harm to the vulnerable adult. The petition
4 shall include an explanation of why the petition was
5 filed in the district court in the county specified by
6 this subparagraph rather than in the district court as
7 specified in subparagraph a or b of this paragraph.

8 B. The petition shall be sworn to and include the name, age,
9 and address of the vulnerable adult who the Department has
10 determined is in need of emergency protective services, the nature
11 of the abuse, neglect, or exploitation, the services needed, and
12 information relating to the capacity of the person to consent to
13 services and a description of the attempts of the Department to
14 obtain consent and the name of the person or organization proposed
15 to be appointed as temporary guardian.

16 C. 1. The vulnerable adult shall receive an opportunity for a
17 hearing upon the petition, and shall be personally served with a
18 copy of the petition and a notice scheduling hearing at least forty-
19 eight (48) hours prior to any such hearing if the petition seeks
20 temporary guardianship of thirty (30) days or more.

21 2. a. The hearing shall be set by the court on an expedited
22 basis, but no later than five (5) calendar days, not
23 including weekends or holidays when the court is

1 closed, from the date the notice scheduling hearing is
2 signed by the judge. The vulnerable adult shall have
3 a right to a closed hearing unless such vulnerable
4 adult requests otherwise.

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

11 (1) the legal guardian, guardian ad litem and
12 caretaker of the vulnerable adult,

13 (2) any person so requested by the vulnerable adult
14 to be present at the hearing, and

15 (3) persons required to be notified pursuant to
16 Section 3-110 of Title 30 of the Oklahoma
17 Statutes.

18 D. 1. Upon sworn testimony of a representative of the
19 Department, or statement of a district attorney representing the
20 Department, that immediate and reasonably foreseeable death or
21 serious physical harm to or financial exploitation of the vulnerable
22 adult will result, the court may waive prior notice and issue a
23 seventy-two-hour temporary guardianship and provide involuntary

1 protective services whether or not during regular courthouse
2 business hours. However, within twenty-four (24) hours of issuance
3 of the seventy-two-hour order, the vulnerable adult and the attorney
4 of the vulnerable adult, if known, shall be personally served with
5 written notice scheduling a hearing within seventy-two (72) hours.

6 2. If a hearing on the seventy-two-hour order is declined, or
7 upon conclusion of any such hearing, the court may terminate the
8 temporary guardianship and involuntary services or enter a temporary
9 guardianship for up to thirty (30) additional calendar days as
10 provided for in subsection G of this section.

11 E. 1. The vulnerable adult has a right to be present and
12 represented by counsel at any hearing authorized by this section.
13 If the vulnerable adult is indigent or, in the determination of the
14 court, lacks capacity to waive the right to counsel, the court shall
15 immediately appoint counsel who shall personally meet with the
16 vulnerable adult and attempt to discuss the petition or any pending
17 motion prior to any hearing.

18 2. If the vulnerable adult is not in attendance at a scheduled
19 hearing, the court shall make a special finding as to why the
20 vulnerable adult is unable to attend, and, upon the request of the
21 vulnerable adult or the attorney of the vulnerable adult, may
22 continue the hearing to allow the vulnerable adult to attend.

1 3. If the vulnerable adult is indigent, the cost of
2 representation by counsel shall be borne by court funds.

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

7 F. 1. After a hearing on the petition, the court may:

- 8 a. appoint a temporary guardian and order involuntary
9 protective services including, but not limited to,
10 authorization for medical and/or psychological
11 treatment and evaluations, and residential placement
12 subject to the provisions of subsection G of this
13 section,
- 14 b. issue an order freezing all assets of the vulnerable
15 adult, establish any new accounts necessary to pay the
16 daily living expenses of the vulnerable adult, and
17 order a full accounting and investigation of the
18 person alleged to be improperly managing the
19 vulnerable adult's estate, or
- 20 c. suspend or revoke powers of attorney or terminate a
21 guardianship or conservatorship upon a finding that
22 the attorney-in-fact, guardian or conservator failed

1 to act appropriately on behalf of the vulnerable
2 adult.

3 2. a. Except as otherwise provided by subparagraphs b and c
4 of this paragraph, the court appointing a temporary
5 guardian and ordering involuntary protective services
6 shall not have authority to order the sale of the real
7 property of the vulnerable adult.

8 b. If the Department of Human Services has been appointed
9 temporary guardian and the court issues an order for
10 the Department to continue as the temporary guardian
11 of the vulnerable adult beyond the one hundred eighty
12 (180) calendar days authorized by this section because
13 there is no one willing and able to act as guardian
14 for the vulnerable adult, the Department, as temporary
15 guardian may, after one (1) year from its initial
16 appointment, sell the real property of a vulnerable
17 adult pursuant to the provisions of the Oklahoma
18 Guardianship and Conservatorship Act.

19 c. The Department, as temporary guardian of a vulnerable
20 adult, may also sell the real property of the
21 vulnerable adult pursuant to the provisions of the
22 Oklahoma Guardianship and Conservatorship Act prior to
23 the one-year requirement specified in subparagraph b

1 of this paragraph, if not selling the real property
2 would jeopardize the vulnerable adult's eligibility
3 for Medicaid. The fact that the vulnerable adult
4 would be in jeopardy for receipt of Medicaid if the
5 property was not sold shall be stated upon the court
6 order directing the sale of the real property of the
7 vulnerable adult.

8 d. The court may issue an order authorizing the
9 Department to sell personal property of a vulnerable
10 adult when additional resources are required to pay
11 for necessary care for the vulnerable adult pursuant
12 to state law.

13 G. Whenever the court issues an order for involuntary
14 protective services, the court shall adhere to the following
15 limitations:

16 1. Only such protective services as are necessary to remove the
17 conditions creating the emergency shall be ordered, and the court
18 shall specifically designate the approved services in the order of
19 the court;

20 2. Protective services authorized by an involuntary protective
21 services order shall not include a change of residence unless the
22 court specifically finds such action is necessary to remove the
23 conditions creating the emergency and gives specific approval for

1 such action in the order of the court. Emergency placement may be
2 made to such facilities as nursing homes, hospital rehabilitation
3 centers, assisted living centers, foster care and in-home
4 placements, or to other appropriate facilities; provided, however,
5 emergency placement shall not be made to facilities for the acutely
6 mentally ill; and

7 3. Involuntary protective services may be provided for a period
8 not to exceed thirty (30) calendar days except as provided by
9 subsections L and M of this section.

10 H. The court shall appoint the Department or an interested
11 person or organization as temporary guardian of the person with
12 responsibility for the welfare of such person and authority to give
13 consent on behalf of the person for the approved involuntary
14 protective services until the expiration of the order.

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

19 J. 1. To enforce an order for involuntary protective services,
20 the court may authorize:

21 a. forcible entry of the premises of the vulnerable adult
22 to be protected for the purpose of rendering
23 protective services but only after a reasonable

1 showing to the court that good faith attempts to gain
2 voluntary access to the premises have failed and
3 forcible entry is necessary, ~~and~~
4 b. the transporting of the vulnerable adult to another
5 location for the provision of involuntary services,
6 and
7 c. the eviction of persons who are in a position to
8 exploit the vulnerable adult from any property owned,
9 leased, or rented by the vulnerable adult and
10 restriction of those persons' further access to any
11 property of the vulnerable adult.

12 2. If forcible entry is authorized by the court, the order
13 shall include a directive that the Department's representative be
14 accompanied by a police officer or deputy sheriff in the county
15 where the vulnerable adult or property of the vulnerable adult is
16 located, and the police officer or deputy sheriff shall make the
17 forcible entry.

18 K. The vulnerable adult, the temporary guardian, or any
19 interested person may petition the court to have the order to
20 provide involuntary protective services set aside or modified at any
21 time.

22 L. If the vulnerable adult continues to need involuntary
23 protective services after expiration of the thirty-day temporary

1 guardianship provided in subsection G of this section, the temporary
2 guardian shall immediately file a verified motion requesting the
3 court to, except as otherwise provided by subsection F of this
4 section, continue the temporary guardianship and involuntary
5 protective services under this section for a period not to exceed
6 one hundred eighty (180) calendar days.

7 M. 1. Service of the verified motion shall be made in
8 conformity with subsection C of this section.

9 2. Upon filing such motion, the court shall order that a
10 physical, mental, and social evaluation of the vulnerable adult be
11 conducted by the Department and that a proposed plan of care be
12 submitted to the court within thirty (30) calendar days thereafter
13 reflecting the evaluation findings and recommended services.

14 3. Upon filing such motion, the prior temporary guardianship
15 shall remain in full force and effect pending a review hearing after
16 the thirty-day evaluation period. The caretaker, guardian or next-
17 of-kin of the vulnerable adult may request that the evaluation
18 period be shortened for good cause.

19 4. The evaluation shall include at least the following
20 information:

21 a. the address of the place where the person is residing
22 and the person or agency which is providing care,
23 treatment, or services at present,

- 1 b. a summary of the professional treatment and services
2 provided to the person by the Department or agency, if
3 any, in connection with the problem creating the need
4 for emergency protective services, and
- 5 c. a medical and social evaluation, including, but not
6 limited to, the Department's assessment of the
7 person's capacity to consent to services, a
8 psychological or psychiatric evaluation and review if
9 the mental state of the person is in question, and any
10 recommendations for or against maintenance of partial
11 legal rights. The evaluation and review shall include
12 recommendations for placement based upon the best
13 interests of the vulnerable adult taking into
14 consideration the following:
- 15 (1) the least restrictive environment,
16 (2) the desires of the vulnerable adult and legal
17 guardian,
18 (3) the desires of the caretaker of the vulnerable
19 adult and of any of the persons specified in
20 Section 3-110 of Title 30 of the Oklahoma
21 Statutes,
22 (4) the physical and mental health needs of the
23 vulnerable adult,

- 1 (5) the available programs and services, and
2 (6) the health, well-being and welfare of the
3 vulnerable adult and the public.

4 During the hearing to consider the motion to continue the
5 temporary guardianship of the vulnerable adult for up to one hundred
6 eighty (180) calendar days, the court shall consider the
7 Department's findings and proposed plan of care and any other
8 evidence presented by the caretaker, guardian or other interested
9 persons. The court shall either terminate the temporary
10 guardianship and all involuntary services or continue the temporary
11 guardianship and specify any necessary services to be provided by
12 the Department for a period not to exceed one hundred eighty (180)
13 calendar days. Provided, the court may continue the guardianship of
14 the Department, if there is no one willing and able to act as
15 guardian for the vulnerable adult.

16 N. Neither the Department nor any of its employees or any other
17 petitioner shall be liable for filing a petition pursuant to the
18 Vulnerable Adults Act if the petition was filed in good faith.

19 SECTION 5. This act shall become effective November 1, 2007.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-20-07 - DO
21 PASS, As Amended and Coauthored.