

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1627  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the printed Bill  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Anastasia Pittman  
\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1627

By: Pittman

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending  
9 43A O.S. 2001, Section 10-104, as last amended by  
10 Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp.  
11 2008, Section 10-104), which relates to Protective  
12 Services for Vulnerable Adults Act; requiring report  
13 to certain law enforcement; requiring preservation of  
14 evidence; amending 63 O.S. 2001, Section 1-1939, as  
15 amended by Section 2, Chapter 429, O.S.L. 2003 (63  
16 O.S. Supp. 2008, Section 1-1939), which relates to  
17 the Nursing Home Care Act; expanding certain  
18 reporting requirements; requiring certain acts be  
19 reported within certain time; providing for the  
20 preservation of alleged crime scene; providing for  
21 certain examination; and providing an effective date.

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

23 SECTION 1. AMENDATORY 43A O.S. 2001, Section 10-104, as  
24 last amended by Section 3, Chapter 68, O.S.L. 2007 (43A O.S. Supp.  
2008, 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

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; and

7 2. The Department of Human Services.

8 B. Any person making a report shall preserve, as reasonably  
9 possible, any evidence of the abuse, neglect, or exploitation.

10 C. Persons required to make reports pursuant to this section  
11 shall include, but not be limited to:

12 1. Physicians;

13 2. Operators of emergency response vehicles and other medical  
14 professionals;

15 3. Social workers and mental health professionals;

16 4. Law enforcement officials;

17 5. Staff of domestic violence programs;

18 6. Long-term care facility personnel, including staff of  
19 nursing facilities, intermediate care facilities for persons with  
20 mental retardation, assisted living facilities, and residential care  
21 facilities;

22 7. Other health care professionals;

23

24

1 8. Persons entering into transactions with a caretaker or other  
2 person who has assumed the role of financial management for a  
3 vulnerable adult;

4 9. Staff of residential care facilities, group homes, or  
5 employment settings for individuals with developmental disabilities;  
6 and

7 10. Job coaches, community service workers, and personal care  
8 assistants.

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

- 17 a. the name and address of the vulnerable adult,
- 18 b. the name and address of the caretaker, guardian, or  
19 person having power of attorney over the vulnerable  
20 adult's resources if any,
- 21 c. a description of the current location of the  
22 vulnerable adult,
- 23 d. a description of the current condition of the  
24 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.~~ E. If the initial report is made to the local municipal  
8 police department or sheriff's office, such police department or  
9 sheriff's office shall notify, as soon as possible, the Department  
10 of Human Services of its investigation.

11 ~~E.~~ F. 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.~~ G. 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.  
24

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

13           ~~H.~~ I. 1. Every physician or other health care professional  
14 making a report concerning the abuse, neglect or exploitation of a  
15 vulnerable adult, as required by this section, or examining a  
16 vulnerable adult to determine the likelihood of abuse, neglect or  
17 exploitation, and every hospital in which a vulnerable adult is  
18 examined or treated for abuse, neglect or exploitation shall  
19 disclose necessary health information related to the case and  
20 provide, upon request by either the Department of Human Services or  
21 the local municipal police or sheriff's department receiving the  
22 initial report, copies of the results or the records of the  
23 examination on which the report was based, and any other clinical  
24

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

22 (b) would be materially and adversely affected  
23 by waiting until the vulnerable adult is  
24 able to agree to the disclosure.

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

4           ~~F.~~ J. After investigating the report, either the county office  
5 of the Department of Human Services or the municipal police  
6 department or sheriff's office, as appropriate, shall forward its  
7 findings to the office of the district attorney in the county in  
8 which the suspected abuse, neglect, or exploitation occurred.

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

19           ~~K.~~ L. No employer shall terminate the employment, prevent or  
20 impair the practice or occupation of or impose any other sanction on  
21 any employee solely for the reason that the employee made or caused  
22 to be made a report or cooperated with an investigation pursuant to  
23 the Protective Services for Vulnerable Adults Act. A court, in  
24 addition to other damages and remedies, may assess reasonable

1 attorney fees against an employer who has been found to have  
2 violated the provisions of this subsection.

3 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1939, as  
4 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,  
5 Section 1-1939), is amended to read as follows:

6 Section 1-1939. A. The owner and licensee are liable to a  
7 resident for any intentional or negligent act or omission of their  
8 agents or employees which injures the resident. In addition, any  
9 state employee that aids, abets, assists, or conspires with an owner  
10 or licensee to perform an act that causes injury to a resident shall  
11 be individually liable.

12 B. A resident may maintain an action under the Nursing Home  
13 Care Act for any other type of relief, including injunctive and  
14 declaratory relief, permitted by law.

15 C. Any damages recoverable under this section, including  
16 minimum damages as provided by this section, may be recovered in any  
17 action which a court may authorize to be brought as a class action.  
18 The remedies provided in this section, are in addition to and  
19 cumulative with any other legal remedies available to a resident.  
20 Exhaustion of any available administrative remedies shall not be  
21 required prior to commencement of suit hereunder.

22 D. Any waiver by a resident or the legal representative of the  
23 resident of the right to commence an action under this section,  
24

1 whether oral or in writing, shall be null and void, and without  
2 legal force or effect.

3 E. Any party to an action brought under this section shall be  
4 entitled to a trial by jury and any waiver of the right to a trial  
5 by a jury, whether oral or in writing, prior to the commencement of  
6 an action, shall be null and void, and without legal force or  
7 effect.

8 F. A licensee or its agents or employees shall not transfer,  
9 discharge, evict, harass, dismiss or retaliate against a resident, a  
10 resident's guardian or an employee or agent who makes a report,  
11 brings, or testifies in, an action under this section, or files a  
12 complaint because of a report, testimony or complaint.

13 G. Any person, institution or agency, under the Nursing Home  
14 Care Act, participating in good faith in the making of a report, or  
15 in the investigation of such a report shall not be deemed to have  
16 violated any privileged communication and shall have immunity from  
17 any liability, civil or criminal, or any other proceedings, civil or  
18 criminal, as a consequence of making such report. The good faith of  
19 any persons required, or permitted to report cases of suspected  
20 resident abuse or neglect under this act shall be presumed.

21 H. A facility employee or agent who becomes aware of abuse,  
22 neglect or exploitation of a resident prohibited by the Nursing Home  
23 Care Act shall immediately report the matter to the facility  
24 administrator. A facility administrator who becomes aware of abuse,

1 neglect, or exploitation of a resident shall immediately act to  
2 rectify the problem and shall make a report of the incident and its  
3 correction to the Department.

4 I. 1. The facility shall be responsible for reporting the  
5 following serious incidents to local law enforcement and the  
6 Department within twenty-four (24) hours:

- 7 a. communicable diseases,
- 8 b. deaths by unusual occurrence, including accidental  
9 deaths or deaths other than by natural causes, and  
10 deaths that may be attributed to a medical device,
- 11 c. missing residents. ~~In addition, the facility shall~~  
12 ~~make a report to local law enforcement agencies within~~  
13 ~~two (2) hours if the resident is still missing,~~
- 14 d. situations arising where criminal intent is suspected.  
15 ~~Such situations shall also be reported to local law~~  
16 ~~enforcement, and~~
- 17 e. resident abuse, neglect, and misappropriation of the  
18 property of a resident.

19 2. Situations described in subparagraphs b, c, d and e of  
20 paragraph 1 of this subsection shall be reported to local law  
21 enforcement within two (2) hours of discovery.

22 3. All other incident reports shall be made in accordance with  
23 federal law.

24

1        ~~3.~~ 4. All initial written reports of incidents or situations  
2 shall be mailed to the Department within five (5) working days after  
3 the incident or situation. The final report shall be filed with the  
4 Department when the full investigation is complete.

5        J. A facility administrator shall preserve the scene in which  
6 any alleged criminal act has taken place, in accordance with  
7 applicable law, until the arrival of law enforcement.

8        K. If sexual assault is suspected, the facility administrator  
9 shall arrange for an examination by a sexual assault nurse examiner.  
10 If a sexual assault nurse examiner is not available, a rape  
11 examination shall be conducted by a physician or a registered nurse.

12        SECTION 3. This act shall become effective November 1, 2009.

13

14        52-1-6815            SAB            02/12/09

15

16

17

18

19

20

21

22

23

24