

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1287

By: Griffin

4  
5  
6 AS INTRODUCED

7 An Act relating to vulnerable adult abuse; amending  
8 43A O.S. 2011, Section 10-104, as amended by Section  
9 3, Chapter 417, O.S.L. 2010, which relates to persons  
10 required to report abuse; prohibiting forwarding of  
11 certain findings; repealing 43A O.S. 2011, Section  
10-104, as amended by Section 3, Chapter 332, O.S.L.  
2003, which is a duplicate section and which relates  
to persons required to report abuse; and providing an  
effective date.

12  
13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-104, as  
16 amended by Section 3, Chapter 417, O.S.L. 2010, is amended to read  
17 as follows:

18 Section 10-104. A. Any person having reasonable cause to  
19 believe that a vulnerable adult is suffering from abuse, neglect, or  
20 exploitation shall make a report as soon as the person is aware of  
21 the situation to:

22 1. The Department of Human Services; or  
23  
24

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

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

6           1. Physicians;

7           2. Operators of emergency response vehicles and other medical  
8 professionals;

9           3. Social workers and mental health professionals;

10          4. Law enforcement officials;

11          5. Staff of domestic violence programs;

12          6. Long-term care facility personnel, including staff of  
13 nursing facilities, intermediate care facilities for persons with  
14 mental retardation, assisted living facilities, and residential care  
15 facilities;

16          7. Other health care professionals;

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

20          9. Staff of residential care facilities, group homes, or  
21 employment settings for individuals with developmental disabilities;

22          10. Job coaches, community service workers, and personal care  
23 assistants; and

24          11. Municipal employees.

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

- 9 a. the name and address of the vulnerable adult,
- 10 b. the name and address of the caretaker, guardian, or  
11 person having power of attorney over the vulnerable  
12 adult's resources if any,
- 13 c. a description of the current location of the  
14 vulnerable adult,
- 15 d. a description of the current condition of the  
16 vulnerable adult, and
- 17 e. a description of the situation which may constitute  
18 abuse, neglect or exploitation of the vulnerable  
19 adult.

20 2. If federal law specifically prohibits the disclosure of any  
21 of the information required by this subsection, that information may  
22 be excluded from the report.

23 D. If the initial report is made to the local municipal police  
24 department or sheriff's office, such police department or sheriff's

1 office shall notify, as soon as possible, the Department of Human  
2 Services of its investigation.

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

10 F. 1. Any person participating in good faith and exercising  
11 due care in the making of a report pursuant to the provisions of  
12 this section shall have immunity from any civil or criminal  
13 liability that might otherwise be incurred or imposed. Any such  
14 participant shall have the same immunity with respect to  
15 participation in any judicial proceeding resulting from the report.

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

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

1 person being reported and for any punitive damages set by the court  
2 or jury which may be allowed in the discretion of the court or jury.

3 H. 1. Every physician or other health care professional making  
4 a report concerning the abuse, neglect or exploitation of a  
5 vulnerable adult, as required by this section, or examining a  
6 vulnerable adult to determine the likelihood of abuse, neglect or  
7 exploitation, and every hospital in which a vulnerable adult is  
8 examined or treated for abuse, neglect or exploitation shall  
9 disclose necessary health information related to the case and  
10 provide, upon request by either the Department of Human Services or  
11 the local municipal police or sheriff's department receiving the  
12 initial report, copies of the results or the records of the  
13 examination on which the report was based, and any other clinical  
14 notes, x-rays or photographs and other health information which is  
15 related to the case if:

- 16 a. the vulnerable adult agrees to the disclosure of the  
17 health information, or
- 18 b. the individual is unable to agree to the disclosure of  
19 health information because of incapacity; and
- 20 (1) the requesting party represents that the health  
21 information for which disclosure is sought is not  
22 intended to be used against the vulnerable adult  
23 in a criminal prosecution but to provide  
24

1 protective services pursuant to the Protective  
2 Services for Vulnerable Adults Act,

3 (2) the disclosure of the information is necessary to  
4 conduct an investigation into the alleged abuse,  
5 neglect or exploitation of the vulnerable adult  
6 subject to the investigation, and

7 (3) immediate enforcement activity that depends upon  
8 the disclosure:

9 (a) is necessary to protect the health, safety  
10 and welfare of the vulnerable adult because  
11 of incapacity, or

12 (b) would be materially and adversely affected  
13 by waiting until the vulnerable adult is  
14 able to agree to the disclosure.

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

18 I. After investigating the report, either the county office of  
19 the Department of Human Services or the municipal police department  
20 or sheriff's office, as appropriate, shall forward its findings to  
21 the office of the district attorney in the county in which the  
22 suspected abuse, neglect, or exploitation occurred. Unsubstantiated  
23 findings and findings of self-neglect shall not be forwarded to the  
24 office of the district attorney.

1 J. Any state or county medical examiner or physician who has  
2 reasonable cause to suspect that the death of any vulnerable adult  
3 may be the result of abuse or neglect as defined by Section 10-103  
4 of this title shall make a report to the district attorney or other  
5 law enforcement official of the county in which the death occurred.  
6 The report shall include the name of the person making the report,  
7 the name of the deceased person, the facts or other evidence  
8 supporting such suspicion, and any other health information that may  
9 be of assistance to the district attorney in conducting an  
10 investigation into the matter.

11 K. No employer shall terminate the employment, prevent or  
12 impair the practice or occupation of or impose any other sanction on  
13 any employee solely for the reason that the employee made or caused  
14 to be made a report or cooperated with an investigation pursuant to  
15 the Protective Services for Vulnerable Adults Act. A court, in  
16 addition to other damages and remedies, may assess reasonable  
17 attorney fees against an employer who has been found to have  
18 violated the provisions of this subsection.

19 SECTION 2. REPEALER 43A O.S. 2011, Section 10-104, as  
20 amended by Section 3, Chapter 332, O.S.L. 2003, is hereby repealed.

21 SECTION 3. This act shall become effective November 1, 2016.  
22

23 55-2-2618 TEK 2/18/2016 6:54:17 PM  
24