

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 201 By: Thompson and Bergstrom of
the Senate
3
4 and
5 McEntire of the House
6
7

8 An Act relating to the Protective Services for
9 Vulnerable Adults Act; amending 43A O.S. 2011,
10 Section 10-103, as amended by Section 1, Chapter 39,
11 O.S.L. 2016 (43A O.S. Supp. 2018, Section 10-103),
12 which relates to definitions; modifying and adding
certain definitions; and providing an effective date.

13 AUTHORS: Add the following House Coauthors: Lawson, Manger and Roe
14 AMENDMENT NO. 1. Delete the title, enacting clause and entire bill
15 and replace with:
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17 "An Act relating to the Protective Services for
18 Vulnerable Adults Act; amending 43A O.S. 2011,
19 Section 10-103, as amended by Section 1, Chapter 39,
20 O.S.L. 2016 (43A O.S. Supp. 2018, Section 10-103),
21 which relates to definitions; modifying definition;
22 adding definition for personal degradation; and
23 providing an effective date.
24

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

1 SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-103, as
2 amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018,
3 Section 10-103), is amended to read as follows:

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

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

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

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

- f. guardianship referral,
- g. outreach programs, and
- h. the transportation necessary to secure any of such services.

The term shall not include taking the person into physical custody without the consent of the person except as provided for in Sections 10-107 and 10-108 of this title, and the 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 to the vulnerable adult is likely to occur;

4. "Incapacitated person" means:

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

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

(2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet

1 essential requirements for his or her mental or
2 physical health or safety without assistance from
3 others, or

4 b. a person for whom a guardian, limited guardian, or
5 conservator has been appointed pursuant to the
6 Oklahoma Guardianship and Conservatorship Act;

7 5. "Vulnerable adult" means an individual who is an
8 incapacitated person or who, because of physical or mental
9 disability, including persons with Alzheimer's disease or other
10 dementias, incapacity, or other disability, is substantially
11 impaired in the ability to provide adequately for the care or
12 custody of himself or herself, or is unable to manage his or her
13 property and financial affairs effectively, or to meet essential
14 requirements for mental or physical health or safety, or to protect
15 himself or herself from abuse, verbal abuse, neglect, or
16 exploitation without assistance from others;

17 6. "Caretaker" means a person who has:

18 a. the responsibility for the care of a vulnerable adult
19 or the financial management of the resources of a
20 vulnerable adult as a result of a family relationship,

21 b. assumed the responsibility for the care of a
22 vulnerable adult voluntarily, by contract, or as a
23 result of the ties of friendship, or
24

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 personal
9 degradation, or

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

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

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

- a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
- b. refusing to pay for necessities or utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

11. "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. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

12. "Personal degradation" means a willful act by a caretaker intended to shame, degrade, humiliate or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation or harm to the personal dignity of a reasonable person.
Personal degradation includes the taking, transmitting, or display

1 of an electronic image of a vulnerable adult by a caretaker, where
2 the caretaker's actions constitute a willful act intended to shame,
3 degrade, humiliate or otherwise harm the personal dignity of the
4 dependent adult, or where the caretaker knew or reasonably should
5 have known the act would cause shame, degradation, humiliation or
6 harm to the personal dignity of a reasonable person. Personal
7 degradation does not include:

8 a. the taking, transmission or display of an electronic
9 image of a vulnerable adult for the purpose of
10 reporting vulnerable adult abuse to law enforcement,
11 the Department of Human Services or other regulatory
12 agency that oversees caretakers or enforces abuse or
13 neglect laws or rules,

14 b. the taking, transmission or display of an electronic
15 image of a vulnerable adult for the purpose of
16 treatment or diagnosis, or

17 c. the taking, transmission or display of an electronic
18 image of a vulnerable adult as part of an ongoing
19 investigation;

20 13. "Sexual abuse" means:

21 a. oral, anal, or vaginal penetration of a vulnerable
22 adult by or through the union with the sexual organ of
23 a caretaker or other person providing services to the
24 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 ~~13.~~ 14. "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 ~~14.~~ 15. "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 ~~15.~~ 16. "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,
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1 or pornographic photographing, filming or depiction of the
2 vulnerable adult as those acts are defined by state law; and

3 ~~16.~~ 17. "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 2. This act shall become effective November 1, 2019."
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1 Passed the House of Representatives the 25th day of April, 2019.

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4 Presiding Officer of the House of
Representatives
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6 Passed the Senate the ____ day of _____, 2019.

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9 Presiding Officer of the Senate
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2 BILL NO. 201

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4 McEntire of the House
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8 Vulnerable Adults Act; amending 43A O.S. 2011,
9 Section 10-103, as amended by Section 1, Chapter 39,
10 O.S.L. 2016 (43A O.S. Supp. 2018, Section 10-103),
11 which relates to definitions; modifying and adding
12 certain definitions; and providing an effective date.

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

14 SECTION 3. AMENDATORY 43A O.S. 2011, Section 10-103, as
15 amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018,
16 Section 10-103), is amended to read as follows:

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

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

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

- 4 a. the identification of vulnerable adults in need of the
5 services,
- 6 b. the provision of medical care for physical and mental
7 health needs,
- 8 c. the provision of social services assistance in
9 personal hygiene, food, clothing, and adequately
10 heated and ventilated shelter,
- 11 d. protection from health and safety hazards,
- 12 e. protection from physical mistreatment,
- 13 f. guardianship referral,
- 14 g. outreach programs, and
- 15 h. the transportation necessary to secure any of such
16 services.

17 The term shall not include taking the person into physical custody
18 without the consent of the person except as provided for in Sections
19 10-107 and 10-108 of this title, and the evaluation, monitoring, and
20 provision of protective placements;

21 3. "Meet essential requirements for mental or physical health
22 and safety" means those actions necessary to provide the health
23 care, food, shelter, clothing, personal hygiene and other care
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1 without which physical injury or illness to the vulnerable adult is
2 likely to occur;

3 4. "Incapacitated person" means:

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

5 (1) who is impaired by reason of mental or physical
6 illness or disability, dementia or related
7 disease, mental retardation, developmental
8 disability or other cause, and

9 (2) whose ability to receive and evaluate information
10 effectively or to make and to communicate
11 responsible decisions is impaired to such an
12 extent that such person lacks the capacity to
13 manage his or her financial resources or to meet
14 essential requirements for his or her mental or
15 physical health or safety without assistance from
16 others, or

17 b. a person for whom a guardian, limited guardian, or
18 conservator has been appointed pursuant to the
19 Oklahoma Guardianship and Conservatorship Act;

20 5. "Vulnerable adult" means an individual who is an
21 incapacitated person or who, because of physical or mental
22 disability, including persons with Alzheimer's disease or other
23 dementias, incapacity, or other disability, is substantially
24 impaired in the ability to provide adequately for the care or

1 custody of himself or herself, or is unable to manage his or her
2 property and financial affairs effectively, or to meet essential
3 requirements for mental or physical health or safety, or to protect
4 himself or herself from abuse, verbal abuse, neglect, or
5 exploitation without assistance from others;

6 6. "Caretaker" means a person who has:

- 7 a. the responsibility for the care of a vulnerable adult
8 or the financial management of the resources of a
9 vulnerable adult as a result of a family relationship,
- 10 b. assumed the responsibility for the care of a
11 vulnerable adult voluntarily, by contract, or as a
12 result of the ties of friendship, or
- 13 c. been appointed a guardian, limited guardian, or
14 conservator pursuant to the Oklahoma Guardianship and
15 Conservatorship Act;

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

17 8. "Abuse" means causing or permitting:

- 18 a. the infliction of physical pain, injury, sexual abuse,
19 sexual exploitation, unreasonable restraint or
20 confinement, ~~or~~ mental anguish or personal
21 degradation, or
- 22 b. the deprivation of nutrition, clothing, shelter,
23 health care, or other care or services without which
24 serious physical or mental injury is likely to occur

1 to a vulnerable adult by a caretaker or other person
2 providing services to a vulnerable adult;

3 9. "Exploitation" or "exploit" means an unjust or improper use
4 of the resources of a vulnerable adult for the profit or advantage,
5 pecuniary or otherwise, of a person other than the vulnerable adult
6 through the use of undue influence, coercion, harassment, duress,
7 deception, false representation or false pretense;

8 10. "Financial neglect" means repeated instances by a
9 caretaker, or other person, who has assumed the role of financial
10 management, of failure to use the resources available to restore or
11 maintain the health and physical well-being of a vulnerable adult,
12 including, but not limited to:

- 13 a. squandering or negligently mismanaging the money,
14 property, or accounts of a vulnerable adult,
- 15 b. refusing to pay for necessities or utilities in a
16 timely manner, or
- 17 c. providing substandard care to a vulnerable adult
18 despite the availability of adequate financial
19 resources;

20 11. "Neglect" means:

- 21 a. the failure to provide protection for a vulnerable
22 adult who is unable to protect his or her own
23 interest,

- 1 b. the failure to provide a vulnerable adult with
2 adequate shelter, nutrition, health care, or clothing,
3 or
4 c. negligent acts or omissions that result in harm or the
5 unreasonable risk of harm to a vulnerable adult
6 through the action, inaction, or lack of supervision
7 by a caretaker providing direct services;

8 12. "Personal degradation" means a willful act or statement by
9 a caretaker intended to shame, degrade, humiliate or otherwise harm
10 the personal dignity of a vulnerable adult, or where the caretaker
11 knew or reasonably should have known the act or statement would
12 cause shame, degradation, humiliation or harm to the personal
13 dignity of a reasonable person. Personal degradation includes the
14 taking, transmitting, or display of an electronic image of a
15 vulnerable adult by a caretaker, where the caretaker's actions
16 constitute a willful act or statement intended to shame, degrade,
17 humiliate or otherwise harm the personal dignity of the dependent
18 adult, or where the caretaker knew or reasonably should have known
19 the act would cause shame, degradation, humiliation or harm to the
20 personal dignity of a reasonable person. Personal degradation does
21 not include:

- 22 a. the taking, transmission or display of an electronic
23 image of a vulnerable adult for the purpose of
24 reporting vulnerable adult abuse to law enforcement,

1 the Department of Human Services or other regulatory
2 agency that oversees caretakers or enforces abuse or
3 neglect laws or rules,

4 b. the taking, transmission or display of an electronic
5 image of a vulnerable adult for the purpose of
6 treatment or diagnosis, or

7 c. the taking, transmission or display of an electronic
8 image of a vulnerable adult as part of an ongoing
9 investigation;

10 13. "Sexual abuse" means:

11 a. oral, anal, or vaginal penetration of a vulnerable
12 adult by or through the union with the sexual organ of
13 a caretaker or other person providing services to the
14 vulnerable adult, or the anal or vaginal penetration
15 of a vulnerable adult by a caretaker or other person
16 providing services to the vulnerable adult with any
17 other object, or

18 b. for the purpose of sexual gratification, the touching,
19 feeling or observation of the body or private parts of
20 a vulnerable adult by a caretaker or other person
21 providing services to the vulnerable adult, or

22 c. indecent exposure by a caretaker or other person
23 providing services to the vulnerable adult;
24

~~13.~~ 14. "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;

~~14.~~ 15. "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;

~~15.~~ 16. "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

~~16.~~ 17. "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

1 means alone through prayer, in accordance with the practices of a
2 recognized religious method of healing, for the treatment or cure of
3 disease or remedial care, or a caretaker or other person
4 responsible, in good faith, is furnishing such vulnerable adult
5 spiritual means alone through prayer, in accordance with the tenets
6 and practices of a recognized church or religious denomination, for
7 the treatment or cure of disease or remedial care in accordance with
8 the practices of or express consent of the vulnerable adult.

9 SECTION 4. This act shall become effective November 1, 2019.

10 Passed the Senate the 12th day of March, 2019.

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Presiding Officer of the Senate

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14 Passed the House of Representatives the ____ day of _____,
15 2019.

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Presiding Officer of the House
of Representatives

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