

Tennessee Judicial Conference

Friday, October 17, 2014

Elder Abuse

Handout #1

TN Code Annotated
Title 71 – Welfare
Chapter 6 – Programs and Services for
Abused Persons
Part 1 – Adult Protection

Fran Bass, Esq.
Judge Robert Carter
Judge Kathleen Gomes
Judge Randy Kennedy

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*** Current through the 2014 Regular Session ***

Title 71 Welfare
Chapter 6 Programs and Services for Abused Persons
Part 1 Adult Protection

Tenn. Code Ann. § 71-6-101 (2014)

71-6-101. Short title -- Legislative intent.

(a) This part may be cited as the "Tennessee Adult Protection Act."

(b) (1) The purpose of this part is to protect adults coming within this part from abuse, neglect or exploitation by requiring reporting of suspected cases by any person having cause to believe that such cases exist. It is intended that, as a result of such reports, the protective services of the state shall prevent further abuse, neglect or exploitation within the limitations set out in this part.

(2) It is recognized that adequate protection of adults will require the cooperation of many agencies and service providers in conjunction with the department of human services due to the often complex nature of the risks to this adult group, and that services to meet the needs of this group will not always be available in each community. However, it is desirable that the following services, as well as other services needed to meet the intent of this part, be available: medical care, mental health and developmental disabilities services, including in-home assessments and evaluations; in-home services including homemaker, home-health, chore, meals; emergency services including shelter; financial assistance; legal services; transportation; counseling; foster care; day care; respite care; and other services as needed to carry out the intent of this part.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2601; Acts 1986, ch. 630, § 1; T.C.A., § 14-25-101.

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Title 71 Welfare
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Tenn. Code Ann. § 71-6-102 (2014)

71-6-102. Part definitions.

As used in this part, unless the context otherwise requires:

(1) (A) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the Tennessee Right to Natural Death Act, compiled in title 32, chapter 11, and if the provision of such medical care would conflict with the terms of such living will;

(B) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:

(i) The adult is unable to protect or care for himself or herself without assistance or supervision; and

(ii) The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;

(2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter;

(3) "Advanced age" means sixty (60) years of age or older;

(4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment

upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

(5) "Caretaker":

(A) Means an individual or institution who has assumed the duty to provide for the care of the adult by contract or agreement;

(B) Includes a parent, spouse, adult child or other relative, both biological or by marriage, who:

(i) Resides with or in the same building with or regularly visits the adult;

(ii) Knows or reasonably should know of the adult's mental or physical dysfunction or advanced age; and

(iii) Knows or reasonably should know that the adult is unable to adequately provide for the adult's own care; and

(C) Does not mean a financial institution as a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

(6) "Commissioner" means the commissioner of human services;

(7) "Department" means the department of human services;

(8) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated. However, the department is not required to assume responsibility for a person in imminent danger pursuant to this chapter except when, in the department's determination, sufficient resources exist for the implementation of this part;

(10) "Investigation" includes, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(11) "Protective services" means services undertaken by the department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home;

(12) "Relative" means spouse; child, including stepchild, adopted child or foster child; parents, including stepparents, adoptive parents or foster parents; siblings of the whole or half-blood; step-siblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces and nephews; and

(13) "Sexual abuse" occurs when an adult, as defined in this chapter, is forced, tricked,

threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an adult, as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2602; Acts 1980, ch. 513, § 2; 1986, ch. 630, §§ 2, 3; T.C.A., § 14-25-102; Acts 1995, ch. 486, §§ 1, 2, 9, 17; 1996, ch. 1029, § 1; 2004, ch. 780, § 4; 2009, ch. 337, §§ 1, 2; 2010, ch. 898, § 1; 2013, ch. 431, §§ 1, 2.

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Title 71 Welfare
Chapter 6 Programs and Services for Abused Persons
Part 1 Adult Protection

Tenn. Code Ann. § 71-6-103 (2014)

71-6-103. Rules and regulations -- Reports of abuse or neglect -- Investigation -- Providing protective services -- Consent of adult -- Duties of other agencies.

(a) The commissioner has the discretion to adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this part insofar as such action is reasonably calculated to serve the public interest.

(b) (1) Any person, including, but not limited to, a physician, nurse, social worker, department personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with this part. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death. However, unless the report indicates that there are other adults in the same or similar situation and that an investigation and provision of protective services are necessary to prevent their possible abuse, neglect or exploitation, it shall not be necessary for the department to make an investigation of the circumstances surrounding the death; provided, that the appropriate law-enforcement agency is notified.

(2) If a hospital, clinic, school, or any other organization or agency responsible for the care of adults has a specific procedure, approved by the director of adult protective services for the department, or the director's designee, for the protection of adults who are victims of abuse, neglect, or exploitation, any member of its staff whose duty to report under this part arises from the performance of the staff member's services as a member of the staff of the organization may, at the staff member's option, fulfill that duty by reporting instead to the person in charge of the organization or the organization head's designee who shall make the report in accordance with this chapter.

(c) An oral or written report shall be made immediately to the department upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide the following information, if known: the name and address of the adult, or of any other person responsible for the adult's care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation. Each report of known or suspected abuse of an adult involving a sexual offense that is a violation of §§ 39-13-501 -- 39-13-506 that occurs in a facility licensed by the department of mental health and substance abuse services as defined in § 33-2-402, or any hospital shall also be made to the local law

enforcement agency in the jurisdiction where such offense occurred.

(d) Upon receipt of the report, the department shall take the following action as soon as practical:

(1) Notify the appropriate law enforcement agency in all cases in which the report involves abuse, neglect, or exploitation of the adult by another person or persons;

(2) Notify the appropriate licensing authority if the report concerns an adult who is a resident of, or at the time of any alleged harm is receiving services from, a facility that is required by law to be licensed or the person alleged to have caused or permitted the harm is licensed under title 63. The commissioner of health, upon becoming aware through personal knowledge, receipt of a report or otherwise, of confirmed exploitation, abuse, or neglect of a nursing home resident, shall report such instances to the Tennessee bureau of investigation for a determination by the bureau as to whether the circumstances reported constitute abuse of the medicaid program or other criminal violation;

(3) Initiate an investigation of the complaint;

(4) Make a written report of the initial findings together with a recommendation for further action, if indicated; and

(5) After completing the evaluation, the department shall notify the person making the report of its determination.

(e) Any representative of the department may enter any health facility or health service licensed by the state at any reasonable time to carry out its responsibilities under this part.

(f) Any representative of the department may, with consent of the adult or caretaker, enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out this part. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the department to proceed with the investigation.

(g) If a determination has been made that protective services are necessary when indicated by the investigation, the department shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(h) In the event the adult elects to accept the protective services to be provided by the department, the caretaker shall not interfere with the department when rendering such services.

(i) If the adult does not consent to the receipt of protective services, or if the adult withdraws consent, the services shall be terminated, unless the department determines that the adult lacks capacity to consent, in which case it may seek court authorization to provide protective services.

(j) (1) Any representative of the department actively involved in the conduct of an abuse, neglect, or exploitation investigation under this part shall be allowed access to the mental and physical health records of the adult that are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.

(2) To complete the investigation required by this part, any authorized representative of the department actively involved in the conduct of an investigation pursuant to this part shall be allowed access to any law enforcement records or personnel records, not otherwise specifically protected by statute, of any person who is:

(A) A caretaker of the adult; or

(B) The alleged perpetrator of abuse, neglect or exploitation of the adult, who is the subject of the investigation.

(3) (A) If refused any information pursuant to subdivisions (j)(1) and (2), any information from any records necessary for conducting investigations pursuant to this part may be obtained upon motion by the department to the circuit, chancery or general sessions court of the county where such records are located, or in the court in which any proceeding concerning the adult may have been initiated or in the court in the county in which the investigation is being conducted.

(B) The order on the department's motion may be entered ex parte upon a showing by the department of an immediate need for such information.

(C) The court may enter such orders as may be necessary to ensure that the information sought is maintained pending any hearing on the motion, and to protect the information obtained from further disclosure if the information is made available to the department pursuant to the court's order.

(4) (A) The department may be allowed access to financial records that are contained in any financial institution, as defined by § 45-10-102(3):

(i) Regarding:

(a) The person who is the subject of the investigation;

(b) Any caretaker of such person; and

(c) Any alleged perpetrator of abuse, neglect or exploitation of such person;

(ii) By the issuance of an administrative subpoena in the name of the commissioner or an authorized representative of the commissioner that is:

(a) Directed to the financial institution; and

(b) Complies with §§ 45-10-106 and 45-10-107; or

(iii) By application, as otherwise required pursuant to § 45-10-117, to the circuit or chancery court in the county in which the financial institution is located, or in the court in which any proceeding concerning the adult may have been initiated or in which the investigation is being conducted, for the issuance of a judicial subpoena that complies with the requirements of § 45-10-107; provided, that the department shall not be required to post a bond pursuant to § 45-10-107(a)(4).

(B) Nothing in this subdivision (j)(4) shall be construed to supersede the provision of financial records pursuant to the permissible acts allowed pursuant to § 45-10-103.

(5) Any records received by the department, the confidentiality of which is protected by any other statute or regulation, shall be maintained as confidential pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to its authority pursuant to this part or title 33 or 34.

(k) (1) If, as a result of its investigation, the department determines that an adult who is a resident or patient of a facility owned or operated by an administrative department of the state is in need of protective services, and the facility is unable or unwilling to take action to protect

the resident or patient, the department shall make a report of its investigation, along with any recommendations for needed services to the commissioner of the department having responsibility for the facility. It shall then be the responsibility of the commissioner for that department and not the department of human services to take such steps as may be necessary to protect the adult from abuse, neglect, or exploitation and, in such cases, the affected administrative department of the state shall have standing to petition the court.

(2) (A) Notwithstanding subdivision (k)(1) or any other provision of this part to the contrary, the department of human services shall not be required to investigate and the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, or their successor agencies, shall not be required to report to the department of human services any allegations of abuse, neglect or exploitation involving any person that arise from conduct occurring in any institutions operated directly by either the department of mental health and substance abuse services or the department of intellectual and developmental disabilities.

(B) Allegations of abuse, neglect or exploitation of individuals occurring in the circumstances described in subdivision (k)(2)(A) shall be investigated, respectively, by investigators of the department of mental health and substance abuse services and the department of intellectual and developmental disabilities, or their successor agencies, who have been assigned to investigate the allegations.

(I) In the event the department, in the course of its investigation, is unable to determine to its satisfaction that sufficient information is available to determine whether an adult is in imminent danger or lacks the capacity to consent to protective services, an order may be issued, upon a showing of probable cause that an adult lacks capacity to consent to protective services and is being abused, neglected, or exploited, to require the adult to be examined by a physician, a psychologist in consultation with a physician or a psychiatrist in order that such determination can be made. An order for examination may be issued ex parte upon affidavit or sworn testimony if the court finds that there is cause to believe that the adult may be in imminent danger and that delay for a hearing would be likely to substantially increase the adult's likelihood of irreparable physical or mental harm, or both, and/or the cessation of life.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2603; Acts 1980, ch. 513, §§ 3-5, 8; 1986, ch. 630, §§ 5-8; T.C.A., § 14-25-103; Acts 1993, ch. 439, § 3; 1995, ch. 486, §§ 2, 14; 1999, ch. 247, § 2; 2000, ch. 947, §§ 6, 8M; 2001, ch. 204, §§ 1, 2; 2003, ch. 169, § 7; 2009, ch. 212, §§ 1, 2; 2010, ch. 1100, §§ 141, 142; 2012, ch. 575, § 1.

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Tenn. Code Ann. § 71-6-104 (2014)

71-6-104. Remedies -- Injunctive relief.

(a) Any court with jurisdiction under this part may upon proper application by the department issue a temporary restraining order or other injunctive relief to prohibit any violation of this part, regardless of the existence of any other remedy at law.

(b) The court may enjoin from providing care for any person, on a temporary or permanent basis, any employee or volunteer, who the court finds has engaged in the abuse, neglect or exploitation of an adult as defined in this part, in any situation involving the care of such adult by such employee or volunteer, whether such actions occurred in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility or arrangement serving adults is licensed to provide care for adults.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2604; Acts 1986, ch. 630, § 18; T.C.A., § 14-25-104; Acts 1995, ch. 486, § 8.

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Tenn. Code Ann. § 71-6-105 (2014)

71-6-105. Reporting or investigating parties -- Immunity from liability -- Protection from job discrimination.

Any person making any report or investigation pursuant to this part, including representatives of the department in the reasonable performance of their duties and within the scope of their authority, shall be presumed to be acting in good faith and shall thereby be immune from any liability, civil or criminal, 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 or investigation. Any person making a report under this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2605; Acts 1980, ch. 513, § 6; T.C.A., § 14-25-105.

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Tenn. Code Ann. § 71-6-106 (2014)

71-6-106. Privilege for confidential communications.

Notwithstanding the existence of the privilege for confidential communications between husband and wife, the chancellor at the hearing may compel testimony if, in the chancellor's opinion, disclosure is necessary in the interest of the adult.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2606, 14-25-106.

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Tenn. Code Ann. § 71-6-107 (2014)

71-6-107. Provision of protective services without the consent of the adult.

(a) (1) (A) If the department determines that an adult who is in need of protective services is in imminent danger if that adult does not receive protective services and lacks capacity to consent to protective services, then the department may file a complaint with the court for an order authorizing the provision of protective services necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life. The judge or chancellor shall hear the complaint ahead of any other business then pending in court or in chambers. This order may include the designation of an individual or organization to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf. The complaint must allege specific facts sufficient to show that the adult is in imminent danger if the adult does not receive protective services and lacks capacity to consent to protective services. Prior to filing a complaint with the court for an order authorizing removal of an adult from that adult's chosen place of residence, the department shall make reasonable efforts to exhaust all practical alternatives to the removal of such adult from such place of residence.

(B) In situations where the department must present a petition for emergency removal of an adult in imminent danger and a chancellor or circuit judge is unavailable, the department may present petitions to judicial officers with general sessions jurisdiction. Further proceedings shall be conducted in chancery or circuit court.

(C) For the purposes of this section, "sexual abuse," as defined in this chapter, shall provide grounds for the department to obtain custody of an adult who lacks capacity to consent when such abuse relates to sexual activity or contact.

(2) The judge or chancellor or the general sessions court judge, prior to entering the order, must find that the adult is in imminent danger if the adult does not receive protective services and lacks capacity to consent to protective services.

(3) Within seven (7) days of entering an order pursuant to this section, or for good cause shown, then up to fifteen (15) days, the court shall hold a hearing on the merits. If such a hearing is not held within such time, the order authorizing the provision of protective services shall be dissolved.

(4) (A) The adult alleged to be in need of protective services and any person to whom the adult is lawfully married, if known and reasonably available, must be served with a copy of the complaint at least forty-eight (48) hours prior to the hearing, unless for good cause shown, a

shorter time is allowed by the court. The adult and the adult's spouse have a right to be present and represented by counsel at the hearing. Failure to serve a copy of the complaint on a lawful spouse of the adult, if the spouse is not known or is not reasonably available as determined by the court, shall not prevent the provision of protective services, as ordered by the court, that may be necessary to prevent the adult from suffering imminent harm.

(B) If the adult alleged to be in need of protective services is indigent or, in the determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel for the adult alleged to be in need of protective services.

(C) If the adult alleged to be in need of protective services is indigent, court costs and the cost of representation of the adult shall be borne by the state; otherwise, the costs shall be borne by the adult. The state shall not be liable for the cost of counsel or court costs for the spouse of the adult; provided, however, that if the court finds that the department or an agency acting under subdivision (a)(7) has, without good cause, failed to serve a copy of the complaint on the lawful spouse of the adult, the court may assess attorneys fees for the spouse of the adult and court costs to the department or agency acting under subdivision (a)(7) not to exceed a total of two thousand dollars (\$2,000); provided further, however, that the court may exceed the two thousand dollar (\$2,000) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000) and that the interests of justice require that the limit be exceeded in the particular case.

(D) If a court determines that appointment of a guardian ad litem is necessary, and if the adult is indigent, the cost for the guardian ad litem shall be borne by the state; otherwise the costs shall be borne by the adult.

(5) (A) Protective services necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life authorized by order pursuant to this section may include, but are not limited to, taking the adult into physical custody in the home, a medical or nursing care facility, or, if available, an alternative living arrangement exclusive of a developmental center operated by the department of intellectual and developmental disabilities; provided, that the court finds that such custody is for the purpose of medical examination and treatment necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life or protection from abuse or neglect necessary to prevent imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life, and that the court specifically authorizes such custody in its order. In determining what specific custodial authority to grant under this section, the court shall consider whether the imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life is relatively mild or severe and authorize such custody as is appropriate under the circumstances. The department shall review the decree at least annually to determine whether the prerequisites for custody still exist.

(B) Within a reasonable period of time after an adult is taken into physical custody and placed other than in a medical or nursing care facility, the department shall cause an appropriate examination to be made of the adult to determine the cause or causes resulting in the adult's lack of capacity to consent, if such determination had not been made at the time of the final hearing.

(6) (A) In the event that the adult has sufficient resources to defray the costs of a medical or nursing care facility, or an appropriate alternative living arrangement, as decreed by the court pursuant to this subsection (a), and that without such resources the adult would be unable to enter such facility or alternative living arrangement, then the court may appoint a temporary guardian for such period as necessary to secure and disburse the adult's resources for that purpose, but for no longer than six (6) months from the entry of the order authorizing provision of protective services. However, the court in its discretion may extend such period for a period no longer than an additional six (6) months. The guardian appointed pursuant hereto

shall file an accounting with the court as to the resources used.

(B) The court in its order may authorize the temporary guardian to exercise a limited power of attorney over any accounts the adult has in a bank, credit union, or other financial institution. The temporary guardian so designated shall deliver a copy of the order of the court to the financial institution prior to taking any action with regard to the accounts. The limited power of attorney shall authorize the temporary guardian to withdraw money from or freeze or unfreeze the account.

(C) Concurrent with the order of the court appointing a temporary guardian, the court shall issue a subpoena directed to the financial institution in compliance with the Financial Records Privacy Act, compiled in title 45, chapter 10, requesting the names of any co-owner or additional authorized signatories on the accounts, unless the temporary guardian has actual knowledge of any co-owners or additional authorized signatories. Upon receipt of the response to the subpoena, or upon actual knowledge of the co-owners or additional authorized signatories, the temporary guardian shall send a copy of the order to any person who is a co-owner of or authorized signatory on the deposit account within ten (10) days of receiving the names of the co-owners or signatories. Nothing in this subdivision (a)(6)(C) shall preclude the temporary guardian from making immediate expenditures from the accounts of the adult necessary to provide protective services for the adult in imminent danger, as defined in this part, pending the response by the co-owners or other signatories to the accounts.

(D) If the court finds that the temporary guardian has, without good cause, failed to provide a copy of the order under this subdivision (a)(6) to the co-owner or additional authorized signatory on the deposit account, the court may assess attorneys' fees for the benefit of the co-owner or additional authorized signatory or court costs associated with the failure of the department or the temporary guardian; provided, that the fees and court costs shall not exceed a total of two thousand dollars (\$2,000); provided, further, however, that the court may exceed the two thousand dollar (\$2,000) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000) and that the interests of justice require that the limit be exceeded in the particular case.

(7) If the department refuses to exercise the powers granted to it by subdivision (a)(1), any private nonprofit agency representing disabled adults may proceed under subdivision (1), after giving notice to the department of intent to do so. If an order authorizing the provision of protective services results, the department's responsibilities are the same as they would have been if the department had sought the order. If the court finds that an order authorizing the provision of protected services is not warranted, any agency proceeding under this subdivision (a)(7) will be responsible for the cost of the court-appointed attorney representing the individual for whom protective services were sought as well as court costs.

(b) (1) If the department determines that an adult is in need of protective services and lacks capacity to consent to protective services, then the department may petition the judge or chancellor for a hearing. The complaint must allege specific facts sufficient to show that the adult is in need of protective services and lacks capacity to consent to protective services.

(2) (A) The adult alleged to be in need of protective services and any person to whom the adult is lawfully married, if known and reasonably available, must be served with a copy of the complaint at least ten (10) days prior to the hearing, unless for good cause shown, a shorter time is allowed by the court. The adult and the adult's spouse have a right to be present and represented by counsel at the hearing. Failure to serve a copy of the complaint on a lawful spouse of the adult, if the spouse is not known or is not reasonably available as determined by the court, shall not prevent the provision of protective services to the adult, as ordered by the court.

(B) If the adult alleged to be in need of protective services is indigent or, in the

determination of the judge or chancellor, lacks capacity to waive the right to counsel, then the court shall appoint counsel for the adult alleged to be in need of protective services.

(C) If the adult alleged to be in need of protective services is indigent, court costs and the cost of representation of the adult shall be borne by the state; otherwise the costs shall be borne by the adult. The state shall not be liable for the costs of counsel or court costs for the spouse of the adult; provided, however, if the court finds that the department or an agency acting under subdivision (7) has, without good cause, failed to serve a copy of the complaint on the lawful spouse of the adult, the court may assess attorneys fees for the spouse of the adult and court costs to the department or agency acting under subdivision (7) not to exceed a total of two thousand dollars (\$2,000); provided, however, that the court may exceed the two thousand dollar (\$2,000) limit upon making a specific finding of fact that the failure of the department or an agency to serve the complaint resulted in financial hardship upon the spouse or adult in excess of two thousand dollars (\$2,000) and that the interests of justice require that the limit be exceeded in the particular case.

(D) If a court determines that appointment of a guardian ad litem is necessary, and if the adult is indigent, the cost for the guardian ad litem shall be borne by the state; otherwise the costs shall be borne by the adult.

(3) If the judge or chancellor finds that the adult is in need of protective services and lacks capacity to consent to protective services, then the judge or chancellor may enter a decree authorizing the provision of protective services. This decree may include the designation of an individual or organization to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf.

(c) An individual or organization appointed pursuant to subsection (a) or (b) to be responsible for the personal welfare of the adult and for consenting to protective services in the adult's behalf or to serve as temporary guardian shall have only specific authority as the court shall provide in its order. Such authority shall be limited to the authority to consent to specified protective services, including medical care if ordered, and if ordered pursuant to subsection (a), may arrange for, and consent to, appropriate custodial care and gain access to and disburse the adult's resources. If the adult is in need of a person to manage the adult's affairs or to have other responsibilities not addressed in this section, the procedures and requirements for appointment of a conservator pursuant to title 34, chapter 1 or 3, must be followed. Nothing in this section shall be construed as requiring the department to initiate proceedings for the appointment of a conservator or a temporary guardian or to accept such appointment if proceedings are instituted or to initiate proceedings under title 34, chapter 1 or 3.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2607; Acts 1980, ch. 513, § 7; 1986, ch. 630, §§ 9-14; 1986, ch. 892, § 1; T.C.A., § 14-25-107; Acts 1995, ch. 486, §§ 2-5, 7, 10-13, 15, 19; 1999, ch. 247, § 3; 2000, ch. 947, § 6; 2008, ch. 887, §§ 1-3; 2008, ch. 1005, §§ 2, 3; 2010, ch. 1100, § 143.

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Title 71 Welfare
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Tenn. Code Ann. § 71-6-108 (2014)

71-6-108. Prohibitions.

No adult may be adjudicated incompetent or committed to a mental institution under this part.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2608, 14-25-108.

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Tenn. Code Ann. § 71-6-109 (2014)

71-6-109. Payment for protective services.

If the department determines that the adult is financially capable of paying for the protective services received, according to standards to be set by the department, the adult shall reimburse the state for the cost of providing the protective services. If the department determines that the adult is not financially capable of paying for the protective services received, the state shall bear the cost of providing the protective services. Otherwise, the department may recover such cost from the adult in any court of competent jurisdiction.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2609, 14-25-109.

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Tenn. Code Ann. § 71-6-110 (2014)

71-6-110. Violation of duty to report.

Any person who knowingly fails to make a report required by this chapter commits a Class A misdemeanor.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., § 14-2610; Acts 1986, ch. 630, § 15; T.C.A., § 14-25-110; Acts 1989, ch. 591, § 111.

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Tenn. Code Ann. § 71-6-111 (2014)

71-6-111. Authority and responsibility of department.

It is the legislative intent that the protective services set out in this part be provided and that the department have present authority to provide or to arrange for the provision of the same. However, the provision of the services is subject to budgetary limitations and the availability of funds appropriated for the general provision of protective services to all persons entitled to services.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2611, 14-25-111.

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Tenn. Code Ann. § 71-6-112 (2014)

71-6-112. Funding.

The cost of the administration of this part and the provision of the services hereby authorized shall be limited to the amount of funds specifically appropriated for such purposes by the general assembly.

HISTORY: Acts 1978, ch. 899, § 1; T.C.A., §§ 14-2612, 14-25-112.

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Tenn. Code Ann. § 71-6-113 (2014)

71-6-113. Cooperation by other departments -- Specialized care.

(a) It is the legislative intent that the departments of mental health and substance abuse services, intellectual and developmental disabilities, and health, or their successor agencies, shall assist the department of human services with providing the services required under this part.

(b) When the department of human services is unable to find a resource for any person in need of protective services who, because of mental or physical illness, intellectual disability or developmental disabilities, is in need of specialized care or medical treatment, the departments of mental health and substance abuse services, intellectual and developmental disabilities, and health, or their successor agencies, shall, based upon available resources, give priority to the person for appropriate placement or treatment if the person is eligible for placement.

HISTORY: Acts 1978, ch. 899, § 2; T.C.A., § 14-2613; Acts 1986, ch. 630, § 16; T.C.A., § 14-25-113; Acts 2000, ch. 947, § 6; 2009, ch. 212, § 3; 2010, ch. 1100, §§ 144, 145; 2011, ch. 158, § 41; 2012, ch. 575, § 1.

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Tenn. Code Ann. § 71-6-114 (2014)

71-6-114. Jurisdiction and venue.

(a) The circuit, general sessions, and chancery courts have jurisdiction of proceedings arising under this part. Probate courts in counties having a population of not less than seven hundred seventy-five thousand (775,000) according to the 1980 federal census or any subsequent federal census shall have concurrent jurisdiction with the circuit and chancery courts.

(b) A proceeding under this part may be commenced in the county where the adult resides or is physically present.

HISTORY: Acts 1986, ch. 630, § 4; T.C.A., § 14-25-114; Acts 1995, ch. 486, § 16.

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Tenn. Code Ann. § 71-6-115 (2014)

71-6-115. Cooperation by law enforcement officials.

It is the legislative intent that law enforcement officials shall cooperate with the department of human services in providing protective services under this part. Further, when the department is unable to return an adult to physical custody who voluntarily leaves such custody, law enforcement officials shall assist in returning the adult to such physical custody and shall give priority in providing such assistance.

HISTORY: Acts 1986, ch. 630, § 17; T.C.A., § 14-25-115.

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Tenn. Code Ann. § 71-6-116 (2014)

71-6-116. Motion for review of court decree.

Either party to a proceeding under this part, or any interested person on behalf of the adult subject to such a proceeding, may file a motion for review of the decree of the court at any time.

HISTORY: Acts 1986, ch. 630, § 17; T.C.A., § 14-25-116.

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Tenn. Code Ann. § 71-6-117 (2014)

71-6-117. Willful abuse, neglect or exploitation prohibited -- Penalty.

(a) It is an offense for any person to knowingly, other than by accidental means, abuse, neglect or exploit any adult within the meaning of this part.

(b) A violation of this section is a Class D felony.

(c) (1) Following a conviction for a violation of this section or § 71-6-119, the clerk of the court shall notify the department of health of the conviction by sending a copy of the judgment in the manner set forth in § 68-11-1003 for inclusion pursuant to title 68, chapter 11, part 10.

(2) Upon receipt of a judgment of conviction for a violation of an offense set out in subdivision (c)(1), the department shall place the person or persons convicted on the registry of persons who have abused, neglected, or misappropriated the property of a vulnerable individual as provided in § 68-11-1003(c).

(3) Upon entry of the information in the registry, the department shall notify the person convicted, at the person's last known mailing address, of the person's inclusion on the registry. The person convicted shall not be entitled or given the opportunity to contest or dispute either the prior hearing conclusions or the content or terms of any criminal disposition, or attempt to refute the factual findings upon which the conclusions and determinations are based. The person convicted may challenge the accuracy of the report that the criminal disposition has occurred, such hearing conclusions were made or any factual issue related to the correct identity of the person. If the person convicted makes such a challenge within sixty (60) days of notification of inclusion on the registry, the commissioner, or the commissioner's designee, shall afford the person an opportunity for a hearing on the matter that complies with the requirements of due process and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

HISTORY: Acts 1986, ch. 630, § 17; T.C.A., § 14-25-117; Acts 1989, ch. 591, § 111; 2007, ch. 416, § 1; 2014, ch. 961, § 1.

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Tenn. Code Ann. § 71-6-118 (2014)

71-6-118. Confidentiality of information, reports and proceedings -- Penalties.

(a) The identity of a person who reports abuse, neglect, or exploitation as required under this part is confidential and may not be revealed unless a court with jurisdiction under this part so orders for good cause shown.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of abuse, neglect, or exploitation under this part, directly or indirectly derived from the records, papers, files or communications of the department of human services or divisions thereof acquired in the course of the performance of official duties.

(c) (1) When necessary to protect adults in a health care facility licensed by any state agency, such information, reports, and investigations may be disclosed to any agency providing licensing or regulation for that facility; however, the information, reports, and investigations shall retain the protection of subsection (b) when disclosed to such agency and may not be disclosed to, or used by, any other person.

(2) Notwithstanding subsections (a) and (b), the department may report to law enforcement or public health authorities any information from its investigations or records regarding illness, disease or injuries obtained in the course of its investigation.

(d) A violation of any provision of this section is a Class B misdemeanor.

HISTORY: Acts 1986, ch. 630, § 17; T.C.A., § 14-25-118; Acts 1989, ch. 591, § 112; 2008, ch. 1005, §§ 4, 5.

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Tenn. Code Ann. § 71-6-119 (2014)

71-6-119. Physical abuse or gross negligence -- Elements of offense -- Penalties.

(a) It is an offense to knowingly, other than by accidental means, physically abuse or grossly neglect an impaired adult if the abuse or neglect results in serious mental or physical harm.

(b) In order to prosecute and convict a person for a violation of this section, it is not necessary for the state to prove the adult sustained serious bodily injury as required by § 39-13-102, but only that the elements set out in subsection (a) occurred.

(c) A violation of this section is a Class C felony.

HISTORY: Acts 1995, ch. 486, § 6; 2007, ch. 468, § 1.

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Tenn. Code Ann. § 71-6-120 (2014)

71-6-120. Right of elderly person or disabled adult to recover for abuse or neglect, sexual abuse, exploitation, or theft.

(a) As used in this section, unless the context otherwise requires:

(1) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect the person from neglect, or hazardous or abusive situations without assistance;

(2) "Disabled adult" means a person who is eighteen (18) years of age or older and who meets one (1) of the following:

(A) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;

(B) Lacks the capacity to consent;

(C) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or

(D) Has been found to be incompetent by a court of proper jurisdiction; and

(3) "Elderly person" or "elder" means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.

(b) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.

(c) Jurisdiction for such action shall be in the circuit or chancery court where the elderly person or disabled adult may reside or where the actions occurred.

(d) Damages shall include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses. In addition, if it is proven upon clear and convincing evidence that abuse or neglect, sexual abuse or exploitation or theft resulted from intentional, fraudulent or malicious conduct by the defendant, a claimant shall be entitled to recover reasonable attorneys' fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise.

(e) In addition to the damages described in (d), a defendant may also be found liable for punitive damages in accordance with applicable common law standards.

(f) Nothing in this section shall be construed as requiring the department of human services to initiate any proceedings pursuant to this section or to act on behalf of any elderly person or disabled adult subject to this section.

(g) This section shall not apply to a cause of action within the scope of title 29, chapter 26; such cause of action shall be governed solely by title 29, chapter 26.

(h) A financial institution, officer, director, or employee of a financial institution, shall not be liable in any civil action brought by or on behalf of a disabled adult or elderly person for recovery of damages under this chapter, unless prior to such civil action, the financial institution, officer, director, or employee of a financial institution, shall have been convicted of a violation of § 71-6-117; provided, however, that this provision shall not apply to theft or conversion by an employee, officer or director of a financial institution or liability arising under other provisions of law.

HISTORY: Acts 1999, ch. 247, § 1; 2000, ch. 768, §§ 1-3; 2004, ch. 780, § 5.

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Tenn. Code Ann. § 71-6-121 (2014)

71-6-121. Posting of contact information on adult protective service.

(a) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all senior centers, all community centers and all pharmacies shall post the following in the main public entrance:

(1) Contact information including the statewide toll-free number of the division of adult protective services, and the number for the local district attorney general's office; and

(2) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect, and exploitation.

(b) The information listed in subsection (a) shall be posted on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(c) All nursing homes, assisted living facilities and any other residential facility licensed by the board of licensing health care facilities shall upon admission provide to each resident the division of adult protective services' statewide toll-free number.

(d) Any licensed nursing home that complies with the requirements of § 68-11-254 shall be exempt from the requirements of subsections (a) and (b).

(e) (1) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all community centers, and all pharmacies shall post in the main public entrance, on a sign no smaller than eight and one-half inches (8 1/2") in width and eleven inches (11") in height, a statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, or any other hotline that may be determined by the departments of health and commerce and insurance and communicated to health care providers subject to this section pursuant to subdivision (e)(2), with that number printed in boldface type, for immediate assistance.

(2) The departments of health and commerce and insurance, through the various regulatory and licensure boards with oversight of health care providers, shall include a statement notifying providers of the requirements of subdivision (e)(1) in the newsletters or other routine correspondences of such boards and shall post a copy of such statement on the departments' web sites. The statement shall include a contact telephone number for providers to request that

a copy of the statement be mailed to them. Upon initial licensure, the various boards shall also provide initial licensees with the statement along with instructions for compliance with subdivision (e)(1).

(f) All offices of physicians licensed pursuant to title 63, chapter 6 or 9, all health care facilities licensed pursuant to title 68, chapter 11, all community centers, and all pharmacies shall post on a sign no smaller than eight and one-half inches (8 1/2") in width and eleven inches (11") in height in the main public entrance a statement that a teen involved in a relationship that includes dating violence may call a national toll-free hotline, with that number printed in boldface type, for immediate assistance.

(g) Notwithstanding the provisions of subsections (a)-(f) regarding the size of the posters, physicians' offices, health care facilities, community centers and pharmacies are authorized to incorporate all of the information required in subsections (a)-(f) in a single poster at least eight and one-half inches (8 1/2") in width and fourteen inches (14") in height that shall be posted in the main public entrance.

(h) The departments of health and commerce and insurance, through the various regulatory and licensure boards with oversight of health care providers, shall include a statement notifying providers of the requirements of subsections (a)-(g) in the newsletters or other routine correspondences of those boards and shall post a copy of the statement on the departments' web sites. The statement shall include a contact telephone number for providers to request that a copy of the statement be mailed to them. Upon initial licensure, the various boards shall also provide initial licensees with the statement along with instructions for compliance with subsections (a)-(g).

HISTORY: Acts 2004, ch. 780, § 6; 2006, ch. 804, §§ 1, 2; 2007, ch. 446, §§ 1, 2.

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*** Current through the 2014 Regular Session ***

Title 71 Welfare
Chapter 6 Programs and Services for Abused Persons
Part 1 Adult Protection

Tenn. Code Ann. § 71-6-122 (2014)

71-6-122. Toll-free number for reporting elder abuse, neglect or exploitation.

The division of adult protective services of the department of human services shall establish a toll-free telephone service to enable citizens within the state to call the division free of charge to report abuse, neglect, or exploitation and to seek relevant assistance from the division in such matters.

HISTORY: Acts 2004, ch. 780, § 7.

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*** Current through the 2014 Regular Session ***

Title 71 Welfare
Chapter 6 Programs and Services for Abused Persons
Part 1 Adult Protection

Tenn. Code Ann. § 71-6-123 (2014)

71-6-123. Reporting false accusations -- Penalties -- Investigation.

(a) It is an offense for a person to report to the department an accusation of abuse, sexual abuse, neglect or exploitation of an adult if, at the time of the report, the person knows or should know the accusation is false.

(b) It is an offense for a person to knowingly cause another to report to the department an accusation of abuse, sexual abuse, neglect or exploitation of an adult if, at the time of the conduct, the person knows or should know the accusation is false.

(c) A violation of this section is a Class A misdemeanor.

(d) Notwithstanding the provisions of § 71-6-118 to the contrary:

(1) The department may report to the district attorney general or law enforcement authorities the identity of any person whom it reasonably believes has violated this section; and

(2) The information such person reported or caused to be reported may be disclosed and utilized in any manner necessary by the department, the district attorney general or law enforcement authorities as part of any investigation or prosecution of a violation of this section.

HISTORY: Acts 2008, ch. 1005, § 1.

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*** Current through the 2014 Regular Session ***

Title 71 Welfare
Chapter 6 Programs and Services for Abused Persons
Part 1 Adult Protection

Tenn. Code Ann. § 71-6-124 (2014)

71-6-124. Procedure for seeking relief by relative having personal knowledge that an adult has been subject to or threatened with willful abuse, neglect or exploitation.

(a) (1) (A) Any relative having personal knowledge that an adult has been the subject of a violation of § 71-6-117 or that such adult is threatened with or placed in fear of a violation of § 71-6-117 occurring against such adult may seek relief for the adult pursuant to this section by filing a sworn petition with any court with jurisdiction under this part alleging that the respondent has violated or threatens to violate § 71-6-117, regardless of the existence of any other remedy at law. For purposes of this section, "adult" shall not include a person while in the custody of intermediate care facilities for persons with intellectual disabilities and a person while receiving residential services or other services from a community provider through contracts with the department of intellectual and developmental disabilities (DIDD).

(B) The petition must allege facts, based upon personal knowledge of the petitioner, that the adult lacks capacity to consent.

(C) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the violation of § 71-6-117 occurred or is threatened to occur. If the respondent is not a resident of this state, the petition may be filed in the county where the adult resides.

(2) The court may enter an immediate ex parte order of protection against the respondent if the petition alleges upon personal knowledge of the petitioner, and the court finds in its ex parte order, that the adult lacks capacity to consent and is in immediate danger of abuse, neglect or exploitation or that the adult's property is being, is in immediate danger of being, or has been misappropriated by the respondent.

(3) The petition and any ex parte order issued pursuant to this section shall be personally served upon the respondent and the adult. If the respondent is not a resident of this state, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216.

(4) Written notice of the filing of the petition and copies of the petition and the ex parte order of protection against the respondent, if any, shall be sent by certified mail, return receipt to the adult protective services unit in the county office of department of human services in the county in which the petition is filed. The department shall have the right to intervene in the proceeding, but shall not otherwise be required to initiate any legal action as a result of such notice. The department may, at any time, file a petition pursuant to § 71-6-107 if it determines that the adult who is the subject of a petition for an order of protection is in need of protective

services.

(5) (A) Within fifteen (15) days of service of an ex parte order of protection against the respondent, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the adult lacks capacity to consent and the allegation of abuse, neglect or exploitation or the threat of such by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one hundred twenty (120) days, unless a further hearing on the continuation of such order is requested by the adult, the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one hundred twenty (120) days.

(B) Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection is issued, proceedings under title 34, chapters 1-3, are concluded, or the order of protection is dissolved. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven that the adult lacks capacity to consent and the allegation of abuse, neglect or exploitation of the adult or the threat of such by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one hundred twenty (120) days.

(C) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent and the adult at least five (5) days prior to such hearing. Such notice shall advise the respondent and the adult that each may be represented by counsel. The court may appoint a guardian ad litem under § 34-1-107.

(D) Within the time the order of protection is in effect, any court with jurisdiction under this part may modify the order of protection, either upon the court's own motion or upon motion of the adult, the respondent or the petitioner.

(b) An order of protection granted pursuant to this section may:

(1) (A) Order the respondent to refrain from committing a violation of this part against an adult;

(B) Refrain from threatening to misappropriate or further misappropriating any moneys, state or federal benefits, retirement funds or any other personal or real property belonging to the adult; or

(C) Order the return to the adult or the adult's caretaker or conservator or other fiduciary any moneys, state or federal benefits, retirement funds or any other personal or real property belonging to the adult obtained by the respondent as result of exploitation of the adult or as result of any other misappropriation of such funds or property of the adult by the respondent. The court may enter judgment against the respondent for the repayment or return to the adult or the adult's caretaker, conservator or other fiduciary of any moneys, government benefits, retirement funds or any other personal or real property belonging to the adult that are under the control of or that have been obtained by the respondent as result of exploitation or misappropriation from the adult. Nothing in this subdivision (b)(1)(C) shall preclude an action under § 71-6-120. The court may, if the amount in question exceeds ten thousand dollars (\$10,000), require any caretaker or custodian of funds appointed under this section to post a bond as required by § 34-1-105;

(2) Enjoin the respondent from providing care for an adult, on a temporary or permanent basis, anyone who the court finds has engaged in abuse, neglect or exploitation of an adult as defined in this part; in any situation involving the care of such adult, whether such actions

occurred in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility or arrangement serving adults is licensed to provide care for adults;

(3) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly; or

(4) Subject to the limitations otherwise stated in this section, grant any other relief deemed necessary by the court to protect an adult.

(c) All orders of protection shall be effective for a fixed period of time, not to exceed one hundred twenty (120) days. The court may modify its order at any time upon subsequent motion filed by any party together with an affidavit showing a change in circumstances sufficient to warrant the modification. The petitioner, respondent or adult, or the court on its own motion shall commence a proceeding under title 34, chapters 1-3 to determine whether a fiduciary should be appointed, if any party alleges that the conditions giving rise to the order of protection continue or may continue beyond the one hundred twenty (120) days.

(d) (1) If the adult and the respondent have been served with a copy of the petition and notice of hearing, the order of protection shall be effective when the order is entered. For purposes of this subdivision (d)(1), an order shall be considered entered once a hearing is conducted and when such order is signed by:

(A) The judge and all parties or counsel;

(B) The judge and one (1) party or counsel and contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(C) The judge and contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(2) Service upon a party or counsel shall be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing.

(3) If the adult and the respondent have been served with a copy of the petition and notice of hearing, an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered, regardless of whether the respondent is present at the hearing.

(4) A copy of any order of protection and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent and the local law enforcement agencies having jurisdiction in the area where the adult resides. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit it to the national crime information center.

(5) Upon violation of an order of protection entered pursuant to this section, a court may order any appropriate punishment or relief as provided for in § 36-3-610.

(e) (1) It is an offense to knowingly violate an order of protection issued pursuant to this section. A law enforcement officer may arrest a respondent who is the subject of an order of protection issued pursuant to this section with or without warrant.

(2) In order to constitute a violation of this section:

(A) The person must have received notice of the request for an order of protection;

(B) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(C) The court must have made specific findings of fact in the order of protection that the person committed a violation of this part.

(3) Any law enforcement officer shall arrest the respondent without a warrant if:

(A) The officer has proper jurisdiction over the area in which the violation occurred;

(B) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and

(C) The officer has verified that an order of protection is in effect against the respondent. If necessary, the law enforcement officer may verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement department.

(4) Any person arrested for a violation of an order of protection entered pursuant to this section shall be treated as a person arrested for a violation of an order of protection issued pursuant to title 36, chapter 3, part 6.

(5) A violation of this subsection (e) is a Class A misdemeanor, and any sentence imposed shall be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations, unless the sentencing judge or magistrate specifically orders the sentences for the offenses arising out of the same facts to be served concurrently.

HISTORY: Acts 2010, ch. 898, § 2; 2011, ch. 39, § 4; 2011, ch. 158, § 42.

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Ex-conservator's control over couple fed 'evil desires'

Walter F. Roche Jr., wroche@tennessean.com; 12:13 a.m. CDT March 27, 2014



(Photo: Submitted)

Citing "the horrific abuse of power and misuse of trust by a court-appointed conservator," a federal judge in Nashville has awarded nearly \$700,000 to a mentally disabled Clay County couple victimized by sexual and financial abuse for more than six years.

In a 12-page order issued Tuesday, U.S. District Judge Kevin H. Sharp ordered Walter M. Strong of Celina to reimburse the couple for money he misappropriated and to pay damages to the wife for sexual battery charges.

Sharp cited testimony that Strong, 77, promised the woman candy or something from the store in return for sex.

"Defendant had complete control over plaintiffs' lives and their money and he used that control for his own needs and evil desires," Sharp wrote.

Strong already had pleaded guilty to theft and sexual battery charges and served nine months of a 385-day prison sentence before being released in October. He is on probation and has been ordered to pay restitution of \$105,480 in the criminal case.

The case first came to light last year as the state General Assembly was considering a series of reforms in the state conservatorship laws (<http://archive.tennessean.com/section/projects56/>). Those changes, including provisions to provide additional protections to wards, were approved and went into effect July 1.

As Sharp noted, Strong appeared as his own attorney and offered little or no defense to the charges, though he did dispute some of the claims of how he had used the couple's funds.

"Defendant utilized plaintiffs' funds as if they were his own," Sharp wrote, adding that Strong coerced the wife into performing sexual acts and required the husband "to provide labor and services without remuneration."

Court records in Clay County show that the couple were placed in a conservatorship in 2004 by a Clay County judge. Strong was removed as the conservator on July 5, 2011, after state officials, tipped by a neighbor to the abuse, filed an emergency petition with the court.

Kelly Tayes, who operates a conservatorship business, was then named to replace Strong.

Tayes testified in the civil suit she filed on the couple's behalf that the sexual abuse was "the most horrific" she had seen in 18 years of acting as a conservator.

How much money the couple will collect remains unclear. Sharp, in his ruling, noted Strong's limited resources: a pension from the state of Pennsylvania, five acres of land assessed at \$38,000 and a pickup truck worth \$37,000 but with a \$12,000 outstanding lien.

Sharp wrote that the husband was forced to provide free labor for Strong. That work included tending a large garden and feeding the conservator's cattle. He noted violations of the federal law and the state Adult Protection Act. Sharp did reduce the award for the forced labor performed by the husband from a requested \$64,800 to \$25,000, stating that the record did not make clear exactly how many hours the husband had worked.

The couple's attorney, Craig Fickling Jr. of Cookeville, was awarded \$10,000 in legal fees even though he had agreed to drop the claim.

\$105,000 on meals