Analysis of 2005 State Legislation Amending Adult Protective Services Laws

A product of the National Center on Elder Abuse (NCEA)
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Introduction

This analysis summarizes amendments to Adult Protective Services (APS) laws that were enacted during 2005. While there may have been other state legislative activity related to elder abuse or to APS during 2005, this analysis only addresses amendments to APS laws. For a list of citations to state APS laws, visit http://www.elderabusecenter.org/pdf/publication/CitationstoAPS_InstitutionalAbuseandLTCOmbudsmanProgramLaws.pdf.

Trends

In 2005, state legislatures continued making adjustments to the APS programs. Thirteen states enacted fifteen laws addressing a variety of topics. These laws:

- Added provisions related to civil liability for perpetrators (Arkansas)
- Encouraged collaboration with other agencies (District of Columbia, Kentucky and Texas)
- Added or strengthened criminal penalties for abuse (Arkansas, Idaho, Kentucky, Montana, and South Dakota)
- Clarified and amended definitions of elder abuse (Arkansas, District of Columbia, Kentucky, Oregon, and South Dakota)
- Amended provisions related to emergency/involuntary APS (Arkansas, Kentucky, and Texas)
- Added provisions related to evidence or testimony (Arkansas)
- Added provisions related to oversight of APS by other government entities or officials (District of Columbia, Kentucky, and Texas)
- Changed provisions related to the role of APS as guardian (Texas)
- Added or changed provisions related to disclosure of records (Arkansas, California, District of Columbia, Kentucky, Louisiana and Texas)
- Added or changed provisions regarding investigations (Kentucky, Texas)
- Revised provisions about notification or referral to other agencies (Arkansas, California, District of Columbia, Kentucky and Texas)
- Added provisions related to public awareness of elder abuse (Illinois)
- Added or changed provisions related to the protection of victims' assets (Arkansas)
- Added provisions to enhance the quality control and supervision of APS staff (Texas)
- Added provisions related to a registry of perpetrators (Arkansas)

- Clarified and amended reporting provisions (Arkansas, California, District of Columbia, Nevada, and Oregon)
- Added provisions related to staffing of APS agencies (Kentucky)
- Added provisions related to staffing of prosecutors' offices (Kentucky)
- Added provisions related to training for APS staff (Texas)
- Added provisions related to training for prosecutors (Kentucky)
- Added provisions related to treatment by spiritual means only (Arkansas, District of Columbia).

As these amendments to state APS laws are highly diverse and sometimes address multiple issues, the changes made are discussed on a state-by-state basis, rather than clustered by trends. A chart showing broad categories of amendments and the states that made them follows the summary. In addition, a combined chart reflecting the amendments enacted in 2003, 2004, and 2005 is available at http://www.elderabusecenter.org/pdf/publication/APSLegSummaryChart.pdf.

Arkansas

AR S.B. 932 created the Adult Maltreatment Custody Act, Ark. Code Ann. § 9-20-101 *et seq*. and in doing so expanded upon and repealed an existing criminal law, Protective Placement and Custody, § 5-28-301 *et seq*. The administrator of Arkansas' APS program reported that the criminal law was not considered to be the APS statute, but that the new Adult Maltreatment Custody Act is meant to be used exclusively by APS. Therefore, ABA staff has included an analysis of the new law in this summary.

The bill, effective on August 11, 2005, authorized the Department of Human Services (of which APS is a part) to seek and receive emergency, temporary, or long-term custody of a maltreated adult for purposes of evaluation or protection. The bill expanded upon or incorporated provisions of the old Protective Placement and Custody law in the following ways:

- Added a clause stating that its purposes are to "protect a maltreated adult or long-term care facility resident who is in imminent danger" and to "encourage the cooperation of state agencies and private providers in the service delivery system for maltreated adults."
- Added definitions for over 20 different terms, including "abuse," "adult maltreatment," "endangered adult," "exploitation," "impaired adult," "neglect," "protective services," and "sexual abuse." These definitions are the same as those in the APS law, Adult and Long-Term Care Facility Resident Maltreatment Act § 12-12-1601 *et seq*. (which also was amended and is discussed below), but for the following general exception that applies to any definition that relates to residents of long-term care facilities. The Adult Maltreatment Custody Act applies only to adults, whether they are in domestic settings or long-term care facilities, but the APS law applies to adults in domestic settings and to adults AND minors who are residents of long-term care facilities. Additionally, the APS law does not contain the definition of "protective services" that is provided in the Adult Maltreatment Custody Act.

- Added a provision stating that treatment by spiritual means alone "in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof" does not "for this reason alone" imply that an adult is endangered or impaired.
- Prohibited the privilege between a husband and a wife, or between any clergy or professional person and their clients, except lawyer and client, from being grounds for exclusion of evidence in any proceeding relating to maltreatment.
- Established good faith immunity from liability and civil or criminal damages for "any person, official, or institution" that participates in the removal of a maltreated adult pursuant to this law.
- Allowed (1) written reports from persons or officials required to report under the Adult and Long-Term Care Facility Resident Maltreatment Act, and (2) affidavits of physicians, psychiatrists, psychologists, or licensed certified social workers to be admissible as evidence in any proceeding relating to maltreatment.
- Amended the jurisdiction and venue provisions and added eligibility guidelines to them.
    - The probate division of the circuit court still has jurisdiction over cases involving custody, temporary custody for purposes of evaluation, court-ordered protective services, or an order of investigation under this law. However, the law now requires the probate division to retain jurisdiction for 180 days after the death of an adult in custody of the Department of Human Services (DHS) to address disposition of assets and payments "for services rendered or goods purchased by or for the adult" while in DHS custody. Also, the bill now requires that any proceeding must be brought in the circuit court's probate division of the county where the maltreated adult resides or the maltreatment occurred.
    - Eligibility for DHS services, including custody, is required to be the same as for the Arkansas Medical Assistance Program.
    - Finally, the provision retained the existing prohibition in the old criminal law against taking a person into or placing a person in custody for the following reasons: acute psychiatric treatment, chronic mental health treatment, alcohol or drug abuse treatment, protection from domestic abuse if the abused person is "mentally competent," casework supervision by mental health professionals, and if the sole purpose of custody is for consent to the adult's medical treatment.
- Retained the old criminal law's provisions related to commencing a proceeding for custody and prohibiting the court from collecting fees in these matters.
- Retained and combined the old criminal law's provisions related to notifying maltreated adults about both probable cause and long-term custody hearings. These included requirements that the maltreated adult be advised of the right to effective assistance of counsel, be present at the hearing, present evidence on his or her own behalf, cross-examine witnesses who testify against him or her, present witnesses in his or her own behalf, remain silent, and view and copy all petitions, reports, and documents retained in the court file. The new bill added to those provisions by:

    - Requiring that all maltreated adults who are the subject of the hearing must receive a copy of the petition (previously that was only necessary if the adult was not represented by a lawyer)
    - Requiring that DHS must provide notice of the date, time, and location of the probable cause hearing to the maltreated adult, the adult's lawyer, and "the person from whom physical custody of the (adult) was removed"
- Retained the old law's provisions that allow an adult to request "voluntary protective placement" using the same court hearing procedures as for involuntary custody hearings.
- Added a new section on "Petition for Evaluations" authorizing DHS to petition the circuit court for a temporary custody order to have an adult evaluated if an APS investigation has demonstrated that (1) "the adult is in imminent danger of death or serious bodily harm," (2) "available protective services have been offered to alleviate the danger and have been refused," and (3) the "adult's capacity to comprehend the nature and consequences of remaining in the situation or condition cannot be adequately assessed in the adult's place of residence."
- Retained the old criminal law's provisions governing emergency custody. These provisions authorize (1) DHS or a law enforcement official to take a maltreated adult into emergency custody and (2) "any person in charge of a hospital or similar institution or any physician treating any maltreated adult (to) keep the adult in custody, whether or not medical treatment is required, if the circumstances or condition of the adult are such that returning to or continuing at the adult's place of residence or in the care or custody of a parent, guardian, or other person responsible for the adult's care presents imminent danger to the adult's health or safety, and the adult lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents imminent danger to his or her health or safety." Emergency custody is limited to 72 hours, excluding weekends and holidays. Anyone who takes a maltreated adult into emergency custody must immediately notify DHS.
- Retained the old law's requirement that DHS obtain an emergency *ex parte* order (an order in a case in which, due to its emergency nature, only one party to the case has appeared and the adverse party has not been notified or made an appearance) for custody of a maltreated adult within 72 hours of taking the adult into custody (except for weekends and holidays), but specified that the probate division of circuit court hears those *ex parte* cases. The bill also retained the requirement that an emergency *ex parte* order must include notice to the maltreated adult and the person from whom physical custody of the maltreated adult was removed of the right to a probable cause hearing that will be held within five days of the *ex parte* order.
- Retained the old bill's provisions related to the probable cause hearing, the purpose of which is to determine whether (1) there was probable cause to protect the maltreated adult at the time of the *ex parte* hearing and (2) there is probable cause to continue protecting the maltreated adult. The old law also provided that if probable cause for continuing protection is found, the court may issue orders to protect the assets of the maltreated adult or to authorize DHS to obtain treatment, evaluations, or services for the maltreated adult. Additionally, the court may

order that the maltreated adult be held in temporary custody for up to 30 days pending a hearing for long-term custody or that the 30-day time period should be extended due to "extenuating circumstances." The new bill added requirements that the court inquire about the maltreated adult's financial ability to hire a lawyer and appoint a lawyer for the maltreated adult if he or she is indigent.

- Retained the provisions of the old law related to long-term custody and court-ordered protective services. They require the court to hold a hearing about the need for long-term custody or court-ordered protective services no later than 30 days after the probable cause hearing or the date on which the emergency custody order was signed, unless that time period is extended due to extenuating circumstances. The hearing may be held anywhere in the judicial district, not just in the county where the maltreated adult resides or where the maltreatment occurred. The court may give DHS long-term custody over the maltreated adult if the adult "lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents an imminent danger to his or her health or safety," "is unable to provide for his or her own protection from maltreatment," and "the court finds clear and convincing evidence that the adult to be placed is in need of placement as provided in this chapter." The court is required to order the least restrictive alternative "to be considered proper under the circumstances" and if protective services are available the court may order the adult or the caregiver for the adult to accept the protective services rather than place the maltreated adult in DHS custody. The old bill's provision that the court may order treatment, evaluations, and services also was retained, but the new bill added a provision stating that the court may not order DHS to use a specific service provider unless the maltreated adult is paying for the services he or she is receiving.
- Retained the old bill's provisions requiring periodic review of custody cases by DHS (not less than every six months) and by the court (not less than every 12 months), and requiring that an attorney for a maltreated person and the administrator of a facility in which a maltreated person is placed receive notices by regular mail of all review hearings.
- Retained the old bill's provisions authorizing the court's probate division to identify, secure, protect, or sell any assets of a maltreated adult in the custody of DHS or receiving court-ordered protective services, or to pay DHS for services rendered to or goods purchased for the adult in custody or receiving court-ordered services from the assets of that adult. Also retained were old provisions that prevented the court from appointing DHS as custodian of the maltreated adult's estate but authorized the court to hear and grant petitions for guardianship of the estate of an adult in DHS custody. The new bill added authority for the court, upon placing a maltreated adult in DHS custody, to "address the issue of the adult's residence, whether rented or owned by the adult, including, the cleaning, vacating, selling, or leasing of the residence and the disposition of the property in the residence."
- Retained the old bill's provisions governing the duties and responsibilities of DHS when acting as custodian of a maltreated adult. These include: securing care and maintenance; honoring advance directives made in conformity with applicable laws; finding a person to act as guardian of the adult's estate if that is

necessary; and consenting to medical care, obtaining physical or psychological evaluations, and obtaining the adult's medical, financial, or other records. These old provisions prohibited DHS when acting as custodian from making the following decisions without court approval: consent to abortion, sterilization, psychosurgery, or removal of bodily organs unless necessary in a life-threatening situation; consent to withholding life-saving treatment; authorize experimental medical procedures; authorize termination of parental rights; prohibit the adult from voting; prohibit the adult from obtaining a driver's license; consent to a settlement or compromise of any claim by or against the adult or his or her estate; and consent to the liquidation of the adult's assets. The new bill also added to that list a prohibition against consenting to amputation of any part of the maltreated adult's body.

- Retained the old bill's provisions authorizing disclosure of otherwise confidential "reports, correspondence, memoranda, case histories, medical records, or other materials compiled or gathered" by DHS regarding a maltreated adult in custody or receiving court-ordered protective services. These provisions allow release or disclosure of records only to: the maltreated adult; an "attorney representing the maltreated adult in a custody or protective services case"; a governmental agency that needs them for a legally authorized audit or similar activity; to law enforcement agencies, a prosecuting attorney, or the Attorney General; to any licensing or registering authority to the extent necessary to carry out that authority's official responsibilities; to a circuit court for purposes of this law; to a grand jury or court if the information is "necessary for the determination of an issue before the court or grand jury"; to a "person or provider currently providing care or services to the adult"; to "individual federal and state representatives and senators who shall not redisclose the information" but "no disclosure may be made to any committee or legislative body of any information that identifies by name or address any recipient of services"; and at the discretion of DHS, to family members of an adult in DHS custody. The bill also prohibits anyone to whom disclosure is made from disclosing the information to any other person, and provides that the penalty for disclosure in violation of the law is a Class C misdemeanor.

The Arkansas legislature, in AR S.B. 945, pulled the provisions governing reporting to and investigations by APS and the Office of Long Term Care (OLTC) out of the former APS statute (§ 5-28-203 *et seq*.) and created a new Adult and Long-Term Care Facility Resident Maltreatment Act, Ark. Code. Ann. § 12-12-1701 *et seq*. The bill, effective on August 12, 2005, changed or expanded upon provisions of the old law in the following ways (many of which are the same as or very similar to the provisions of the new Adult Maltreatment Custody Act discussed above):

- Reflecting the fact that this law applies to LTCF residents of any age, not just those who are adults, the words "or LTCF resident" were added after "adult" to many provisions throughout the bill.
- Added a clause stating that its purposes are to "provide a system for the reporting of known or suspected adult and long-term care facility (LTCF) resident maltreatment," "ensure the screening, safety assessment, and prompt investigation

of reports of known or suspected adult and LTCF resident maltreatment," "provide for a civil action, if appropriate, to protect maltreated adults and residents of LTCF," and "encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation, assessment, and prosecution of maltreated adults and residents of LTCF."

- Added definitions for over 20 different terms, including "abuse," "adult maltreatment," "endangered adult," "exploitation," "impaired adult," "neglect," "protective services," and "sexual abuse." These definitions are the same as those in the Adult Maltreatment Custody Act, except that they apply to LTCF residents of any age and "protective services" is not defined (see discussion above).
- Added an exemption for spiritual treatment (basically the same as the provision contained in the Adult Maltreatment Custody Act, except that the word "person" is used instead of "adult" because this law applies to LTCF residents of any age).
- As in the Adult Maltreatment Custody Act (but with slightly different wording), prohibited the privilege between a husband and a wife, or between any clergy or professional person and their clients, except lawyer and client, from being grounds for exclusion of evidence in any proceeding relating to maltreatment.
- Created a civil cause of action to protect LTCF residents that may be brought by the "State of Arkansas and the Attorney General" against "any LTCF caregiver." The law authorizes civil penalties, establishes the burden of proof as "preponderance of the evidence," provides that civil penalties collected shall be credited to the Arkansas Medicaid Program Trust Fund, requires that any caregiver against whom a civil judgment is entered under this law shall pay the reasonable expenses incurred by the Attorney General's office to bring the civil action, and provides that a civil action must be brought no later than three years after the date of the alleged violation of the law.
- Repealed provisions specifying what kind of information the adult and LTCF resident maltreatment hotline should obtain from a person making a report.
- Added a provision requiring reports made to the hotline be "screened out" if they would not constitute adult or LTCF resident maltreatment even if they were true.
- Added "dental hygienist," "home health worker" and "facility owner" to the list of mandatory reporters and deleted "case worker" from that list.
- Required that whenever a person who is a mandatory reporter in his or her capacity as "a member of the staff, an employee in or owner of a facility, or an employee of (DHS)" must make a report, that person must "immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent," who must then make a report or cause a report to be made within 24 hours or on the next business day, whichever is earlier.
- Repealed provisions allowing the circuit court to grant and the APS unit to petition for an order of temporary custody for the purpose of having the adult evaluated (that authority is now provided in the Adult Maltreatment Custody Act discussed above).
- Authorized the retention for statistical purposes only of demographic information contained in unfounded reports.
- Expanded the list of persons that DHS is required to notify after making an investigative determination to include: (1) "the natural or legal guardian of a long-

term care facility resident under 18 years of age," and (2) if the maltreatment occurred in a LTCF and the Office of Long-term Care within DHS knows that the offender is currently employed by a different facility, then DHS must notify the administrator of that facility.

- Established within DHS a statewide adult and LTCF resident maltreatment central registry. The registry provision provides due process rights (notification and an opportunity for an administrative hearing) to offenders and states that DHS "may adopt rules necessary to encourage cooperation with other states in exchanging reports to effect a national registry system of adult maltreatment."
- Added "any applicable licensing or registering authority" and the "legal guardian of the person who is the subject of a report" to the list of persons to whom DHS must make founded reports available.
- Expanded the list of persons to whom DHS must make "screened out" (see definition on previous page) and pending reports available to include "any applicable licensing or registering authority" and "a person or provider identified by (DHS) as having services needed by the maltreated person."
- Expanded the list of persons to whom DHS must make unfounded reports available to include "a person or provider identified by (DHS) as having services needed by the person" (meaning the person whose alleged maltreatment was unfounded).
- Added provisions allowing the director of DHS to delegate the department's responsibilities under this law to divisions of DHS that in the opinion of the director "are best able to render service or administer the provisions."
- Added three new provisions to the penalties section: (1) "any person or caregiver" who is a mandatory reporter and who purposely fails to make a report is guilty of a Class B misdemeanor, (2) "any person or caregiver" who is a mandatory reporter and who purposely fails to make a report "shall be civilly liable for damages proximately caused by the failure," and (3) "any person" required to report a death who knowingly fails to do so in the time and manner provided is guilty of a Class C misdemeanor.

California

CA S.B. 1018 amended, repealed, and added sections to the Elder Abuse and Dependent Adult Civil Protection Act within the Welfare and Institutions Code. Most of the new provisions become effective on January 1, 2007, but a few are not effective until January 1, 2013. The bill accomplished the following:

- Added officers and employees of banks, federal and state credit unions, and their "institution-affiliated part(ies)" (as defined by the Federal Deposit Insurance Act) to the list of "mandated reporters of suspected financial abuse of an elder or dependent adult."
- Established reporting procedures for anyone mandated to report suspected financial abuse who either (1) has "direct contact" with an elder or dependent adult, or (2) in the course of employment or professional practice reviews or approves the financial documents, records, or transactions of elder or dependent adult and (a) has observed or has knowledge of financial abuse or (b) has a

reasonable suspicion of financial abuse based solely on information available at the time of reviewing or approving those items. These mandatory reporters must report the abuse to APS or the local law enforcement agency by telephone "immediately, or as soon as practicably possible" and by written report "sent within two working days" unless the reporter knows that the elder or dependent adult resides in a LTCF, in which case the report must be made to either the local long-term care ombudsman program (LTCOP) or the local law enforcement agency as APS does not have the statutory authority to investigate reports of LTCF abuse. If multiple mandatory reporters have knowledge or suspicion of financial abuse, upon which they have agreement, they need only submit one report by telephone and in writing.

- Exempted a mandatory reporter of suspected financial abuse from making a report if the reporter, who is "not required to investigate any accusations," (1) is not aware of any "corroborating or independent evidence of the alleged financial abuse" and (2) using professional judgment, "reasonably believes" that the financial abuse did not occur.
- Subjected mandatory reporters who fail to report suspected financial abuse to civil penalties, and required that any civil penalties imposed on officers and employees of banks, federal and state credit unions, and their institution-affiliated parties be paid by the employer financial institution.
- Added provisions about confidentiality of reports and disclosure of otherwise-confidential information under particular circumstances, including to "trained and qualified" members of multidisciplinary teams.
- Added mandated reporters of suspected financial abuse to the existing provisions governing (1) civil and criminal liability for failure to make a report and (2) immunity from civil or criminal liability for making a report.
- Created a new section governing cross-reporting between APS, the LTCOP, law enforcement agencies, and other state agencies in cases involving suspected financial or other types of abuse. Under this section,
    - APS is required to cross-report allegations of financial abuse to law enforcement agencies after determining that there is "reasonable suspicion of any criminal activity";
    - if APS receives a report that abuse allegedly occurred in an LTCF, then APS must advise the reporter to contact the LTCOP or local law enforcement agency or forward any written report received to the LTCOP;
    - if APS, the LTCOP, or a law enforcement agency receive a report of abuse, conduct an investigation, and determine that abuse was committed by a licensed health practitioner, then the agency must cross-report to the appropriate licensing agency as soon as possible while continuing to fulfill its own responsibilities;
    - if a law enforcement agency receives a report or complaint involving elder or dependent adult abuse, it must report the incidence by phone as soon as possible to either APS or the LTCOP or any other appropriate agency, and then must follow up with a written report within two working days of the receipt of the report or complaint;

- if a victim of abuse within a LTCF consents, then the LTCOP coordinator may report the incident to APS or a local law enforcement agency for help in investigating the complaint;
- if the LTCOP or the Licensing and Certification Division of the State Department of Health Services receive a report that neglect in a health care facility has "seriously harmed" any patient or "reasonably appears to present a serious threat" to the health or well-being of a patient, then those agencies must cross-report by telephone and in writing to the Bureau of Medi-Cal Fraud within the office of the Attorney General within two days if the victim or potential victim of neglect consents; however, if the victim or potential victim of neglect withholds consent, then the LTCOP or division must instead provide "circumstantial information about the neglect but… not identify that victim or potential victim";
- if APS, the LTCOP, or a law enforcement agency receives a report that an elder or dependent adult residing in an LTCF was abused, neglected, or abandoned, then that agency shall cross-report to the licensing and certification division as soon as possible; and
- any APS, LTCOP, or law enforcement agency that receives a cross-report from another agency shall inform that referring agency about the results of its investigation.

- Added a requirement that a county APS agency must provide banks, federal and state credit unions, and their "institution-affiliated part(ies)" with educational materials about elder and dependent adult abuse and neglect, how to recognize it, and how to report it and to whom.

District of Columbia

DC L.B. 46 amended several sections of the Adult Protective Services Act of 1984. The bill, effective on March 8, 2006, made the following changes:

- Amended the definition of abuse to include threats to impose unreasonable confinement.
- Authorized APS to investigate cases of self-neglect and provide protective services to persons who self-neglect.
- Added a definition of "adult" ("18 years of age or older"), of "incapacity" ("the state of being an incapacitated individual as defined by" the guardianship law), and of "self-neglect" ("failure…, due to physical or mental impairments or incapacity, to perform essential self-care tasks…").
- Added "incapacity" to the first of the three criteria for determining whether an adult is in need of protective services and added "self-neglect" to the first two of the three criteria.
- Added to the definitions of "abuse," "adult in need of protective services," "neglect," and "self-neglect" a provision stating that "an adult shall not be considered in need of protective services… for the reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means

through prayer alone in accordance with a religious method of healing in lieu of medical treatment."

- Added exploitation to the types of elder abuse that must be reported by mandatory reporters.
- Expanded the list of mandatory reporters to include bank managers and financial managers.
- Added the court-appointed representatives of an adult in need of protective services and the Metropolitan Police Department to the list of individuals or agencies to which APS may release reports and investigative information.
- Eliminated the requirement that the District of Columbia (DC) Department of Human Services (DHS) conduct mandatory educational programs for mandatory reporters, but provided that DHS may provide outreach and training on the reporting provisions to members of the public; government personnel including those working in law enforcement, social services, the court system; and to guardians and conservators for incapacitated adults.
- Added provisions indicating that DHS is not mandated to provide protective services to persons who self-neglect and established conditions for serving those individuals, including the availability of sufficient resources, permission from the self-neglecter or his or her legally authorized decision-maker, and the willingness of a non-indigent self-neglecter to pay for or contribute to the cost of protective services. Also included were provisions authorizing APS workers to take other steps to protect a self-neglecter if the conditions listed above are not met; these steps can include referral to other agencies or petitioning the court for appointment of a guardian or conservator.
- Added reports of self-neglect to the provision regarding immunity from civil or criminal liability for making good faith reports of suspected abuse to APS.
- Required the Mayor to issue rules regarding (1) coordination of interdepartmental resources and actions when DHS requests records or documents from another agency and (2) coordination of interdepartmental resources and actions to assure that adults in need of protective services have expedited access to those services and to ensure that requests for such services are given high priority by other government agencies.
- Required the Mayor to report annually to the DC Council about resources needed by APS and the effectiveness of government agencies' collaboration with private organizations to investigate cases and provide protective services.

Idaho

Section 39-5301 of the Adult Abuse, Neglect and Exploitation Act was amended by ID S.B. 1153. The bill changed the punishment applicable to the abuse, exploitation, or neglect of a vulnerable adult from a "misdemeanor under section 18-1505" to a "crime under section 18-1505." The amendment became effective on July 1, 2005.

Illinois

IL S.B. 1489 added a new section to the Elder Abuse and Neglect Act. The new section authorized creation of a volunteer corps, providing that "[q]ualified volunteers may be used for the purposes of increasing public awareness and providing companion-type services…to eligible adults" and that "qualified volunteer(s) must undergo training as prescribed by the Department by rule and must adhere to all confidentiality requirements as required by law." The new section became effective on August 2, 2005.

Kentucky

KY S.B. 47, effective on June 20, 2005, made the following technical changes to provisions within the Protection of Adults Act, specifically sections 209.005 and 209.020:

- the Cabinet for Families and Children was changed to the Cabinet for Health and Family Service,
- the Office of Aging Services was changed to the Division of Aging Services, and
- the Division of Long Term Care was changed to the Division of Health Care Facilities and Services.

KY H.B. 298, effective on June 20, 2005, made the following changes to the Protection of Adults Act within Chapter 209 of the Kentucky statutes:

- Expanded the purpose to include promotion of coordination and efficiency among agencies that respond to abuse, neglect, or exploitation of adults. It also limited the application of the law to elder abuse "inflicted by a person or caretaker," stating that the law "shall not apply to victims of domestic violence unless the victim is also an adult" as defined by the statute.
- Added unable to protect himself (sic) from exploitation to the definition of "adult."
- Added to the definition of "caretaker" a clarification that it includes an individual or institution that has "been entrusted with" responsibility for the care of the adult or who has assumed responsibility through employment or legal duty.
- Added a definition of deception that includes "creating or reinforcing a false impression…, preventing another from acquiring information that would affect his or her judgment of a transaction, or failing to correct a false impression…."
- Added the following forms of abuse to the definition of "abuse": sexual abuse, unreasonable confinement, and intimidation.
- Amended the definition of "exploitation" to read "obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources."
- Amended the definition of "investigation" to include "an assessment of individual and environmental risk and safety factors; identification of the perpetrator, if possible; and identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure

contributed to or caused an adult under the facility's care to be abused, neglected, or exploited."

- Changed the definition of "records" to include a provision stating that the records included in the definition "shall not be disclosed for any purpose other than the purpose for which they have been obtained."
- Added a definition of "authorized agency," which includes: the newly renamed (see above) Cabinet for Health and Family Service (Cabinet), a law enforcement agency or the Kentucky State Police, an office of a Commonwealth's attorney or county attorney, and the appropriate division of the Attorney General's office.
- Added a requirement that notification occur within 24 hours to the existing requirement that APS notify the appropriate law enforcement agency after receiving a report of suspected abuse, unless the assessment or investigation of the report reveals emergency circumstances in which case the notification to law enforcement should be made immediately and documented.
- Added a requirement that upon receipt of a report, APS also must notify "each appropriate authorized agency" and should develop standardized procedures for providing that notice when conditions warrant notification during an investigation.
- Added a requirement that APS, "to the extent practicable, coordinate its investigation with the appropriate law enforcement agency and, if indicated, any appropriate authorized agency or agencies."
- Added a requirement that APS "to the extent practicable, support specialized multidisciplinary teams" to investigate APS reports, and listed potential members.

- Added three provisions to the existing section governing entry of a Cabinet representative to any licensed health facility or service and access to records: (a) included financial records, (b) added "firm, financial institution, corporation" to the list of entities that must provide access to records in their possession, and (c) stated that these records may not be disclosed for any purpose other than that for which they were obtained.
- Required the Cabinet to consult with local agencies and advocacy groups to encourage information-sharing, training, and awareness about "adult abuse, neglect, and exploitation, crimes against the elderly, and APS."
- Required any authorized agency that received a report of adult abuse, neglect, or exploitation to prepare and submit an annual written report to the Cabinet about the status of each case.
- Required the Cabinet to produce an annual written report for the Governor and the Legislative Research Commission summarizing the status of all adult abuse, neglect, and exploitation reports made to the Cabinet and the authorized agencies, and providing recommendations to improve "the coordination of investigations and the provision of protective services."
- Mandated the Cabinet to "provide for sufficient social worker staff to implement the provisions" of this law and to train those staff as required by the law.
- Amended the section regarding notification of a hearing about a petition for emergency protective services by adding a provision that notice shall not be

provided to "any person who is believed to have perpetrated the abuse, neglect, or exploitation."

- Amended the section regarding notification of a court's issuance of an *ex parte* order authorizing emergency protective services by adding a provision that the order shall not be delivered to "the person or caretaker who is believed to have perpetrated the abuse, neglect, or exploitation."
- Required each Commonwealth's attorney's office and each county attorney's office to have a lawyer "trained in adult abuse, neglect, and exploitation" on staff "if adequate personnel are available." The amendment also added requirements that the lawyers in those offices "take an active part" in interviewing the victim and keep the victim informed about the case, adopt a vertical prosecution approach where one prosecutor handles the case from inception to completion, minimize the involvement of the victim in legal proceedings when possible, and make referrals to other services "when a decision is made not to prosecute the case" and explain the reasons for that decision to the victim or his or her family or guardian.
- Changed the provisions providing criminal penalties for abuse, neglect, or exploitation by a "caretaker" to cover abuse, neglect, or exploitation by "any person."
- Directed the Attorney General to consult with "legal, victims services, victim advocacy, and mental health professionals" to develop a prosecutor's manual "establishing the policies and procedures for the prosecution of crimes against the elderly."
- Supported distribution "by computer, Internet, or other electronic technology" of all required professional education and training courses and materials.

Louisiana

LA S.B. 271 made a simple addition to La. Rev. Stat. Ann. § 14:403.2. The bill added to the existing provision about disclosure of APS case records a sentence authorizing release of information to state regulatory agencies "for the purpose of enforcing federal or state laws and regulations relating to abuse, neglect, exploitation, or extortion by persons compensated through state or federal funds." The bill became effective on June 29, 2005.

Minnesota

MN S.F. 1720, effective on August 1, 2005, amended sections 626.557 and 626.5571 of Minnesota APS law. County social services agencies are no longer required to prepare an "investigation memorandum," although they are still required to maintain private data on individuals served.

Montana

MT H.B. 197, effective on October 1, 2005, revised criminal penalties established in the Montana Elder and Persons with Developmental Disabilities Abuse Prevention

Act. The bill amended § 52-3-825 by changing the penalty for purposely or knowingly abusing, sexually abusing, or neglecting an older person or a person with a developmental disability from a misdemeanor to a felony. The bill added a provision making it a misdemeanor for a first conviction for negligently abusing an older person or a person with a developmental disability and a felony for any subsequent conviction. The bill also exempted persons with developmental disabilities from prosecution under the provisions of this law.

Nevada

NV A.B. 267, effective on October 1, 2005, changed the Abuse, Neglect, Exploitation, or Isolation of Older Persons and Vulnerable Persons Act. To understand the amendment, it is critical to recognize that the APS law is part of Nevada's criminal code and that the law previously covered only persons who were 60 and older. The new bill amended the law to include "vulnerable adults" BUT ONLY in relation to the law enforcement purpose of the statute. Specifically, mandated reports of vulnerable adult abuse are made ONLY to law enforcement agencies, and vulnerable adults are NOT eligible for adult protective services, which are administered by the Aging Services Division of the Department of Human Resources.

The bill did make some changes relevant to the adult protective services purpose of the law. These amendments eliminated clergymen, practitioners of Christian Science, religious healers, and attorneys from the list of mandatory reporters.

Oregon

Several changes to the Reporting of Abuse of Elderly Persons Act were made by OR S.B. 106, which became effective on July 29, 2005. These changes:

- Added "wrongfully taking or appropriating money or property or knowingly subjecting an elderly person or person with disabilities to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with disabilities to believe that the threat will be carried out" to the statute's definition of "abuse."
- Added "an act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, or 163.467" (respectively, rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree, sexual abuse in the third degree, sexual abuse in the second degree, sexual abuse in the first degree, public indecency, and private indecency) to the statute's definition of "abuse."
- Added "firefighter or emergency medical technician" to the existing definition of "public or private official," which has the effect of adding them to the list of mandatory reporters.

South Dakota

SD S.B. 43, effective on July 1, 2005, amended the Abuse, Neglect, or Exploitation of Disabled Adults Act, which is contained within the criminal code, in the following ways:

- Removed from the definition of neglect and moved elsewhere in the statutes (§ 34-12) the following statement: "If a disabled adult is under treatment solely by spiritual means, the court may, upon good cause shown, order that medical treatment be provided for that disabled adult."
- Removed the exclusion of two crimes (recklessly causing bodily injury to another and attempt to put into fear of imminent serious bodily harm) from the definition of abuse or neglect constituting a Class 6 felony.

Texas

TX S.B. 6, effective on September 1, 2005, made substantial changes to the Investigations and Protective Services for Elderly and Disabled Persons Act:

- Required the executive commissioner of the Health and Human Services Commission, which has oversight responsibility for the Department of Family and Protective Services (DFPS), of which APS is a part, to develop risk assessment criteria for use by APS personnel in determining whether an elderly or disabled person is in imminent risk of or experiencing abuse, neglect, or exploitation and in need of protective services. The criteria must "provide for a comprehensive assessment of the person's: environmental, physical, medical, mental health, and financial condition; social interaction and support; need for legal intervention; and specify the circumstances under which a caseworker must consult with a supervisor regarding a case."
- Required DFPS, subject to the availability of funds, to maintain in an electronic format a summary of all records related to investigations of reports of abuse. The records are to include "only critical information with respect to those investigations that will enable (DFPS) to research the history of a person's involvement in the investigated cases."
- Required DFPS, subject to the availability of funds, to develop a community satisfaction survey for each service region and solicit information at least annually about its performance in providing investigative and adult protective services. Survey recipients are to include "stakeholders in the APS system, including local law enforcement agencies and prosecutors' offices; protective services agencies, including nonprofit agencies; and courts with jurisdiction over probate matters." Survey results shall be disseminated to regional and program administrators, the presiding judge of the statutory probate courts in the region, and courts with jurisdiction over probate matters in the region.
- Directed caseworkers to contact the person who made a report and gave self-identifying information to obtain any additional information required to assist the person who is the subject of the report, if necessary.
- Mandated the executive commissioner to adopt rules regarding the release, on request, by DFPS or the investigating state agency of otherwise confidential

information related to an abuse report to: the subject of the report or that person's legal representative; a court that has a matter pending before it that involves the person who is the subject of the report; "the attorney *ad litem* or any other legal representative, other than a guardian, appointed for the person"; and the person's legal guardian.

- Transferred from DFPS to the executive commissioner the authority to make rules regarding the release of information from the records of a deceased person who was the subject of an investigation by DFPS or investigating state agency or to whom DFPS had provided protective services to the personal representative of that person's estate. The bill added a requirement that information released pursuant to the mandated rules described in the previous bullet or to the optional rules described in this bullet may not include the identity of the person who made the report.
- Authorized DFPS to establish procedures governing the exchange of confidential information related to a report with community service providers or local government entities if DFPS, the providers, or the entities need that information to provide the subject of the report with protective, health care, housing, or social services. However, the executive commissioner is required to develop rules to ensure against unauthorized release or dissemination of confidential information pursuant to these procedures.
- Mandated DFPS to develop and implement a system in which "especially complex" cases, such as those involving "issues associated with identity theft and other forms of financial exploitation," are assigned to personnel who have "experience and training" in those issues and are monitored by a "special task unit for complex cases." Each county with a population of 250,000 or more is required to appoint members to that special task unit, and the statute sets forth who must and who may be members of that unit. DFPS is required to develop a manual, using "Wisconsin's Elder Abuse Interdisciplinary Team Manual as a model," to guide the counties in "establishing and operating" the special task unit. The bill also requires that the task unit consider all possible legal alternatives before recommending that a guardian be appointed for a person whose case the unit is monitoring.
- Required that DFPS or another state investigating agency immediately notify the appropriate law enforcement agency and provide it with copies of an investigation report if a caseworker, caseworker's supervisor, or other investigator has cause to believe that the elderly or disabled person has been abused, neglected, or exploited by another person in a manner than constitutes a crime "under any law."

- Required management review and assistance in developing a long-term plan to address issues when DFPS receives and investigates a report about a person who has been the subject of two previous reports that were investigated and closed.
- Required DFPS to "establish procedures for conducting an internal review of completed investigations" to assess whether procedures are followed and determine whether corrective actions are necessary to improve the investigation process.

- Required DFPS or another state investigating agency to determine whether the person who is the subject of an investigation needs legal intervention.
- Amended the previous language that said DFPS may provide or contract for the provision of protective services to instead mandate that DFPS do those things, "subject to the availability of funds." Added a proviso that if DFPS lacks sufficient resources to provide protective services directly, it shall contract with protective services agencies "for the provision of those services, especially to elderly or disabled persons residing in rural or remote areas of this state or not previously served by (DFPS)."
- Made changes to the section governing emergency orders for protective services, providing that:
    - in lieu of the required medical report, a petition for an emergency order may include an assessment of the person's health status, psychological status, or a "medical opinion" if DFPS determines after making a good faith effort that there is no physician available to provide a medical report and ensures that the assessment or opinion is provided by someone with "training and experience";
    - a health status assessment must be conducted by a physician assistant or an advanced practice nurse, a psychological status assessment must be conducted by a licensed psychologist or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation, a nursing assessment must be conducted by a registered nurse, and a physician who provides a medical opinion may rely on a registered nurse's assessment; and the professionals conducting the assessments must sign reports indicating whether the abuse, neglect, or exploitation poses a threat to the subject's life or physical safety and whether an emergency order is necessary under the circumstances;
    - if the court enters an emergency order based on an assessment or medical opinion rather than a medical report, it must order that a physician conduct an examination of the person within 72 hours after the protective services begin and submit a report to the court stating the physician's opinion about whether the abuse, neglect, or exploitation poses a threat to the subject's life or physical safety and whether the subject is mentally or physically incapable of consenting to services;
    - an emergency order based on an assessment or medical opinion rather than a medical report immediately terminates if the medical report described in the previous bullet determines either that the situation does not pose a threat to the person's life or physical safety or that the person does have the mental or physical capacity to consent to services; and
    - the court may extend an emergency order for up to 30 days, rather than 14 days as previously authorized.
- Transferred the state's guardianship services function from DFPS to the Department of Aging and Disability Services (DADS) and required DFPS to refer to DADS for guardianship services the cases of elderly persons or persons with disabilities whom DFPS has found to be abused, neglected, or exploited and whom DFPS believes to be incapacitated as defined by Texas' guardianship law.

However, if DFPS believes a less restrictive alternative to guardianship is appropriate then DFPS may pursue that alternative instead of referring the case to DADS. The bill required DFPS and DADS to develop a memorandum of understanding about the roles and duties of each agency regarding referrals for and the provision of guardianship services. Additionally, the bill does not preclude DFPS from referring an elderly person or person with a disability to a court having probate jurisdiction if the court has asked DFPS to make referrals of persons "who may be appropriate for a court-initiated guardianship proceeding under Section 683, Texas Probate Code." Such a court may not require DFPS to act as a guardian *ad litem* or court investigator or gather information not contained in DFPS records, and the court may not appoint DFPS as the temporary or permanent guardian for any person.

2005 Chart of Amendment Categories

Categories	State
Civil Liability for Perpetrators	AR (S.B. 945)
Collaboration with Other Agencies	DC, KY (H.B. 298), TX
Criminal Penalties for Abuse	AR (S.B. 945), ID, KY (H.B. 298), MT, SD
Definitions of Elder/Adult Abuse	AR (S.B. 932), AR (S.B. 945), DC, KY (H.B. 298), OR, SD
Emergency/Involuntary APS	AR (S.B. 932), AR (S.B. 945), KY (H.B. 298), TX
Evidence/Testimony	AR (S.B. 932), AR (S.B. 945)
Government Oversight of APS	DC, KY (H.B. 298), TX
Guardianship by APS	TX
Information/Record Disclosure	AR (S.B. 932), AR (S.B. 945), CA, DC, KY (H.B. 298) LA, TX
Investigations	KY (H.B. 298), TX
Multidisciplinary Teams	KY (H.B. 298)
Notification/Referral to Other Agencies	AR (S.B. 945), CA, DC, KY (H.B. 298), TX
Outreach to Victims/Public Awareness	IL
Protection of Victim Assets	AR (S.B. 932)
Quality Control/Supervision of APS	TX
Registry of Perpetrators	AR (S.B. 945)
Reporting	AR (S.B. 945), CA, DC, NV, OR
Staffing (APS)	KY (H.B. 298)
Staffing (Prosecutors' Offices)	KY (H.B. 298)
Training for APS Staff	TX
Training for Prosecutors	KY (H.B. 298)
Treatment by Spiritual Means	AR (S.B. 932), AR (S.B. 945), DC