

Section 38-9-3

Legislative findings and intent.

The legislature recognizes that there are many adult citizens of the state who, because of the infirmities of age, disabilities or like incapacities, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

(Acts 1977, No. 780, p. 1340, §1.)

Section 38-9-4

Arrangements for protective services; liability of department for protective services; services to conform to wishes of person to be served; duty of department to ascertain persons in need of care and protection.

(a) Protective services may be arranged when an adult person is in need of care and protection because of danger to his health or safety; provided, that nothing in this chapter shall be construed to mean that the department is chargeable for the cost of such care except where such care is specifically provided for by law or departmental regulations and funding exists for such purpose. All protective services shall be in conformity with the wishes of the person to be served unless the person is unable or unwilling to accept such services, and if the person is unable or unwilling to accept such services, the court may order such services. The department may be required to provide or arrange for services only for persons it is equipped to serve and agrees to serve.

(b) The department shall seek out, through investigation, complaints from citizens or otherwise, the adults in the state who are in need of care and protection because of danger to their health or safety, and shall, as far as may be possible, through existing agencies, public or private, or through such other resources as are available, aid such adults to a fair opportunity in life.

(Acts 1977, No. 780, p. 1340, §3.)

Section 38-9-5

Emergency protective services.

When there is brought to the attention of a county department of human resources a person who is unable, because of physical or mental disabilities, to provide for his basic needs for shelter,

food, clothing or health care, and whose health or safety is in immediate danger, the department may arrange for protective services with the consent of the person. If the person is incapable of giving consent or does not consent, the department shall petition the court for an order authorizing the department to arrange for care for such person immediately. Upon a determination by the court that such care is urgently and immediately necessary to protect the health or safety of the person, an appropriate order of the court shall be issued authorizing the department to arrange for the placement of such person in an approved foster home, licensed nursing home or other similar facility immediately. At the proceeding to obtain the necessary order, any relative or other interested person may appear to oppose or join in the petition of the department. In the event of such involuntary protective placement the court shall thereafter, within 10 days, cause notice to be given, as appropriate, to the person, his spouse and other interested persons of the action of the court, the present whereabouts of the person and setting a time for a hearing on the matter of the person's need for protective placement, the appropriateness of the present placement and arrangements for future care.

(Acts 1977, No. 780, p. 1340, §9.)

Section 38-9-6

Protective placement or other protective services.

- (a) An interested person may petition the court to order protective placement or other protective services for an adult in need of protective services. No protective placement or other protective services may be ordered unless there is a determination by the court that the person is unable to provide for his or her own protection from abuse, neglect, exploitation, sexual abuse, or emotional abuse. Upon a petition, setting forth the facts and name, age, sex, and residence of the person, the court of the circuit in which the person resides shall appoint a day, not more than 30 days from the filing of the petition, for the hearing on the petition. If, on the hearing of a petition, the person is not represented by counsel, the court shall appoint a guardian ad litem to represent him or her. A jury of six persons shall be impanelled for the hearing to serve as the trier of facts.
- (b) Costs of court proceedings under this chapter shall be paid as other civil court costs are paid, as provided for by law.
- (c) The court shall give preference in making a determination to the least drastic alternative considered to be proper under the circumstances, including a preference for noninstitutional care wherever possible. Before ordering the protective placement of any person, the court shall direct a comprehensive evaluation of the adult in need of services, if such an evaluation has not already been made and if it is necessary. The court may utilize available resources in the community in determining the need for placement. The department shall cooperate with the court in securing available resources for the person to be served. A copy of the comprehensive evaluation shall be provided to the guardian or to the guardian ad litem or attorney of the person if a guardian has not been appointed. The court obtaining the evaluation shall request appropriate information which shall include at least the following:

(1) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(2) A resume of any professional services provided to the person by the department or other agency in connection with the problems creating a need for placement.

(3) A medical, psychological, social, vocational, and educational evaluation and review, where necessary.

(d) The department which arranges for a protective placement shall make an evaluation and submit a written report to the court at least once every six months covering the physical, mental, and social condition of each person for whom it is acting and shall recommend an alternative arrangement where appropriate.

(e) Any record of the department or other agency pertaining to such a person shall not be open for public inspection. Information in a record shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the commissioner of the department or by the court.

(f) Placement may be made in an appropriate alternative living arrangement such as a licensed nursing home, licensed personal care facility, or approved foster care home. No person shall be committed to a mental health facility under this chapter. A court may enter orders granting the department additional time to locate an appropriate licensed facility in which to place a person living in an unlicensed facility.

(g) If the person is eligible for the adult services program of the department, usual department policies shall be followed in regard to fees or payments, or both. If the person's income or resources, or both, make him or her ineligible for department services other than protective services, payment for services in relation to his or her evaluation, and to his or her care in a protective setting is to be made from his or her income or resources, or both. A guardian, a conservator, or both, may be appointed by the court. The department shall not be appointed as guardian or conservator and shall not be appointed custodian other than for the limited purpose, where appropriate, of transporting an adult for protective placement as ordered by the court. If it is agreeable with the person to be served, the court may appoint a guardian, or conservator, or both, having the same powers, duties, and obligations, including having a bond, as a guardian of an incapacitated person or a conservator under the Alabama Uniform Guardianship and Protective Proceedings Act and it shall not be necessary to have a hearing on that issue; otherwise, the court may appoint a guardian, a conservator, or both, following the procedures provided by the Alabama Uniform Guardianship and Protective Proceedings Act. If a jury is requested or required, the jury impanelled in this court according to subsection (a) of this section shall serve that function.

(h) When any adult in need of protective services is unable to manage his or her estate and because of the inability is in danger of being reduced to poverty and want, an interested person may petition the court to preserve the estate of the person, to direct use of the estate for the needs of the person, and for the general relief of the person.

(i) No civil rights are relinquished as a result of any protective placement under this chapter. Nothing in this chapter shall be construed to authorize or require medical care or treatment for a person in contravention of his or her stated or implied objection upon the grounds that the medical care and treatment conflict with his or her religious beliefs and practices.

(j) As far as is compatible with the mental and physical condition of the adult in need of services or claimed to be in need of services under this chapter, every reasonable effort shall be made to assure that no action is taken without the full and informed consent of the person.

(k) To promote coordination, placement, and service delivery for persons living in unlicensed facilities and needing placement in a licensed facility, the department shall establish a coordinating council composed of representatives of interested state and local agencies including the state Department of Public Health and the state Department of Mental Health. The council shall also include representatives from the Alabama Nursing Home Association, Alabama Assisted Living Association, Alabama Hospital Association, and other interested persons, agencies, or groups as determined by commissioner. The council shall meet at times designated by the commissioner for coordination purposes identified by the commissioner including identifying resources and placements, increasing needed supportive services, and assuring maximum community coordination of effort in placing in a licensed facility persons living in an unlicensed facility.

(Acts 1977, No. 780, p. 1340, §4; Acts 1989, No. 89-825, p. 1652, §2; Acts 1994, No. 94-615, p. 1134, §1; Act 2008-390, p. 735, §1.)

Section 38-9-7

Violations; penalties.

(a) It shall be unlawful for any person to abuse, neglect, exploit, or emotionally abuse any protected person. For purposes of this section, residence in a nursing home, mental institution, developmental center for people with an intellectual disability, or other convalescent care facility shall be prima facie evidence that a person is a protected person. Charges of abuse, neglect, exploitation, or emotional abuse may be initiated upon complaints of private individuals, as a result of investigations by social service agencies, or on the direct initiative of law enforcement officials.

(b) Any person who intentionally abuses or neglects a person in violation of this chapter shall be guilty of a Class B felony if the intentional abuse or neglect causes serious physical injury.

(c) Any person who recklessly abuses or neglects a person in violation of this chapter shall be guilty of a Class C felony if the reckless abuse or neglect causes serious physical injury.

(d) Any person who intentionally abuses or neglects a person in violation of this chapter, shall be guilty of a Class C felony if the intentional abuse or neglect causes physical injury.

(e) Any person who recklessly abuses or neglects a person in violation of this chapter, shall be guilty of a Class A misdemeanor if the reckless abuse or neglect causes physical injury.

(f) Any person who emotionally abuses a person in violation of this chapter shall be guilty of a Class A misdemeanor.

(g) Any person who exploits a person in violation of this chapter shall be guilty of a Class C felony, where the value of the property, assets, or resources or illegal services provided to a protected person by an unlicensed hospital exceeds one hundred dollars (\$100).

(h) Any person who exploits a person in violation of this chapter shall be guilty of a Class A misdemeanor, if the value of the property, assets, or resources or illegal services provided to a protected person by an unlicensed hospital does not exceed one hundred dollars (\$100).

(i) If a violation of this section is also a violation of any other Alabama criminal statute, then a conviction or acquittal under either statute bars prosecution under the remaining statute.

(Acts 1977, No. 780, p. 1340, §§5, 11; Acts 1989, No. 89-825, p. 1652, §3; Acts 1994, No. 94-615, p. 1134, §1; Act 2000-455, p. 837, §1; Act 2008-390, p. 735, §1.)

Section 38-9-8

Reports by physicians, etc., of physical, sexual, or emotional abuse, neglect, or exploitation - Required; contents; investigation.

(a) All physicians and other practitioners of the healing arts or any caregiver having reasonable cause to believe that any protected person has been subjected to physical abuse, neglect, exploitation, sexual abuse, or emotional abuse shall report or cause a report to be made as follows:

(1) An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the county department of human resources or to the chief of police of the city or city and county, or to the sheriff of the county if the observation is made in an unincorporated territory, except that reports of a nursing home employee who abuses, neglects, or misappropriates the property of a nursing home resident shall be made to the Department of Public Health. The requirements to report suspicion of suspected abuse, neglect, or misappropriation of property of a nursing home resident by an employee of a nursing home shall be deemed satisfied if the report is made in accordance with the rules of the State Board of Health.

(2) Within seven days following an oral report, an investigation of any alleged abuse, neglect, exploitation, sexual abuse, or emotional abuse shall be made by the county department of human resources or the law enforcement official, whichever receives the report, and a written report prepared which includes the following:

a. Name, age, and address of the person.

b. Nature and extent of injury suffered by the person.

c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

(b) All reports prepared by a law enforcement official shall be forwarded to the county department of human resources within 24 hours.

(c) The county department of human resources shall not be required to investigate any report of abuse, neglect, exploitation, sexual abuse, or emotional abuse that occurs in any facility owned and operated by the Alabama Department of Corrections or the Alabama Department of Mental Health.

(d) Notwithstanding the foregoing, the Department of Public Health shall investigate all reports that a nursing home employee has abused or neglected a nursing home resident, or misappropriated the property of a nursing home resident, in accordance with the rules of the State Board of Health and the federal regulations and guidelines of the Medicaid and Medicare programs. The Department of Public Health shall investigate the complaints in accordance with the procedures and time frames established by the agency. A county department of human resources shall not be required to investigate the complaints.

(Acts 1977, No. 780, p. 1340, §6; Acts 1994, No. 94-615, p. 1134, §1; Act 2000-455, p. 839, §1.)

Section 38-9-9

Reports by physicians, etc., of physical abuse, neglect or exploitation - Immunity of reporter from civil and criminal liability.

Any person, firm or corporation making or participating in the making of a report pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(Acts 1977, No. 780, p. 1340, §7.)