

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 300

By: Rosino of the Senate

6 and

7 Kannady of the House

8
9 An Act relating to guardianship of vulnerable adult;
10 amending 43A O.S. 2011, Section 10-108, which relates
11 to petition for involuntary protective services;
12 requiring dismissal of temporary guardianship upon
13 removal of emergency conditions; clarifying scope of
14 certain service; and providing an effective date.

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

16 SECTION 1. AMENDATORY 43A O.S. 2011, Section 10-108, is
17 amended to read as follows:

18 Section 10-108. A. 1. If the Department of Human Services
19 determines that a vulnerable adult is suffering from abuse, neglect,
20 self-neglect, or financial neglect or exploitation presenting a
21 substantial risk of death or immediate and serious physical harm to
22 the person or financial exploitation of the estate of the person,
23 and the vulnerable adult lacks mental capacity to consent to receive
24 protective services and no consent can be obtained, the Department

1 may petition the district court in the county specified by paragraph
2 3 of this subsection for an order:

- 3 a. authorizing involuntary protective services and
4 appointing a temporary guardian of the person and/or
5 the estate,
- 6 b. freezing the assets of the vulnerable adult, if the
7 vulnerable adult is being exploited, establishing any
8 new accounts necessary to pay the daily living
9 expenses of the vulnerable adult, and directing a full
10 accounting and investigation of the person alleged to
11 be improperly managing the estate of the vulnerable
12 adult,
- 13 c. suspending or revoking the powers of an attorney-in-
14 fact granted by a durable power of attorney, or
15 revoking an irrevocable trust, or terminating a
16 guardianship or conservatorship established pursuant
17 to the Oklahoma Guardianship and Conservatorship Act,
18 or
- 19 d. directing any law enforcement agency to transport any
20 incapacitated person or vulnerable adult as necessary
21 for appropriate care, treatment and residential
22 placement. If such transportation is ordered,
23 reimbursement for expenses incurred from the
24 transportation of a vulnerable adult under the

1 Department's temporary guardianship shall be paid as
2 provided for in Section 10-107 of this title.

3 2. Under no circumstances shall the court authorize the
4 Department, pursuant to this subsection, to consent or deny consent
5 to a Do-Not-Resuscitate order or the withdrawal of hydration or
6 nutrition or other life-sustaining treatment although the court
7 retains jurisdiction to hear such matters under applicable law.

8 3. The district court which may be petitioned by the Department
9 for an order pursuant to paragraph 1 of this subsection is:

- 10 a. the district court in the county in which the
11 vulnerable adult resides,
- 12 b. the district court in the county in which the
13 vulnerable adult is receiving inpatient services, or
- 14 c. the district court in the county where the vulnerable
15 adult is located when any delay caused by taking the
16 petition to the district court in the county of the
17 residence of the vulnerable adult would result in
18 greater substantial risk of death or greater serious
19 physical harm to the vulnerable adult. The petition
20 shall include an explanation of why the petition was
21 filed in the district court in the county specified by
22 this subparagraph rather than in the district court as
23 specified in subparagraph a or b of this paragraph.

1 B. The petition shall be sworn to and include the name, age,
2 and address of the vulnerable adult who the Department has
3 determined is in need of emergency protective services, the nature
4 of the abuse, neglect, or exploitation, the services needed, and
5 information relating to the capacity of the person to consent to
6 services and a description of the attempts of the Department to
7 obtain consent and the name of the person or organization proposed
8 to be appointed as temporary guardian.

9 C. 1. The vulnerable adult shall receive an opportunity for a
10 hearing upon the petition, and shall be personally served with a
11 copy of the petition and a notice scheduling hearing at least forty-
12 eight (48) hours prior to any such hearing if the petition seeks
13 temporary guardianship of thirty (30) days or more.

14 2. a. The hearing shall be set by the court on an expedited
15 basis, but no later than five (5) calendar days, not
16 including weekends or holidays when the court is
17 closed, from the date the notice scheduling hearing is
18 signed by the judge. The vulnerable adult shall have
19 a right to a closed hearing unless such vulnerable
20 adult requests otherwise.

21 b. Unless the vulnerable adult objects or the person
22 requiring notification pursuant to this subparagraph
23 is alleged to have abused, neglected or exploited the
24 vulnerable adult, the following persons shall be

1 notified of any hearing held pursuant to this
2 subsection:

- 3 (1) the legal guardian, guardian ad litem and
4 caretaker of the vulnerable adult,
- 5 (2) any person so requested by the vulnerable adult
6 to be present at the hearing, and
- 7 (3) persons required to be notified pursuant to
8 Section 3-110 of Title 30 of the Oklahoma
9 Statutes.

10 D. 1. Upon sworn testimony of a representative of the
11 Department, or statement of a district attorney representing the
12 Department, that immediate and reasonably foreseeable death or
13 serious physical harm to or financial exploitation of the vulnerable
14 adult will result, the court may waive prior notice and issue a
15 seventy-two-hour temporary guardianship and provide involuntary
16 protective services whether or not during regular courthouse
17 business hours. However, within twenty-four (24) hours of issuance
18 of the seventy-two-hour order, the vulnerable adult and the attorney
19 of the vulnerable adult, if known, shall be personally served with
20 written notice scheduling a hearing within seventy-two (72) hours.

21 2. If a hearing on the seventy-two-hour order is declined, or
22 upon conclusion of any such hearing, the court may terminate the
23 temporary guardianship and involuntary services or enter a temporary
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1 guardianship for up to thirty (30) additional calendar days as
2 provided for in subsection G of this section.

3 E. 1. The vulnerable adult has a right to be present and
4 represented by counsel at any hearing authorized by this section.

5 If the vulnerable adult is indigent or, in the determination of the
6 court, lacks capacity to waive the right to counsel, the court shall
7 immediately appoint counsel who shall personally meet with the
8 vulnerable adult and attempt to discuss the petition or any pending
9 motion prior to any hearing.

10 2. If the vulnerable adult is not in attendance at a scheduled
11 hearing, the court shall make a special finding as to why the
12 vulnerable adult is unable to attend, and, upon the request of the
13 vulnerable adult or the attorney of the vulnerable adult, may
14 continue the hearing to allow the vulnerable adult to attend.

15 3. If the vulnerable adult is indigent, the cost of
16 representation by counsel shall be borne by court funds.

17 4. If the vulnerable adult is not indigent, the court may order
18 costs of representation paid from the estate in the same manner as
19 currently paid under the Oklahoma Guardianship and Conservatorship
20 Act.

21 F. 1. After a hearing on the petition, the court may:

22 a. appoint a temporary guardian and order involuntary
23 protective services including, but not limited to,
24 authorization for medical and/or psychological

1 treatment and evaluations, and residential placement
2 subject to the provisions of subsection G of this
3 section,

4 b. issue an order freezing all assets of the vulnerable
5 adult, establish any new accounts necessary to pay the
6 daily living expenses of the vulnerable adult, and
7 order a full accounting and investigation of the
8 person alleged to be improperly managing the
9 vulnerable adult's estate,

10 c. suspend or revoke powers of attorney or terminate a
11 guardianship or conservatorship upon a finding that
12 the attorney-in-fact, guardian or conservator failed
13 to act appropriately on behalf of the vulnerable
14 adult, or

15 d. order any law enforcement agency to transport any
16 incapacitated person or vulnerable adult as necessary
17 for appropriate care, treatment and residential
18 placement. If such transportation is ordered,
19 reimbursement for expenses incurred from the
20 transportation of a vulnerable adult under the
21 Department's temporary guardianship shall be paid as
22 provided for in Section 10-107 of this title.

23 2. a. Except as otherwise provided by subparagraphs b and c
24 of this paragraph, the court appointing a temporary

1 guardian and ordering involuntary protective services
2 shall not have authority to order the sale of the real
3 property of the vulnerable adult.

4 b. If the Department of Human Services has been appointed
5 temporary guardian and the court issues an order for
6 the Department to continue as the temporary guardian
7 of the vulnerable adult beyond the one hundred eighty
8 (180) calendar days authorized by this section because
9 there is no one willing and able to act as guardian
10 for the vulnerable adult, the Department, as temporary
11 guardian may, after one (1) year from its initial
12 appointment, sell the real property of a vulnerable
13 adult pursuant to the provisions of the Oklahoma
14 Guardianship and Conservatorship Act.

15 c. The Department, as temporary guardian of a vulnerable
16 adult, may also sell the real property of the
17 vulnerable adult pursuant to the provisions of the
18 Oklahoma Guardianship and Conservatorship Act prior to
19 the one-year requirement specified in subparagraph b
20 of this paragraph, if not selling the real property
21 would jeopardize the vulnerable adult's eligibility
22 for Medicaid. The fact that the vulnerable adult
23 would be in jeopardy for receipt of Medicaid if the
24 property was not sold shall be stated upon the court

1 order directing the sale of the real property of the
2 vulnerable adult.

3 d. The court may issue an order authorizing the
4 Department to sell personal property of a vulnerable
5 adult when additional resources are required to pay
6 for necessary care for the vulnerable adult pursuant
7 to state law.

8 G. Whenever the court issues an order for involuntary
9 protective services, the court shall adhere to the following
10 limitations:

11 1. Only such protective services as are necessary to remove the
12 conditions creating the emergency shall be ordered, and the court
13 shall specifically designate the approved services in the order of
14 the court. When the conditions creating the emergency have been
15 removed, the court shall dismiss the temporary guardianship ordered
16 pursuant to this section;

17 2. The scope of service provided by the Department shall be
18 limited to protective services or the establishment of eligibility
19 for protective services for the person and estate. The Department
20 shall request dismissal of the temporary guardianship ordered
21 pursuant to this section when:

22 a. an appropriate level of care for the vulnerable adult
23 as determined by the Department has been established,

24 b. assets have been secured, if applicable, and

1 c. a representative payee or trustee has been set for
2 financial management, if applicable;

3 3. Protective services authorized by an involuntary protective
4 services order shall not include a change of residence unless the
5 court specifically finds such action is necessary to remove the
6 conditions creating the emergency and gives specific approval for
7 such action in the order of the court. Emergency placement may be
8 made to such facilities as nursing homes, hospital rehabilitation
9 centers, assisted living centers, foster care and in-home
10 placements, or to other appropriate facilities for emergency care or
11 evaluation to determine the extent of a vulnerable adult's physical,
12 mental and functional limitations; provided, however, emergency
13 placement shall not be made or construed as an alternative to
14 emergency detention and protective custody as authorized under
15 Section 5-206 et seq. of this title or made or construed as an
16 alternative to involuntary commitment under Section 5-410 et seq. of
17 this title when a vulnerable adult otherwise meets the criteria for
18 involuntary commitment. Services to such vulnerable adults shall be
19 provided in a manner that is appropriate for the adult's age and
20 condition and, except for facilities operated by the Department of
21 Mental Health and Substance Abuse Services or community-based
22 structured crisis centers under contract with the Department
23 pursuant to Section 3-317 of this title, services provided to
24 vulnerable adults pursuant to this section shall be provided in a

1 setting that is segregated from any patients or residents of a
2 facility who have been determined to be a danger to others; and

3 ~~3.~~ 4. Involuntary protective services may be provided for a
4 period not to exceed thirty (30) calendar days except as provided by
5 subsections L and M of this section.

6 H. The court shall appoint the Department or an interested
7 person or organization as temporary guardian of the person with
8 responsibility for the welfare of such person and authority to give
9 consent on behalf of the person for the approved involuntary
10 protective services until the expiration of the order.

11 I. The issuance of an order for involuntary protective services
12 and the appointment of a temporary guardian shall not deprive the
13 vulnerable adult of any rights except to the extent validly provided
14 for in the order or appointment.

15 J. 1. To enforce an order for involuntary protective services,
16 the court may authorize:

17 a. forcible entry of the premises of the vulnerable adult
18 to be protected for the purpose of rendering
19 protective services but only after a reasonable
20 showing to the court that good faith attempts to gain
21 voluntary access to the premises have failed and
22 forcible entry is necessary,

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- 1 b. the transporting of the vulnerable adult to another
2 location for the provision of involuntary services,
3 and
4 c. the eviction of persons who are in a position to
5 exploit the vulnerable adult from any property owned,
6 leased, or rented by the vulnerable adult and
7 restriction of those persons' further access to any
8 property of the vulnerable adult.

9 2. If forcible entry is authorized by the court, the order
10 shall include a directive that the Department's representative be
11 accompanied by a police officer or deputy sheriff in the county
12 where the vulnerable adult or property of the vulnerable adult is
13 located, and the police officer or deputy sheriff shall make the
14 forcible entry.

15 K. The vulnerable adult, the temporary guardian, or any
16 interested person may petition the court to have the order to
17 provide involuntary protective services set aside or modified at any
18 time.

19 L. If the vulnerable adult continues to need involuntary
20 protective services after expiration of the thirty-day temporary
21 guardianship provided in subsection G of this section, the temporary
22 guardian shall immediately file a verified motion requesting the
23 court to, except as otherwise provided by subsection F of this
24 section, continue the temporary guardianship and involuntary

1 protective services under this section for a period not to exceed
2 one hundred eighty (180) calendar days.

3 M. 1. Service of the verified motion shall be made in
4 conformity with subsection C of this section.

5 2. Upon filing such motion, the court shall order that a
6 physical, mental, and social evaluation of the vulnerable adult be
7 conducted by the Department and that a proposed plan of care be
8 submitted to the court within thirty (30) calendar days thereafter
9 reflecting the evaluation findings and recommended services.

10 3. Upon filing such motion, the prior temporary guardianship
11 shall remain in full force and effect pending a review hearing after
12 the thirty-day evaluation period. The caretaker, guardian or next-
13 of-kin of the vulnerable adult may request that the evaluation
14 period be shortened for good cause.

15 4. The evaluation shall include at least the following
16 information:

17 a. the address of the place where the person is residing
18 and the person or agency which is providing care,
19 treatment, or services at present,

20 b. a summary of the professional treatment and services
21 provided to the person by the Department or agency, if
22 any, in connection with the problem creating the need
23 for emergency protective services, and
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1 c. a medical and social evaluation, including, but not
2 limited to, the Department's assessment of the
3 person's capacity to consent to services, a
4 psychological or psychiatric evaluation and review if
5 the mental state of the person is in question, and any
6 recommendations for or against maintenance of partial
7 legal rights. The evaluation and review shall include
8 recommendations for placement based upon the best
9 interests of the vulnerable adult taking into
10 consideration the following:

- 11 (1) the least restrictive environment,
- 12 (2) the desires of the vulnerable adult and legal
13 guardian,
- 14 (3) the desires of the caretaker of the vulnerable
15 adult and of any of the persons specified in
16 Section 3-110 of Title 30 of the Oklahoma
17 Statutes,
- 18 (4) the physical and mental health needs of the
19 vulnerable adult,
- 20 (5) the available programs and services, and
21 (6) the health, well-being and welfare of the
22 vulnerable adult and the public.

23 During the hearing to consider the motion to continue the
24 temporary guardianship of the vulnerable adult for up to one hundred

1 eighty (180) calendar days, the court shall consider the
2 Department's findings and proposed plan of care and any other
3 evidence presented by the caretaker, guardian or other interested
4 persons. The court shall either terminate the temporary
5 guardianship and all involuntary services or continue the temporary
6 guardianship and specify any necessary services to be provided by
7 the Department for a period not to exceed one hundred eighty (180)
8 calendar days. Provided, the court may continue the guardianship of
9 the Department, if there is no one willing and able to act as
10 guardian for the vulnerable adult.

11 N. Neither the Department nor any of its employees or any other
12 petitioner shall be liable for filing a petition pursuant to the
13 Protective Services for Vulnerable Adults Act if the petition was
14 filed in good faith.

15 SECTION 2. This act shall become effective November 1, 2021.

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17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
18 03/30/2021 - DO PASS.
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