

1 **SENATE FLOOR VERSION**

2 February 19, 2021

3 SENATE BILL NO. 300

By: Rosino of the Senate

4 and

5 Kannady of the House

6  
7  
8 An Act relating to guardianship of vulnerable adult;  
9 amending 43A O.S. 2011, Section 10-108, which relates  
10 to petition for involuntary protective services;  
11 requiring dismissal of temporary guardianship upon  
12 removal of emergency conditions; clarifying scope of  
13 certain service; and providing an effective date.

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

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

17 Section 10-108. A. 1. If the Department of Human Services  
18 determines that a vulnerable adult is suffering from abuse, neglect,  
19 self-neglect, or financial neglect or exploitation presenting a  
20 substantial risk of death or immediate and serious physical harm to  
21 the person or financial exploitation of the estate of the person,  
22 and the vulnerable adult lacks mental capacity to consent to receive  
23 protective services and no consent can be obtained, the Department  
24 may petition the district court in the county specified by paragraph  
3 of this subsection for an order:

- 1 a. authorizing involuntary protective services and  
2 appointing a temporary guardian of the person and/or  
3 the estate,
- 4 b. freezing the assets of the vulnerable adult, if the  
5 vulnerable adult is being exploited, establishing any  
6 new accounts necessary to pay the daily living  
7 expenses of the vulnerable adult, and directing a full  
8 accounting and investigation of the person alleged to  
9 be improperly managing the estate of the vulnerable  
10 adult,
- 11 c. suspending or revoking the powers of an attorney-in-  
12 fact granted by a durable power of attorney, or  
13 revoking an irrevocable trust, or terminating a  
14 guardianship or conservatorship established pursuant  
15 to the Oklahoma Guardianship and Conservatorship Act,  
16 or
- 17 d. directing any law enforcement agency to transport any  
18 incapacitated person or vulnerable adult as necessary  
19 for appropriate care, treatment and residential  
20 placement. If such transportation is ordered,  
21 reimbursement for expenses incurred from the  
22 transportation of a vulnerable adult under the  
23 Department's temporary guardianship shall be paid as  
24 provided for in Section 10-107 of this title.

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

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

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

22          B. The petition shall be sworn to and include the name, age,  
23 and address of the vulnerable adult who the Department has  
24 determined is in need of emergency protective services, the nature

1 of the abuse, neglect, or exploitation, the services needed, and  
2 information relating to the capacity of the person to consent to  
3 services and a description of the attempts of the Department to  
4 obtain consent and the name of the person or organization proposed  
5 to be appointed as temporary guardian.

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

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

18 b. Unless the vulnerable adult objects or the person  
19 requiring notification pursuant to this subparagraph  
20 is alleged to have abused, neglected or exploited the  
21 vulnerable adult, the following persons shall be  
22 notified of any hearing held pursuant to this  
23 subsection:  
24

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

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

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

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1 E. 1. The vulnerable adult has a right to be present and  
2 represented by counsel at any hearing authorized by this section.  
3 If the vulnerable adult is indigent or, in the determination of the  
4 court, lacks capacity to waive the right to counsel, the court shall  
5 immediately appoint counsel who shall personally meet with the  
6 vulnerable adult and attempt to discuss the petition or any pending  
7 motion prior to any hearing.

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

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

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

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

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

1 subject to the provisions of subsection G of this  
2 section,

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

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

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

22 2. a. Except as otherwise provided by subparagraphs b and c  
23 of this paragraph, the court appointing a temporary  
24 guardian and ordering involuntary protective services

1 shall not have authority to order the sale of the real  
2 property of the vulnerable adult.

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

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



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.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
17 February 19, 2021 - DO PASS  
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