

CHAPTER 568

S.B. No. 1150

AN ACT

relating to the reporting, investigation, and prevention of abuse of elderly or disabled persons.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivisions (5) and (8), Section 48.002, Human Resources Code, are amended to read as follows:

(5) "Protective services" means the services furnished by the department or by a protective services agency to an elderly or disabled person who has been determined to be in a state of abuse, exploitation, or neglect. These services may include ~~[investigation of reported abuse,]~~ social casework, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, and other services consistent with this chapter.

(8) "Disabled person" means a person with a mental, physical, or developmental disability *who is*:

(A) ~~[between the ages of]~~ 18 ~~[and 65]~~ years of age or older; or

(B) under 18 years of age and who has had the disabilities of minority removed.

SECTION 2. Subsections (h) and (c), Section 48.038, Human Resources Code, as amended, are amended to read as follows:

(b) The department's investigation shall include a visit to the elderly or disabled person's *place of residence* ~~[home]~~ and consultation with persons thought to have knowledge of the circumstances.

(c) To implement an investigation of reported abuse, exploitation, or neglect, the probate court, or the county court when no probate court exists, may authorize entry of the *place of residence* ~~[premises]~~ of the elderly or disabled person.

SECTION 3. Section 48.040, Human Resources Code, as amended, is amended to read as follows:

Sec. 48.040. REPRESENTATION. ~~[(a)]~~ The prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding brought by the department under this chapter.

~~[(b) The court shall appoint an attorney ad litem to represent the elderly or disabled person in any proceeding brought by the department under this chapter. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the General Fund of the county.]~~

SECTION 4. Section 48.061, Human Resources Code, as amended, is amended to read as follows:

Sec. 48.061. EMERGENCY ORDER FOR PROTECTIVE SERVICES. (a) For purposes of this section, a person lacks the capacity to consent to receive protective services if, because of mental or physical impairment, the person is incapable of understanding the nature of the services offered and agreeing to receive or rejecting protective services.

(b) If the department determines that an elderly or disabled person is suffering from abuse or neglect presenting a ~~[an immediate]~~ threat to life, that the person lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the *probate or county* ~~[district]~~ court in the county in which the elderly or disabled person resides for an emergency order authorizing protective services.

(c) The petition shall be verified and shall include the name, age, and address of the elderly or disabled person who needs protective services, the nature of the abuse or neglect, the services needed, and a medical report signed by a physician stating that the person is suffering from abuse or neglect presenting a ~~[an immediate]~~ threat to life and stating that the person is physically or mentally incapable of consenting to services.

(d) On finding that there is reasonable cause to believe that abuse or neglect presents a ~~[an immediate]~~ threat to life for the elderly or disabled person and that the elderly or disabled person lacks capacity to consent to services, the court may order removal of the elderly or disabled person to safer surroundings, authorize medical treatment, and order other available services necessary to remove conditions creating the ~~[immediate]~~ threat to life. ~~[The court shall appoint an attorney ad litem to represent the interests of the elderly or disabled person at the first or a subsequent hearing.]~~

(e) The emergency order expires at the end of 72 hours from the time of the order and may be renewed once for 72 hours.

(f) Any medical facility or physician treating an elderly or disabled person pursuant to an emergency order under this chapter is not liable for any damages arising from the treatment, except those damages resulting from the negligence of the facility or physician.

(g) The court shall appoint an attorney ad litem to represent the elderly or disabled person in any proceeding brought by the department under this section. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the general fund of the county.

SECTION 5. Subdivision (3), Subsection (e), Section 16, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) The investigation shall include a visit to the resident's institution and an interview with the subject institution resident. If admission to the institution, or any place where the institution resident may be, cannot be obtained, the *probate or county* ~~[district]~~ court, upon cause shown, shall order the persons responsible for the care of the institution resident, or the person in charge of any place where the institution resident may be, to allow entrance for the interview and investigation.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1987, by a viva-voce vote. Passed the House on May 22, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.