

PUBLIC CHAPTER NO. 898

HOUSE BILL NO. 2778

By Representatives Hackworth, Maggart, Bass, Hawk, Shepard, Fincher, Stewart, Hardaway, Kevin Brooks, Weaver, Montgomery, Swafford, Towns, Halford, Hensley, Lundberg, Shipley, Yokley, Favors, Brown, Dean, Ferguson, Ty Cobb, Casada, Gilmore, McCormick, Ford, Phillip Johnson, Harry Brooks, Cooper, White, Coley, Moore, Lollar, Sontany, Bone, Coleman, Evans, Carr, Barker, Lois DeBerry, Fitzhugh, Richardson, McManus, Sargent, Eldridge, Fraley, Naifeh, Johnnie Turner, Ulysses Jones and Mr. Speaker Williams

Substituted for: Senate Bill No. 2832

By Senators Berke, Overbey, Burks, Marrero, Harper, Ford, Barnes, Haynes

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 6, Part 1, relative to the protection of vulnerable adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-6-102, is amended by adding a new appropriately designated subdivision thereto:

() "Relative" means spouse; child, including stepchild, adopted child or foster child; parents: including stepparents, adoptive parents or foster parents; siblings of the whole or half-blood; step-siblings, grandparents, grandchildren, of any degree, and aunts, uncles, nieces and nephews;

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 6, Part 1, is amended by adding the following new section thereto:

§ 71-6-124.

(a)

(1)

(A) Any relative having personal knowledge that an adult has been the subject of a violation of § 71-6-117 or that such adult is threatened with or placed in fear of a violation of § 71-6-117 occurring against such adult may seek relief for the adult pursuant to this section by filing a sworn petition with any court with jurisdiction under this part alleging that the respondent has violated or threatens to violate § 71-6-117, regardless of the existence of any other remedy at law. For purposes of this section, "adult"

shall not include a person while in the custody of intermediate care facilities for persons with mental retardation (ICFs/MR) and a person while receiving residential services or other services from a community provider through contracts with the division of intellectual disability services (DIDS), department of finance and administration.

(B) The petition must allege facts, based upon personal knowledge of the petitioner, that the adult lacks capacity to consent.

(C) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the violation of § 71-6-117 occurred or is threatened to occur. If the respondent is not a resident of this state, the petition may be filed in the county where the adult resides.

(2) The court may enter an immediate ex parte order of protection against the respondent if the petition alleges upon personal knowledge of the petitioner, and the court finds in its ex parte order, that the adult lacks capacity to consent and is in immediate danger of abuse, neglect or exploitation or that the adult's property is being, is in immediate danger of being, or has been misappropriated by the respondent.

(3) The petition and any ex parte order issued pursuant to this section shall be personally served upon the respondent and the adult. If the respondent is not a resident of this state, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216.

(4) Written notice of the filing of the petition and copies of the petition and the ex parte order of protection against the respondent, if any, shall be sent by certified mail, return receipt to the adult protective services unit in the county office of department of human services in the county in which the petition is filed. The department shall have the right to intervene in the proceeding, but shall not otherwise be required to initiate any legal action as a result of such notice. The department may, at any time, file a petition pursuant to § 71-6-107 if it determines that the adult who is the subject of a petition for an order or protection is in need of protective services.

(5)

(A) Within fifteen (15) days of service of an ex parte order of protection against the respondent, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the

petitioner has proved the adult lacks capacity to consent and the allegation of abuse, neglect or exploitation or the threat of such by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one hundred twenty (120) days, unless a further hearing on the continuation of such order is requested by the adult, the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one hundred twenty (120) days.

(B) Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection is issued, proceedings under title 34, chapters 1-3, are concluded, or the order of protection is dissolved. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven that the adult lacks capacity to consent and the allegation of abuse, neglect or exploitation of the adult or the threat of such by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one hundred twenty (120) days.

(C) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent and the adult at least five (5) days prior to such hearing. Such notice shall advise the respondent and the adult that each may be represented by counsel. The court may appoint a guardian ad litem under the provisions of § 34-1-107.

(D) Within the time the order of protection is in effect, any court with jurisdiction under this part may modify the order of protection, either upon the courts own motion or upon motion of the adult, the respondent or the petitioner.

(b) An order of protection granted pursuant to this section may:

(1)

(A) Order the respondent to refrain from committing a violation of this part against an adult;

(B) Refrain from threatening to misappropriate or further misappropriating any monies, state or federal

benefits, retirement funds or any other personal or real property belonging to the adult, or

(C) Order the return to the adult or the adult's caretaker or conservator or other fiduciary any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult obtained by the respondent as result of exploitation of the adult or as result of any other misappropriation of such funds or property of the adult by the respondent. The court may enter judgment against the respondent for the repayment or return to the adult or the adult's caretaker, conservator or other fiduciary of any monies, government benefits, retirement funds or any other personal or real property belonging to the adult that are under the control of or that have been obtained by the respondent as result of exploitation or misappropriation from the adult. Nothing in this subdivision (C) shall preclude an action under § 71-6-120. The court may, if the amount in question exceeds ten thousand dollars (\$10,000), require any caretaker or custodian of funds appointed under this section to post a bond as required by § 34-1-105.

(2) Enjoin the respondent from providing care for an adult, on a temporary or permanent basis, anyone who the court finds has engaged in abuse, neglect or exploitation of an adult as defined in title 71, chapter 6, part 1; in any situation involving the care of such adult, whether such actions occurred in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility or arrangement serving adults is licensed to provide care for adults;

(3) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly;

(4) Subject to the limitations otherwise stated in this section, grant any other relief deemed necessary by the court to protect an adult.

(c) All orders of protection shall be effective for a fixed period of time, not to exceed one hundred twenty (120) days. The court may modify its order at any time upon subsequent motion filed by any party together with an affidavit showing a change in circumstances sufficient to warrant the modification. The petitioner, respondent or adult, or the court on its own motion shall commence a proceeding under title 34, chapters 1-3 to determine whether a fiduciary should be appointed, if any party alleges that the conditions giving rise to the order of protection continue or may continue beyond the one hundred twenty (120) days.

(d)

(1) If the adult and the respondent have been served with a copy of the petition and notice of hearing, the order of protection shall be effective when the order is entered. For purposes of this subdivision (d)(1), an order shall be considered entered once a hearing is conducted and when such order is signed by:

(A) The judge and all parties or counsel;

(B) The judge and one party or counsel and contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(C) The judge and contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(2) Service upon a party or counsel shall be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing.

(3) If the adult and the respondent have been served with a copy of the petition and notice of hearing, an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered, regardless of whether the respondent is present at the hearing.

(4) A copy of any order of protection and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent and the local law enforcement agencies having jurisdiction in the area where the adult resides. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall immediately enter such order or dismissal in the Tennessee crime information system and take any necessary action to immediately transmit it to the national crime information center.

(5) Upon violation of an order of protection entered pursuant to this section, a court may order any appropriate punishment or relief as provided for in § 36-3-610.

(e)

(1) It is an offense to knowingly violate an order of protection issued pursuant to this section. A law enforcement officer may arrest a respondent who is the subject of an order of protection issued pursuant to this section with or without warrant.

(2) In order to constitute a violation of this section:

(A) The person must have received notice of the request for an order of protection;

(B) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(C) The court must have made specific findings of fact in the order of protection that the person committed a violation of this part.

(3) Any law enforcement officer shall arrest the respondent without a warrant if:

(A) The officer has proper jurisdiction over the area in which the violation occurred;

(B) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and

(C) The officer has verified that an order of protection is in effect against the respondent. If necessary, the law enforcement officer may verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement department.

(4) Any person arrested for a violation of an order of protection entered pursuant to this section shall be treated as a person arrested for a violation of an order of protection issued pursuant to title 36, chapter 3, part 6.

(5) A violation of this subsection (e) is a Class A misdemeanor, and any sentence imposed shall be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations, unless the sentencing judge or magistrate specifically orders the sentences for the offenses arising out of the same facts to be served concurrently.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 22, 2010



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 10th day of May 2010



PHIL BREDESEN, GOVERNOR