

Protecting Tennessee's Vulnerable Adults

2003



A Field Guide

Developed by the Tennessee Department of Human Services.
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College of Social Work Office of Research and Public Service.
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Tennessee Department of Human Services—Adult Protective Services

The Adult Protective Services (APS) program is the only statewide service in Tennessee mandated to intervene when adults with mental and/or physical impairments are in danger because they are unable to provide for their own needs, or others who are responsible for their care, abuse, neglect or exploit them. APS staff assess the need for protective services and provide services to reduce the identified risk to the adult.

Adults who may receive protective services are eighteen years of age or older who, because of mental or physical dysfunctioning or advanced age, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous or abusive situations without assistance from others, and they have no responsibly able person to depend upon for assistance, and they may be in need of protective services. [Adult Protection Act T.C.A. 71-6-102(2)]

Reports to APS are mandated by state law when “any person” has reasonable cause to suspect abuse, neglect, or financial exploitation. To report abuse, neglect, or financial exploitation of a vulnerable adult in Tennessee, contact the Adult Protective Services intake office at 1-888-277-8366. (See contact information on the back of this Field Guide.)



Tennessee Bureau of Investigation—Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit (MFCU) is the state law enforcement agency that has the authority to investigate and refer for prosecution

- fraudulent health care providers, and
- abusers of patients in Medicaid/TennCare—receiving facilities (such as nursing homes, hospitals, mental health, and mental retardation facilities) and board and care facilities.

The TBI has Special Agents located around the state to investigate potential criminal cases that may be referred to the appropriate District Attorney General or United States Attorney for prosecution.

The types of abuse the MFCU investigates are

- physical abuse
- sexual abuse
- financial abuse
- emotional abuse
- neglect

If you suspect that a resident of a nursing home, mental health, or mental retardation facility or board and care facility has suffered abuse or neglect, please contact the MFCU at 1-800-433-5454.

Protecting Tennessee’s Vulnerable Adults: A Field Guide

This Field Guide provides information about

- *criminal laws,*
- *civil actions,*
- *regulatory provisions, and*
- *protection measures*

in the United States and Tennessee Codes that may be critically important to adult victims of abuse (including domestic abuse in later life) and professionals who work with them.

The Field Guide is designed for ease of use as a ready reference for investigators, attorneys, courts, law enforcement officers, Adult Protective Services counselors and other “first response” personnel who deal frequently with abuse, neglect, and financial exploitation of elderly and vulnerable adults in Tennessee.

The design of this Field Guide was modeled after *Elder Abuse—Potential Legal Remedies*, published by the Wisconsin Coalition Against Domestic Violence.

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*Jane E. Young, Editor
Program Coordinator
Adult Protective Services*

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How to Use This Guide

Pages 1–36 contain listings of Tennessee statutes for the topics shown in the Table of Contents. These listings separate the statutes into **criminal laws**, **civil actions**, and a category labeled **protection**, which contains remedies, protective measures, and other forms of relief for elderly and vulnerable adults. The **Key Elements of Selected Statutes** can then be found beginning on page 36. The statutes are listed in numerical order as they appear in the United States and Tennessee Codes. Space limitations prevent listing the elements of the numerous criminal statutes. Direct reference to Title 39 of the Tennessee Code is recommended.

PHYSICAL ABUSE

The infliction of physical pain, injury...or unreasonable confinement of an adult who is unable to protect him/herself.

CRIMINAL ACTIONS

ABUSE

- 1. Willful Abuse of Impaired Adult Prohibited**
Class A Misdemeanor Sec. 71-6-117

- 2. Willful Physical Abuse and Gross Neglect of an Impaired Adult Prohibited and Punished as Aggravated Assault**
Class C or D Felony Sec. 71-6-119

- 3. **Duty to Report** Sec. 71-6-103(b)(1)
- 4. **Violation of Duty to Report** Sec. 71-6-110
- 5. **Immunity from Liability** Sec. 71-6-105
- 6. **Death Doesn't Relieve
Duty to Report** Sec. 71-6-103(b)(1)

ASSAULTIVE OFFENSES

—See Title 39 Tennessee Code for Key Elements

- 1. **Assault** Sec. 39-13-101
- 2. **Aggravated Assault** Sec. 39-13-102
- 3. **Reckless Endangerment** Sec. 39-13-103
- 4. **Physical Injury to Victim** Sec. 39-13-105
- 5. **Vehicular Assault** Sec. 39-13-106
- 6. **Criminal Exposure to HIV** Sec. 39-13-109
- 7. **Female Genital Mutilation** Sec. 39-13-110

CRIMINAL HOMICIDE

—See Title 39 Tennessee Code for Key Elements

- 1. **First Degree Murder** Sec. 39-13-202
- 2. **Second Degree Murder** Sec. 39-13-210

- | | |
|---|----------------|
| 3. Voluntary Manslaughter | Sec. 39-13-211 |
| 4. Reckless Homicide | Sec. 39-13-215 |
| 5. Criminally Negligent Homicide | Sec. 39-13-212 |
| 6. Vehicular Homicide | Sec. 39-13-213 |
| 7. Aggravated Vehicular Homicide | Sec. 39-13-218 |
| 8. Assisted Suicide | Sec. 39-13-216 |

FELONY ATTEMPT

- | | |
|---|----------------|
| 1. Injury Suffered in Felony Attempt—
No Damages | Sec. 29-34-201 |
|---|----------------|

CIVIL ACTIONS

ADULT PROTECTIVE SERVICES

1. **Temporary Restraining Orders and Injunctions** Sec. 71-6-104(a)
2. **Enjoin from Providing Care** Sec. 71-6-104(b)
3. **Medical or Mental Examinations** Sec. 71-6-103(l)
4. **Provision of Protective Services without Adult's Consent—Lack of Capacity and Imminent Danger** Sec. 71-6-107(a)
5. **Capacity to Consent—Defined** Sec. 71-6-102(4)
6. **Imminent Danger—Defined** Sec. 71-6-102(9)
7. **Lack of Capacity without Imminent Danger** Sec. 71-6-107(b)
8. **Right to Recover Compensatory Damages for Abuse** Sec. 71-6-120
9. **Rescission of Fraudulent or Erroneous Settlements** Sec. 29-34-102

DOMESTIC ABUSE

1. **Domestic Abuse Defined** Sec. 36-3-601(1)
2. **Protective Orders to Protect Petitioner from Domestic Abuse** Secs. 36-3-602 to 612, 617

PROTECTION

ADULT PROTECTIVE SERVICES

1. Access to Records Sec. 71-6-103(j)

DOMESTIC ABUSE

1. Leaving Residence or Use of Necessary Force—
Right to Relief Unaffected Sec. 36-3-613
2. Notification to Victim That Family or Household Member Arrested for Domestic Abuse May Be Released on Bond Sec. 36-3-615
3. Preferred Response Defined Sec. 36-3-601(7)
4. Factors to Consider to Determine Primary Aggressor Sec. 36-3-619(c)
5. Officer Response to Domestic Abuse Calls—Arrest Sec. 36-3-619(a)
6. Notice of Legal Rights to Domestic Abuse Victim Sec. 36-3-619(g)
7. Seizure of Weapons Sec. 36-3-620
8. No Health Insurance Discrimination Against Abused Sec. 56-8-303

CONFINEMENT

Holding another person against his or her will and/or engaging in behavior that results in a person not feeling able to move about freely.

CRIMINAL ACTIONS

—See Title 39 Tennessee Code for Key Elements

- | | |
|---|------------------|
| 1. False Imprisonment | Sec. 39-13-302 |
| 2. Kidnapping | Sec. 39-13-303 |
| 3. Aggravated Kidnapping | Sec. 39-13-304 |
| 4. Especially Aggravated Kidnapping | Sec. 39-13-305 |
| 5. Custodial Interference | Sec. 39-13-306 |
| 6. Abuse (Mental Anguish) | Sec. 71-6-102(1) |
| 7. Willful Abuse or Neglect of Impaired Adult Prohibited
Class A Misdemeanor | Sec. 71-6-117 |
| 8. Willful Physical Abuse or Gross Neglect of an Impaired Adult Prohibited and Punished as Aggravated Assault
Class C or D Felony | Sec. 71-6-119 |

CIVIL ACTIONS

- 1. Sexual Abuse of an Adult
Who Lacks the Capacity to
Consent Can Be Grounds
for Custody by Tennessee
Department of Human Services** Sec. 71-6-107
(a)(1)(C)
- 2. Right to Recover Compensatory
Damages for Sexual Abuse** Sec. 71-6-120

PROTECTION

- 1. Sexual Offender Registration
and Monitoring System** Sec. 40-39-101
et seq.
- 2. Sexual Relations with
Service Recipient
Discharge** Sec. 33-3-903

EMOTIONAL ABUSE

Infliction of mental or emotional anguish by threat, humiliation, intimidation, or other verbal or non-verbal abusive conduct.

CRIMINAL ACTIONS

—See Title 39 Tennessee Code for Key Elements

- | | |
|---|------------------|
| 1. Unlawful Photographing—
Violation of Privacy | Sec. 39-13-605 |
| 2. Disorderly Conduct | Sec. 39-13-605 |
| 3. Harassment | Sec. 39-17-308 |
| 4. Civil Rights Intimidation | Sec. 39-17-309 |
| 5. Abuse of Corpse
Class E Felony | Sec. 39-17-314 |
| 6. Stalking
Class A Misdemeanor | Sec. 39-17-314 |
| 7. Destruction or Interference
with Utility Lines, Fixtures,
or Appliances
Class E Felony | Sec. 39-14-411 |
| 8. Mailbox Tampering | Sec. 39-14-412 |
| 9. Abuse (Mental Anguish) | Sec. 71-6-102(1) |

CIVIL ACTIONS

1. **Right to Recover Compensatory Damages for Neglect** Sec. 71-6-120

PROTECTION

1. **Durable Power of Attorney for Health Care** Sec. 34-6-201
2. **Rented Premises Unfit for Habitation** Secs. 68-11-101 to 107

DENIAL OF ACCESS

Refusing to allow entry of an adult protective services counselor and/or law enforcement officer into a home or facility in which assistance is needed.

INVESTIGATIVE AUTHORITY— TENNESSEE ADULT PROTECTION ACT

1. **Entry to Health Care Facilities and Private Premises** Secs. 71-6-103 (e)(f)
2. **Access Denied—Search Warrant** Sec. 71-6-103(f)

PROTECTION OF PROPERTY

CRIMINAL ACTIONS

—See Title 39 of the Tennessee Code for Key Elements

ROBBERY

- | | |
|----------------------------------|----------------|
| 1. Robbery | Sec. 39-13-401 |
| 2. Aggravated Robbery | Sec. 39-13-402 |
| 3. Especially Aggravated Robbery | Sec. 39-13-403 |
| 4. Car Jacking | Sec. 39-13-404 |

THEFT

- | | |
|---|----------------|
| 1. Theft of Property | Sec. 39-14-103 |
| 2. Theft of Services | Sec. 39-14-103 |
| 3. Unauthorized Use of Automobiles
and Other Vehicles—Joy Riding | Sec. 39-14-106 |
| 4. Theft of Rental Property | Sec. 39-14-108 |
| 5. Extortion | Sec. 39-14-112 |
| 6. Forgery | Sec. 39-14-114 |

ARSON

- | | |
|---|----------------|
| 1. Arson | Sec. 39-14-301 |
| 2. Aggravated Arson | Sec. 39-14-302 |
| 3. Setting Fire to Personal Property
or Land
Class E Felony | Sec. 39-14-303 |
| 4. Reckless Burning
Class A Misdemeanor | Sec. 39-14-304 |

BURGLARY

- | | |
|--|----------------|
| 1. Burglary | Sec. 39-14-301 |
| 2. Aggravated Burglary | Sec. 39-14-403 |
| 3. Especially Aggravated Burglary | Sec. 39-14-404 |
| 4. Criminal Trespass | Sec. 39-14-405 |
| 5. Aggravated Criminal Trespass | Sec. 39-14-406 |
| 6. Trespass by Motor Vehicle | Sec. 39-14-407 |
| 7. Vandalism | Sec. 39-14-408 |

CIVIL ACTIONS

- | | |
|---|------------------------|
| 1. Unlawful Entry Prohibited | Sec. 29-18-101 |
| 2. Forcible Entry and
Detainer Defined | Sec. 29-18-102 |
| 3. Forcible Detainer | Sec. 29-18-103 |
| 4. Unlawful Detainer Defined | Sec. 29-18-104 |
| 5. Action to Recover
Personal Property | Sec. 29-30-101 |
| 6. Right of Vulnerable Adult
to Recover Compensatory
Damages for Theft | Sec. 71-6-120 |
| 7. Abatement of Nuisance | Secs. 29-3-101,
102 |
| 8. Unlawfully Engaging
in Business or Profession | Sec. 29-3-112 |
| 9. Alternative Actions | Sec. 29-18-106 |
| 10. Detinue | Sec. 29-30-201 |

FINANCIAL EXPLOITATION

Misappropriation, misuse, or blocking access to property, possessions, or other assets of the rightful owner.

Note: The Adult Protective Services staff of the Tennessee Department of Human Services is authorized by state law to investigate **only** those cases involving the misappropriation by a caretaker of an impaired adult's **government benefits**.

CRIMINAL ACTIONS

—See Title 39 of the Tennessee Code for Key Elements

1. **Criminal Simulation** Sec. 39-14-115
2. **Fraud in Insolvency** Sec. 39-14-117
3. **Illegal Possession or Fraudulent Use of Credit or Debit Card** Sec. 39-14-118
4. **Falsely Reporting Credit/Debit Card Lost, Stolen, or Mislaid** Sec. 39-14-119
5. **Issuing False Financial Statement** Sec. 39-14-120
6. **Worthless Checks** Sec. 39-14-121
7. **Deceptive Business Practices** Sec. 39-14-127

- 8. **Creating False Impression of Death** Sec. 39-14-128
- 9. **Destruction of Valuable Papers with Intent to Defraud** Sec. 39-14-130
- 10. **Destruction or Concealment of Will** Sec. 39-14-131
- 11. **Misrepresentation of Mileage on Used Motor Vehicle Odometer** Sec. 39-14-132
- 12. **False or Fraudulent Insurance Claims** Sec. 39-14-133
- 13. **Misappropriation of Government Benefits by a Caretaker** Sec. 71-6-102(8)
 - a. **Exploitation Defined in Adult Protection Act**
 - Improper use of funds paid by a governmental agency
 - to an (impaired) adult or
 - to a caretaker of (impaired) adult
 - b. **Willful Exploitation Prohibited**
 - Class A Misdemeanor Sec. 71-6-117
 - c. **Violation of Duty to Report**
 - Class A Misdemeanor Sec. 71-6-110

CIVIL ACTIONS

1. **Right to Recover Compensatory Damages for Exploitation** Sec. 71-6-120

2. **Exemption Rights and Motion to Quash Garnishment** Secs. 26-2-103 to 115 and 20-2-401 to 410

3. **Attachment** Sec. 29-6-101

4. **Consumer Protection Act** Secs. 47-18-101 to 121

Note: The Consumer Protection Act contains a statute of limitations of one year from when the aggrieved party discovered or should have discovered the illegal act or practice that occurred. The outside limitation for suits under that act is four years.

- a. **Buyer's Clubs** Secs. 47-18-501 to 509

- b. **Rental Purchase Agreements** Secs. 47-18-601 to 614

- c. **Home Solicitation Sales** Secs. 47-18-701 to 707

- d. **Equal Consumer Credit** Secs. 47-18-801 to 804

- e. **Unsolicited Merchandise** Secs. 47-18-901 to 902

- f. **Credit Services Businesses** Secs. 47-18-1001 to 1011
 - g. **Consumer Protection Warranty Extension** Secs. 47-18-1401 to 1404
 - h. **Consumer Telemarketing Protection** Secs. 47-18-1501 to 1510
 - i. **Unsolicited Credit Cards and Unauthorized Use** Secs. 47-22-101 to 104
 - j. **Termination of Credit Cards** Secs. 47-22-201 to 204
- 5. **Home Improvement Contractors Licensing Act** Secs. 62-37-101 to 139
 - 6. **Truth in Lending— Loan Recession** 15 U.S.C. Sec. 1635; 12 C.F.R. Sec. 226.23
 - 7. **Fair Debt Collection Practices Act** 15 U.S.C. Secs. 1692 to 1692o

*The following paragraphs 8-14 and most of the paragraphs under **Real Estate Issues** set forth common law principles that can protect elderly persons from financial exploitation. For case law references and other explanatory material, contact the Legal Aid Society of Middle Tennessee and the Cumberland, 300 Deaderick St., Nashville, TN 37201, (615) 244-6610, FAX (615) 244-4920. Financial Abuse of the Elderly: An Advocates Guide is published by the Tennessee Commission on Aging and Disability and Tennessee Association of Legal Services.*

8. Fraudulent Misrepresentation

Even where an elderly plaintiff presents proof problems in establishing the elements of fraud, strong circumstantial evidence can be relied upon.

9. Constructive Fraud

This theory requires a less rigorous standard of proof and has been described as a “virtual fraud” arising from a confidential relationship between the parties.

10. Conversion

This theory simply requires a showing of the appropriation of a thing to the party’s own use and benefit, by the exercise of dominion over it, in defiance of a plaintiff’s right. The defendant’s intent is immaterial.

11. Unjust Enrichment

This theory requires no showing as to the defendant’s intent, but simply an inappropriate benefit to the defendant from the plaintiff’s assets, which can be helpful where the misappropriated funds have been received by a third party.

12. The “Gift” Defense

Often the defendant claims the elderly plaintiff intended a gift of the misappropriated assets; the courts have held that if a confidential relationship can be shown, the defendant has the burden of showing that the plaintiff was competent and had independent competent advice, and that the transfer was not unfair.

Furthermore, the defendant in such a confidential relationship must disprove undue influence by clear and convincing evidence.

13. Measure of Damages

In addition to compensatory damages for misappropriated funds or assets, the elderly plaintiff should pursue (1) **pre-judgment interest** where appropriate as authorized by Sec. 47-14-123, (2) punitive damages, and (3) attorney's fees where the defendant's actions have required the plaintiff to litigate with a third party to protect his/her interests.

14. Social Security Representative Payees

42. U.S.C. Sec. 405(j)(5)

Where Social Security benefits or SSI benefits have been misappropriated by a payee appointed by the Social Security Administration, the senior can request restitution from that agency if it was negligent in overseeing the payee.

REAL ESTATE ISSUES

1. Lis Pendens

Sec. 20-3-201

To insure that a defendant does not convey or encumber real estate while a suit is pending, the senior's attorney should file a lis pendens with the register of deeds to place third parties on notice of the suit.

2. Mental Capacity

Conveyances of property may be avoidable based on the senior's lack of capacity to understand the transaction.

3. Mistake

If the senior's actual intent in executing an instrument differs from the terms of the deed, the conveyance may be set aside (or reformed) on a "mistake" theory.

4. Third Party Purchaser

Where a defendant has sold or encumbered the senior's property to a third party, the plaintiff can challenge the transaction if the senior was incompetent; alternatively, if the senior has resided in the property, such possession can defeat the third party's claim to be an innocent purchaser.

PROTECTION

1. **Durable Powers of Attorney** Sec. 34-6-102

2. **Breach of Promise or
Contract of Marriage when
the Defendant is over 60** Sec. 36-3-404

3. **Insurance**
 - a. **Unfair Competition
and Deceptive Acts** Sec. 56-8-101

 - b. **Discriminatory Acts
Prohibited** Sec. 56-8-101

DURABLE POWERS OF ATTORNEY

A document executed by one person giving another the right and authority to act for him/her in specific situations. It either commences or continues when grantor becomes disabled or incapacitated. It is automatically terminated on the death of the grantor.

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| 1. Definition | Sec. 34-6-102 |
| 2. Bond | Sec. 34-6-106 |
| 3. Restrictions of the Authority of Attorneys-in-Fact | Secs. 34-6-108 to 109 |

DURABLE POWERS OF ATTORNEY FOR HEALTH CARE

A durable power of attorney for health care is a durable power of attorney to the extent that it authorizes an attorney-in-fact to make health care decisions for the principal.

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| 1. Definition | Sec. 34-6-201 |
| 2. Requirements | Sec. 34-6-203 |
| 3. Powers/Limitations of Attorney-in-Fact | Sec. 34-6-204 |

4. Access to Medical Records and Information	Sec. 34-6-206
5. Revocation	Sec. 34-6-207
6. Principal's Objection to Withholding or Withdrawal of Care	Sec. 34-6-210
7. Required Execution of Durable Power of Attorney for Health Care Prohibited	Sec. 34-6-211
8. Life Insurance Unaffected	Sec. 34-6-213
9. Transfer of Patient	Sec. 34-6-214
10. Power of Attorney Executed Outside of Tennessee	Sec. 34-6-215

NURSING HOMES AND OTHER HEALTH CARE FACILITIES

Includes hospital, recuperation centers, homes for the aged, home care organizations, residential hospices and other facilities operated for the provision of treatment services.

3. Definition of Home Care Organization	Sec. 68-11-228
4. Solicitation of Patients of Other Home Care Organizations Prohibited	Sec. 68-11-229
5. Penalties for Solicitation	Sec. 68-11-231
6. Medical Records—Hospitals	
a. Hospital’s Duty to Keep Records	Sec. 68-11-303
b. Access to Medical Records	Sec. 68-11-304
c. Violation of Access to Medical Records Provisions Class C Misdemeanor	Sec. 68-11-311
7. Patient Transfers	
a. Legislative Intent	Sec. 68-11-701
b. Standards and Policies	Sec. 68-11-702
8. Notice and Corrections of Violation	Sec. 68-11-703
9. Suspension or Revocation of License	Sec. 68-11-704
10. Mentally Ill and Mentally Retarded Persons	Sec. 68-11-705
11. Nursing Home Administrators’ Qualifications for Licensure	Secs. 63-16-101 to 113

PROTECTION

- 1. Housing or Domiciliary Care for Aged Persons—Daily Attendance Upon and Care for Tenants** Sec. 13-20-116
- 2. Trust Fund** Secs. 68-11-827 to 828
- 3. Right to Action to Recover Moneys Paid Out of Trust Fund** Sec. 68-11-829
- 4. Minimum Rights of Nursing Home Residents/Patients** Sec. 68-11-901
- 5. Restriction of Minimum Rights** Sec. 68-11-902
- 6. Retaliation or Discrimination** Sec. 68-11-903
- 7. Confidentiality of Complainant Identity** Sec. 68-11-904
- 8. Storage and Protection of Valuables** Sec. 68-11-905
- 9. Deposit of Residents' Funds** Sec. 68-11-906
- 10. Involuntary Transfer or Discharge to Location Outside of the Nursing Home** Sec. 68-11-907
- 11. Refusal of Access** Sec. 68-11-908

- 12. Required Written Disclosures by Nursing Home to Resident, Resident's Authorized Representative, and Resident's Next of Kin** Sec. 68-11-910
- 13. Abuse Registry** Sec. 68-11-1001
 - a. Access to Abuse Registry** Sec. 68-11-1003
- 14. Long-Term Care Ombudsman** Sec. 71-2-111
- 15. Health Commissioner Required to Report Confirmed Abuse, Neglect, or Exploitation to TBI** Sec. 71-6-103(d)
- 16. Criminal Background Checks for Direct Care Staff** Sec. 68-11-256

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|---|-------------------------|
| 8. Duty to Report | Sec. 71-6-103
(b)(1) |
| a. Any Person | Sec. 71-6-103(b) |
| b. Approved Procedure | Sec. 71-6-103(b) |
| c. Report to DHS | Sec. 71-6-103(b) |
| d. Immunity from Liability/
Protection from Job
Discrimination | Sec. 71-6-105 |
| e. Confidential
Communications | Sec. 71-6-106 |
| 9. Violation of Duty to Report
Class A Misdemeanor | Sec. 71-6-110 |
| 10. Trespassing on Hospital or
Developmental Center Grounds
Class C Misdemeanor | Sec. 33-2-108 |
| 11. Operating Facility without
a License
Class B Misdemeanor | Sec. 33-2-405 |
| 12. Provision of Services
without a License
Class B Misdemeanor | Sec. 33-2-417 |
| 13. Private Grounds—Trespassing
Class C Misdemeanor | Sec. 33-2-806 |
| 14. Certificates of Need for
Commitment—Person Not Seen
Class E Felony | Sec. 33-4-108 |

CIVIL ACTIONS

1. **Judicial Procedures for Commitment** Secs. 33-3-602 to 620
2. **Place of Detention** Sec. 33-3-616
3. **Requirements for Commitment** Sec. 33-3-617
4. **Appointment of Conservator for Service Recipient** Sec. 33-4-110
5. **Injunctive Relief—Person Enjoined from Providing Care** Sec. 71-6-104
6. **Prohibition to Commit under Adult Protective Services Statute** Sec. 71-6-108
7. **Who May File a Complaint for Commitment** Sec. 33-6-504
8. **Enjoining Operation without a License** Sec. 33-2-412
9. **Leaving Facility without Consent** Sec. 33-2-412

PROTECTION

ABUSE, NEGLECT, AND EXPLOITATION—GENERAL PROVISIONS

1. **Access to Mental and Physical Health Records** Sec. 71-6-103(j)

- 2. **Cooperation by Other Departments** Sec. 71-6-113(a)
- 3. **Priority Placement for Specialized Care or Treatment Given to APS Clients** Sec. 71-6-113(b)
- 4. **Any Employee Having Sexual Relations with Service Recipient Subject to Discharge** Sec. 33-3-903

SERVICES TO PERSONS WITH DEVELOPMENTAL DISABILITIES

- 1. **Families Support** Sec. 33-5-205
- 2. **Application Process of Voluntary Admission** Sec. 33-5-106 et seq.
 - a. **Primary Focus Includes Adults Living with Families and in Unsupported Community** Sec. 33-5-203
 - b. **Scope of Family Support Services** Sec. 33-5-205
 - c. **Coordination of Services** Sec. 33-5-206
 - d. **Residential Housing Loans for Handicapped Persons** Secs. 13-23-201, 202
 - e. **Services for Residents** Sec. 13-23-203

- f. **Meaning of Mentally Handicapped for Zoning Classifications** Sec. 13-24-101
- g. **Single Family Residences** Sec. 13-24-102
- h. **Right to Intervention**
Termination of Contract Sec. 33-2-203
- i. **Grounds for Suspension/Revocation of License** Sec. 33-2-407
- j. **Investigation of Reported Abuse in Operation of Facility** Sec. 33-2-416
- k. **Residential Facility Licensed** Sec. 33-2-418

PERSONS WITH MENTAL ILLNESS

- 1. **Services to Persons with Severe Impairments** Sec. 33-6-201
 - a. **Voluntary Hospitalization and Release** Sec. 33-6-201
 - b. **Emergency Involuntary Admission to Inpatient Treatment** Sec. 33-6-Part 4
 - c. **Detention without Warrant Authorized** Sec. 33-6-402

- d. **Notice of Admission to Guardian or Family** Sec. 33-4-103
 - e. **Standards for Commitment to Involuntary Care and Treatment** Sec. 33-6-Part 5
 - f. **Substantial Likelihood of Serious Harm Defined** Sec. 33-6-501
 - g. **Discharge Criteria** Secs. 33-6-705 to 706
 - h. **Discharge Procedure** Sec. 33-6-708
 - i. **Transportation of Patient to Hospital— Temporary Detention** Sec. 33-6-902
 - j. **Confidentiality of Mental Health Records** Secs. 33-3-103 to 108
 - k. **Professional Not Related or Have Financial Interest** Sec. 33-3-125
- 2. Mandatory Outpatient Treatment for Person with Mental Illness**
- a. **Discharge of Involuntarily Committed Subject to Mandatory Outpatient Treatment** Secs. 33-6-602 to 608
 - b. **Noncompliance with Outpatient Treatment Program; Hearing; Recommitment** Sec. 33-6-609 et seq.

- c. **Custody of Noncomplying Service Recipients; Examination of Patients Release or Recommitment** Secs. 33-6-610 to 617
- d. **Jurisdiction over Rehospitalization for Noncompliance** Sec. 33-6-616
- e. **Rights Regarding Outpatient Treatment Plans** Sec. 33-6-618
- f. **Termination of Outpatient Treatment—Procedure** Sec. 33-6-620
- g. **Reinstatement of MOT** Sec. 33-6-621

GENERAL PROVISIONS

- 1. **Rights of Patients or Residents** Secs. 33-3-101 and 102
- 2. **Right to Liberty** Sec. 33-3-101
- 3. **Restraints and Isolation** Sec. 33-3-120
- 4. **Transfer of Service Recipients between Facilities** Secs. 33-3-301 to 303
- 5. **Judicial Procedures for Commitment** Secs. 33-3-602 to 620
- 6. **Determination of Medical Condition of Person Seeking Release** Sec. 33-3 Part 8

7. Designation of Limited Guardians for Service Recipient	Secs. 33-4-201 to 209
8. Power to Assume Temporary Control of Facility in Emergency	Sec. 33-1-310
9. Proceeding for Transfers	Secs. 33-3-701 to 710
10. Written Statement of Release Procedures and Other Rights	Sec. 33-4-105
11. Initial and Subsequent Exams	Secs. 33-6-702 to 704

CONSERVATORSHIPS

1. Public Guardianship for the Elderly	Secs. 34-7-101 to 105
2. Conservatorship Generally	Secs. 34-13-101 to 109
3. Petition for Appointment of a Conservator	Sec. 34-13-102
4. Rights of Person for Whom a Conservator is Appointed	Sec. 34-13-106
5. Letter of Conservatorship	Sec. 34-11-04

- 6. **Least Restrictive Alternative** Sec. 34-11-127
- 7. **Court Order Appointing
Conservator** Sec. 34-13-107
- 8. **Discharge of Conservator,
Modification of Duties,
Termination** Sec. 34-13-108
- 9. **Prerequisite for Appointment
of Fiduciary** Sec. 34-22-126

GENERAL PROTECTIVE PROVISIONS

- 1. **Employment of Private
Counsel by Crime Victims** Sec. 8-7-401
- 2. **Criminal Injuries Compensation—
Offenses to Which
Compensation Applies** Sec. 29-13-104
- 3. **Investigations into Allegations
of Abuse/Neglect in
State Institutions** Sec. 71-6-103k
- 4. **Cooperation by Law
Enforcement Officials** Sec. 71-6-115
- 5. **Unlawful to Disclose Reporter
Class B Misdemeanor** Sec. 71-6-118

The following selected United States and Tennessee Code sections are the primary statutes for use in advocacy for vulnerable adults. The statutes are listed in numerical order with the United States Codes listed first. Most of the citations in pages 1-36 are summarized here. Space limitations prevent a digest of the elements of the numerous criminal statutes. For such laws, you should directly consult Title 39 of the Tennessee Code.

KEY ELEMENTS OF SELECTED STATUTES

15 U.S.C. Secs 1635; 12 C.F.R Sec. 226.23

Truth in Lending—Loan Recession

Home Equity Loan Transactions

- Can be cancelled within three business days when the loan papers are signed, including those made to finance home improvements.
- The right to cancel extends to three years if certain things are not done correctly by the financier.

15 U.S.C. Secs. 1692 to 1692o

Fair Debt Collection Practice Act

Regarding Coercive and Intimidating Tactics of Debt Collectors

- The right to stop a debt collection from all contacts by sending a written demand.

- The right to sue a debt collector who treats them abusively or who does not stop contact upon written demand.
- The right not to be sued in a consumer transaction in a county distant from their residence.

**8-7-401 Employment of Private Counsel by
 Crime Victims**

- A victim of crime or family members of a crime victim may employ private legal counsel to act as co-counsel with the District Attorney General in trying cases.

**13-20-116 Housing or Domiciliary Care for Aged
 Persons**

- Daily attendance upon and care for tenants—Any state agency or political subdivision of the state that operates any program providing housing or domiciliary care for aged persons (65 years or older) in a building over three (3) stories shall make arrangements, when funds are available for that purpose, to provide someone each day to contact each resident and check on his/her well-being
 - by phone
 - in person
 - or in any other effective manner
- In the event that the resident requests and is in apparent need of medical or social assistance, the agency will promptly contact the appropriate agencies and request such assistance for the resident.
- If the public funds are not made available to defray the cost of such arrangements, the agency shall adopt and implement a program to organize, develop,

and utilize private or organizational resources or any other public agency resources that may be available to carry out the arrangements, either on a volunteer or other feasible basis.

13-23-201, 202 Residential Housing Loans for Handicapped Persons

- Tennessee Housing Development Authority is authorized to make construction and mortgage loans for the development of residential housing for the elderly or developmentally or physically handicapped.

13-23-203 Services for Residents

- All affected agencies of state government are authorized to enter into interagency agreements with the Tennessee Housing Development Authority to provide educational, vocational, therapeutic, medical, or other services on behalf of residents of housing developments financed under Sec. 13-23-202.

13-24-101 Purpose—Meaning of Mentally Handicapped for Zoning Classifications

- Purpose is to remove any zoning obstacles that prevent mentally retarded, mentally handicapped, or physically handicapped persons from living in normal residential surroundings.
- “Mentally handicapped” does not include persons who are mentally ill and, because of such mental illness, pose a likelihood of serious harm, or who have been convicted of serious criminal conduct related to mental illness.

13-24-102 Single Family Residences

- Homes in which mentally retarded, mentally handicapped or physically handicapped persons reside are classified as single family residences.
- For the purposes of zoning laws, the classification “single family residence” includes any home in which 8 or fewer unrelated mentally retarded, mentally handicapped, or physically handicapped persons reside, and may include three (3) additional people acting as house parents or guardians.

26-2-103 to 115 and 20-2-401 to 410

Exemption Rights and Motion to Quash Garnishment

The property that vulnerable adults most often lose to judgement creditors are automobiles and funds in bank accounts they have:

- The right to file an exemption affidavit to keep their equity in their automobile away from a judgement creditor before the creditor takes the legal step to seize and sell the car.
- If exempt funds (Social Security, SSI and/or VA) are in the account, the account can be exempted through affidavit in order to keep it from being garnished.
- If it has already been garnished, a motion can be filed to quash the garnishment and get the money back.

29-3-101, 102 Abatement of Nuisance

- Courts have jurisdiction to abate public nuisances.
- Public nuisance is (1) that which is declared a nuisance by other statutes, (2) any place where the following are carried on or permitted: lewdness; assignation; prostitution; unlawful sale of alcohol or

drugs; unlawful gambling; sale, exhibition, or possession of obscene or pornographic material with intent to sell, deliver, or distribute it; quarreling, drunkenness, fighting or breaches of the peace; and personal property, contents, furniture, fixtures, equipment, and stock used in or in connection with the conducting or maintaining of such a place for such purpose.

**29-3-112 Unlawfully Engaging in Business
or Profession**

- The carrying on, conducting, or practice of any profession, business, or occupation that is prohibited by law—or without a valid license—is a public nuisance and may be abated. Such abatement may be accomplished by injunction.

29-6-101 Attachment

- Under certain circumstance, any person with a debt or demand due either at the beginning of an action or after an action has been brought may sue out an attachment against the property of a debtor or a defendant.

**29-13-104 Criminal Injuries Compensation—
Offenses to Which Compensation
Applies**

Personal injuries or death of victim that resulted from

- crimes under state or federal law
- attempt to prevent or prevention of crime or attempted crime
- apprehending an individual who committed a felony in the presence of the victim

- any of the foregoing acts committed in another state if the victim was a resident of Tennessee at the time

29-18-101 Unlawful Entry Prohibited

No person shall

- enter upon any lands, tenements, or other possessions and
- detain or hold them,
- unless the entry is legal and made in a peaceable manner.

29-18-102 Forcible Entry and Detainer Defined

Where a person uses

- threats, force, weapons, or any violence whatsoever
- to enter, detain, and hold
- the land, tenements, or possessions of another.

29-18-103 Forcible Detainer

When a person

- enters lands, tenements, or possessions
- lawfully or peaceably and
- holds the land unlawfully and by any means as described in Sec. 29-18-102.

29-18-104 Unlawful Detainer Defined

When a person

- enters by contract as a tenant, assignee of a tenant, personal representative of a tenant, as a subtenant, or by collusion with a tenant and then

- willfully and without force holds over possession from the landlord or the assignee.

29-18-106 Alternative Actions

- Where the action is to recover real property, ejectment, forcible or unlawful entry, or detainer may be brought.

29-30-101 Action to Recover Personal Property

- Where goods, chattels, or other items of tangible personal property are in possession of another,
- the person entitled to possession may recover the property by filing an action to recover personal property.

29-30-201 Detinue

- If a party seeks to recover only possession of property, the party may bring detinue.

29-34-102 Rescission of Fraudulent or Erroneous Settlements

- Where a compromise settlement of a claim for damages resulting from personal injuries has been brought about by fraud or mistake, the settlement may be rescinded without return of the consideration to the party released.
- The consideration paid shall be a credit to apply in satisfaction of any judgment procured to the account of the personal injuries.

**29-34-201 Injury Suffered in Felony Attempt—
No Damages**

- Recovery of actual or punitive damages is barred for injuries inflicted accidentally or intentionally by the owner, lawful occupier of tenant of property during an attempt to commit a felony on the property.

**33-1-310 Power to Assume Temporary Control
of Facility in the Event of Emergency**

- If emergency substantially impairs the agency's capacity to provide services and
- jeopardizes the health or safety of service recipients; then,
- the department may assume temporary operating responsibility to assure continuity of care, health, and safety of service recipients.

**33-2-108 Trespassing on Hospital or
Developmental Center Grounds—
Penalty
Class C Misdemeanor**

- The enclosed premises and land adjoining and belonging to, or used by and for any state hospital or developmental center, are private grounds.
- Any person who enters without authority or permission is guilty of a Class C Misdemeanor.

**33-2-203 Right to Intervention—Termination
of Contract**

- A contract for management of a facility under Title 33 shall provide that the department has the right to enter the facility immediately and intervene in the

operation when it has good cause to believe the action is necessary to protect the health or safety of any patient, and to terminate the contract for cause on 30 days notice.

**33-2-402 Definitions that Apply to Clients of
Facilities Licensed by MH/DD**

- Abuse defined as knowing infliction of injury, unreasonable confinement intimidation, or punishment that results in physical harm, pain, or mental anguish.
- Misappropriation of property is the deliberate misplacement, exploitation or wrongful, temporary, or permanent use of belongings without a person's consent.
- Neglect is failure to provide goods or services that are necessary to avoid physical harm, mental anguish, or mental illness that will result in injury or probable risk of serious harm.

**33-2-405 Operating Facility without a
License—Penalty
Class B Misdemeanor**

- It is unlawful for a person, partnership, association, or corporation to own or operate a service or facility that provides mental health, developmental disability, or personal support service without having obtained a license.
- A violation of this requirement is a Class B Misdemeanor.
- Each day of operation without a license constitutes a separate offense.

**33-2-407 Grounds for Suspension or
Revocation of License**

- Violation of rules and regulations;
- Permitting, aiding, or abetting the commission of any illegal act during a licensed service or in a licensed facility; or
- Conduct or practice found by the department to be detrimental to the welfare of the service recipients of a licensed service or facility.
- Abuse, misappropriation of property, or neglect as defined in 33-2-402 are grounds for suspension or revocation of a license.

33-2-412 Enjoining Operation without License

- The department may enjoin any person, partnership, association, or corporation from establishing, conducting, managing, or operating any service or facility providing mental health, developmental disability, or personal support services without having obtained a license or while its licensed has been suspended or revoked.

**33-2-416 Investigation of Reported Abuses in
Operation of Facility**

- The department shall investigate reports of serious abuse, dereliction, or deficiency in the operation of a licensed service or facility.
- The commissioner shall suspend or revoke the license of any service or facility if serious abuse, dereliction, or deficiency is found and not corrected in a reasonable time period.

33-2-417 **Provision of Services without a License—Penalty**
Class B Misdemeanor

- If the commissioner finds that a service or facility is providing mental health, developmental disability, or personal support services without a license, the commissioner may, without prior notice, order the service or facility immediately to cease and desist from providing mental health, development disability, or personal support services.
- The order must be (1) in the public interest; (2) necessary for protection of the health, safety, or welfare of the service recipients of the service or facility; and (3) consistent with this law.
- It is a Class B Misdemeanor to violate a cease and desist order.

33-2-418 **Residential Facilities**

- Any residential facility that houses persons with developmental disabilities and is required by law to be licensed by the department shall not receive a license if the facility houses more than four (4) service recipients.

33-2-806 **Private Grounds; Trespassing—Penalty**
Class C Misdemeanor

- The enclosed premises and the adjoining land belonging to, or used by and for any of the state facilities, are private grounds.
- Any person who enters without authority or permission is guilty of a Class C Misdemeanor.

33-3-101 Right to Liberty

- No person shall be deprived of liberty on the grounds that he or she has or is believed to have
- mental illness,
- a serious emotional disturbance;
- a developmental disability; or
- is in need of service except in accordance with the provisions of Title 33.

33-3-102(b) Specific Rights Protected/Proof of Conservatorship

- No person shall make a decision for a person with mental illness, serious emotional disturbance, or developmental disability on the basis of a claim to be the service recipient’s conservator, legal guardian, guardian ad litem, or to be acting under a durable power of attorney for mental health treatment under Title 34 until the person has presented written evidence of the person’s status.

Rights of Service Recipients

civil rights	33-3-101
restraints restricted	33-3-120
notice of transfer between institutions	33-3-301
habeas corpus	33-3-801
visitors and mail	33-4-101
care and treatment	33-4-102
release procedures statement	33-4-105

33-3-103 to 108 Confidentiality of Mental Health Records

- All applicants, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, or regulated under Title 33 and directly or indirectly identifying a service recipient or former service recipient, shall be kept confidential and shall not be disclosed by any person except in compliance with this part.
- Who may consent to disclose information
- Disclosure of information without consent
- Disclosure to others
- Rules relating to disclosure of confidential information
- Sec. 33-3-108 allows access for abuse investigation; does not require consent, allows reports of suspected abuse.

33-3-120 Isolation and Restraints

- Service recipients have the right to be free from isolation and restraints, in any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff.
- A person with mental illness or serious emotional disturbance may be isolated or restrained only in emergency situations, if necessary, to assure the physical safety of the person or another person nearby or to prevent significant destruction of property. If a person imposes restraints or isolation, the person shall immediately contact a qualified mental health professional who is permitted under department rules to authorize the isolation or restraint.
- A person with developmental disability may be restrained only as a part of an approved plan or in

emergency situations, if necessary, to ensure the physical safety of the person or another person nearby, or to prevent significant destruction of property.

- Rules are to be developed on the use of restraint and isolation, and training is required.
- Staff shall remain in the physical presence of a person in restraint and continuously observe a person for the health and well being of the person.

33-3-125 Professional Not to Be Related or to Have Financial Interest

- A certificate of need for commitment for care and treatment as a person with mental illness, serious emotional disturbance, or developmental disability that is authorized or required to be made by a physician, psychologist, or other professional under this title is not valid if:
 - It is made by such a professional who is a relative by blood, marriage, or adoption, or the legal guardian, conservator, or legal custodian of the person who is the subject of the petition, application, or certificate;
 - It is made by a professional who has an ownership interest in a private facility in which the person is to be admitted.

33-3-301 Transfer of Residential Service Recipient between Facilities

- The commissioner may authorize the transfer of a person in a facility of the department to another department facility or to a private facility.
- Transfer may occur if (1) the person can be more properly cared for and treated in a different facility and (2) transfer is in the person's best interests.

- The person shall be given a physical examination by a licensed physician and a mental assessment and evaluation before the transfer.
- Personal notice of a transfer recommendation must be given to the person, the person's spouse, parent, adult child, legal guardian, or conservator.

33-3-602 Judicial Procedures for Commitment

Petitions for commitment must be sworn and show that respondent needs involuntary care and treatment, and include

- that professionals have examined respondent within three days;
- that they believe respondent should be involuntarily committed; and
- factual foundation for these conclusions must be set forth.

33-3-606 Time for Hearing

- A commitment hearing shall be held as soon as possible, but not more than twenty days after the complaint was filed.
- The court may continue the hearing for up to ten days for good cause and may continue the hearing for as long as necessary to impanel a jury if the defendant demands a jury trial.

33-3-608 Attorney Appointment

- If the person is to be committed and does not employ an attorney, the court shall appoint one.

- The attorney shall not serve as guardian ad litem.
- If the court determines that the defendant cannot understand the nature of the proceeding and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the defendant's guardian ad litem.

33-3-610 Place of Hearing

- The hearing shall be conducted in a place where the court is usually held or in a physical setting not likely to have a harmful effect on the mental condition of the defendant.

33-3-611 Transportation to Hearing

- The facility where the defendant is located shall arrange for suitable transportation of the individual to the court where the hearing is to be held.

33-3-612 Evidence and Witnesses

- The court shall give the defendant, plaintiff, legal custodian, and all other persons to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.
- The defendant shall be present at the hearing unless he or she waives his or presence in writing.

33-3-616 Detention in Jail Prohibited

- No defendant shall be detained at a jail or other custodial facility for the detention of individuals

charged with or convicted of criminal offenses, unless the defendant is under arrest for the commission of a crime.

33-3-617 Requirements for Commitment

- Certificates required by law must be filed with the court showing the need for involuntary care and treatment AND
- the court must find on the basis of clear, unequivocal, and convincing evidence that the defendant is subject to involuntary care and treatment under the statute under which the commitment is sought.

**33-3-618 Dismissal of Proceedings—
Release of Defendant**

- If the court does not commit a person, the court shall dismiss the proceedings for involuntary care and treatment.
- If the defendant is being held involuntarily under Title 33, the court shall order the immediate release of the defendant unless he or she is in the custody of the chief officer under another law, or is being held on criminal charges.

**33-3-701 Commencement of Proceedings
for Review of Transfers; When
Hearing Should Be Held**

- Judicial proceedings for the determination of whether a person may be transferred to a facility or continues to be eligible for treatment in a facility to which that person was transferred under this title may be commenced by filing a complaint in circuit court.

- The person or a parent, legal guardian, legal custodian, conservator, spouse, or responsible adult relative of the person may initiate such proceedings.

33-3-703 When Hearing Held—Continuances

- A transfer review hearing should be held as soon as possible after a complaint is filed.
- The hearing may be continued for up to ten days at the request of the transferee's counsel.

33-3-704 Transferee's Attorney

- If the transferee, or others on his or her behalf, does not employ an attorney for the transferee, the court shall appoint an attorney to represent the transferee.
- The attorney shall not serve as guardian ad litem.
- If the court determines that the transferee cannot understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the transferee's guardian ad litem.

33-3-705 Jury Trial

- Either party may demand a jury trial on the transfer review issues.

33-3-706 Place of Transfer Review Hearings

- Where the court is usually held or
- In a physical setting not likely to have a harmful effect on the mental condition of the transferee.

**33-3-707 Transfer Review Hearings: Parties,
Evidence, Witnesses, Conduct**

- Court shall give plaintiff, transferee, and all other persons to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.
- The transferee shall be present at the hearing unless the transferee waives the right to be present in writing.

33-3-708 Informal Hearings

- Hearings shall be conducted in as informal a manner as may be consistent with orderly procedure.

33-3-710 Findings by Court or Jury

- If a court finds by a preponderance of the evidence that the transferee is subject to transfer or continues to be eligible for care and treatment in the facility to which he or she was transferred, the court shall so declare.
- Otherwise, the court shall order the person's transfer from the receiving facility to the transferring facility or shall order that person not to be transferred to the proposed facility.

**33-3-Part 8 Determination of Mental Condition
and Writ of Habeas Corpus**

- During any proceeding to determine whether to release a person seeking release by means of a writ of habeas corpus, the court shall, if the issue is raised in the responsive pleading, determine whether the person seeking release has mental illness, serious emotional disturbance, or mental retardation and is in need of treatment.

- If the court determines that the person was admitted or committed pursuant to Title 33, or was not afforded due process of law, but that the person has a mental illness, serious emotional disturbance, or developmental disability and because of the condition, poses a likelihood of serious harm to the person or others. The court may order the person returned to the hospital or developmental center for not more than 15 days. A commitment petition must be filed and disposed of within 15 days, unless the case is continued at petitioner's request; otherwise, the person shall be released.

**33-3-901 Wrongful Hospitalization/
Admission—Penalty
Class E Felony**

- Causing or conspiring with or assisting another to cause the hospitalization or admission of a person without probable cause for believing the person has a developmental disability, mental illness, or serious emotional disturbance; or
- causing the denial of any rights accorded to any person under Title 33; or
- executing a petition, application, or certificate to secure the apprehension, detention, hospitalization, admission, or restraint of any person without probable cause to believe a person has developmental disability, mental illness, or serious emotional disturbance; or
- Knowingly makes a false certificate or application under Title 33.

**33-3-902 Furnishing False Information—
Penalty
Class C Misdemeanor**

- It is prohibited to knowingly furnish false information to hospitalize or admit any person to a facility for persons with developmental disability, mental illness, or serious emotional disturbance.

**33-3-903 Sexual Relations with Service
Recipient—Penalty
Discharge**

- Any employee of a service provider who has sexual intercourse with a service recipient of the service provider other than the employee's spouse or commits sexual battery on a service recipient, knowing or having reason to believe that the service recipient is a service recipient of the service provider, is subject to discharge for that conduct.

**33-3-904 Inciting Service Recipient to Escape/
Violence, Supplying Dangerous or
Intoxicating Substance—Penalty
Class E Felony**

- Counseling, causing, influencing, aiding, or assisting or attempting to influence or assist a service recipient with mental illness, serious emotional disturbance, or developmental disability admitted under court order;
- Harboring or concealing an escaped service recipient;
- Inciting a service recipient to hurt or injure any person while the service recipient is admitted to a hospital or developmental center;
- Giving or selling to any service recipient, knowing that person is a service recipient, any firearms,

intoxicating drinks, drugs, or any other harmful articles, whether on the premises of the facility or not (constitutes a Class E Felony);

- Any person who aids in the above, or aids a prohibited attempt, is guilty as if a principal and shall be so punished.

**33-3-904(b) Receiving Gifts/Bribes from Service Recipient—Penalty
Class C Misdemeanor**

- A hospital or developmental center employee or official who receives from a person with mental illness, serious emotional disturbance, or developmental disability anything of value as a gift or for a consideration commits a Class C Misdemeanor.

**33-4-103 Notice of Admission to Guardian/
Family**

- Whenever an individual has been admitted to a hospital, developmental center, or other residential service pursuant to Secs. 33-6-103 or 33-6-104, or on the application of another person OTHER than the individual's parent, legal guardian, legal custodian, conservator, spouse or adult next of kin,
- the individual's parent, legal guardian, legal custodian, spouse, or adult next of kin shall be notified immediately, if known.

**33-4-105 Written Statement of Release
Procedures and Other Rights**

- A person admitted with mental illness, serious emotional disturbance, or developmental disability to a hospital, developmental center, or other residential

service, must be informed in writing in a simple, non-technical language of all release procedures and all other rights accorded under Title 33.

- The chief officer shall provide the written statement to the person's parent, legal guardian, legal custodian, conservator, spouse, or other nearest known adult relative.
- A statement of rights must also be signed by a service recipient acknowledging that he or she has been informed orally and in writing.
- A disinterested witness must also sign the statement of rights acknowledging the service recipient's signature.

**33-4-106 Leaving Facility without Consent—
Notification to Court**

- If a person admitted under court order leaves a hospital, developmental center, or other residential service without authority, the chief officer shall immediately notify the court regardless of the length of the person's absence.
- If the person is taken into custody, the person may be returned to the facility upon an order by the court.

**33-4-107 Commitment by Disinterested
Professional**

- If a person is proposed to be committed to a private facility under Title 33, at least one of the required certificates of need shall be from a professional not employed by the facility.

33-4-108**Certificates of Need for
Commitment—Penalty
Class E Felony**

- Shall not be considered unless based on personal observation and examination of the individual made by the professional not more than three days prior to making the certificate.
- The certificate shall set forth in detail the facts and reasoning on which the opinions and conclusions are based.
- The execution of a certificate concerning the mental condition of an individual by a professional who has not personally observed and examined the person is punishable by a Class E Felony.

33-4-110**Appointment of Conservator for
Residential Service Recipient When
Unable to Exercise Rights**

- When the chief officer of a facility believes that a residential service recipient is unable to exercise rights afforded by this title THEN
- the service recipient and his/her attorney, parent, legal custodian, spouse, or other known adult relative shall be notified immediately of this fact.
- The chief officer shall notify those persons of the intent to file for the appointment of a conservator.
- The chief officer may file for the appointment of the conservator.

33-4-201 Designation of Employee as Legal Guardian or Conservator

- The commissioner shall designate an employee of the department whom courts may appoint as legal guardian or conservator for a service recipient in a state facility if the court determines that
- no other person or legally qualified organization will serve for the person AND
- that it is in the best interest of the service recipient that the person be appointed.

33-4-202 Qualifications of Guardian, Conservator, and Trustee

- Must have sufficient background to understand the person's handicapping condition;
- may not be required to accept appointment as legal guardian, conservator, or trustee as a condition of employment unless duties are a normal part of the employee's duties and the employee can serve in good conscience and without conflict of interest;
- no employee may be appointed as legal guardian, conservator, or trustee of a person who is in the facility in which the employee works.

33-4-203 Bond

- If the total value of the assets that are turned over to an employee for a ward is less than \$5,000 exclusive of burial fund, the court shall not require a bond.

**33-4-204 Duration of Guardianship or
Conservator**

- An employee serving as a legal guardian or conservator may serve only as long as the employee continues to be an employee of the department and for up to 90 days after the ward leaves the state facility.

**33-4-205 to 207 Funds and Assets Received by
Guardian or Conservator**

- All funds received by a legal guardian or conservator shall be handled as state funds.
- All funds shall be accountable as all other state funds.
- All funds shall be audited annually by the state.
- All earnings on the funds shall inure to the benefit of the ward.
- All other assets received by a legal guardian or conservator shall be handled as state property except that the legal guardian or conservator may dispose of the assets free of laws governing the disposition of state property and shall keep a record of the disposition and the reason for it.
- Upon termination of the guardianship or conservatorship, all assets remaining in the estate shall be paid to the ward or ward's legal representative.

33-4-208 Annual Report

- An employee serving as a legal guardian or conservator shall file the annual report required by the Limited Guardianship law of the appointing court on a form approved by the commissioner.

33-4-209 Designation of Trustees for Service Recipients

- The commissioner may designate department employees to serve as trustees for service recipients if the trust terms have been approved by the commissioner and the attorney general.
- All assets, funds, and property held as part of the corpus of the trust and income from it shall be audited annually by the state.

33-5-106 et seq. Application for Service and Support for Persons with Developmental Disabilities

Application for voluntary admission to state developmental center may be made by

- 18 year old person,
- parent or guardian of person under 18,
- guardian of a person.

33-5-205 Scope of Family Support Services

Family support services include, but are not limited to

- respite care
- personal assistance services
- child care
- homemaker services
- minor home/vehicular modifications
- specialized equipment maintenance and repair
- specialized nutrition, clothing, and supplies
- transportation services
- health-related costs not otherwise covered
- licensed nursing/nurses aid services
- family counseling, training, support groups

33-5-206 Coordination of Services

- Contract agency shall provide service coordinator.

33-6-201 Persons Who May Apply for Voluntary Admission

The following persons may apply for admission to a public or private hospital or treatment resource for diagnosis, observation, and treatment of a mental illness or serious emotional disturbance:

- A person who is sixteen (16) years of age or over and who does not lack capacity to apply under Sec. 33-3-218;
- A parent, legal custodian, or legal guardian who is acting on behalf of a child;
- A conservator empowered by the court with this authority;
- A qualified mental health professional acting on the terms of the person's declaration for mental health advance directive;
- An attorney with power of attorney for health care.

33-6-Part 4 Emergency Involuntary Admission to Inpatient Treatment

A person may be detained and taken into custody for immediate examination and certification of need for care and treatment without a civil order or warrant if the person has

- mental illness, AND
- poses an immediate substantial likelihood of serious harm, as defined in Sec. 33-6-501, because of mental illness or serious emotional disturbance.

33-6-402 Detention without Warrant Authorized

- If an officer authorized to make arrests in Tennessee, a licensed physician, a psychologist, or professional designated by the MH/DD Commissioner has reason to believe that a person has a mental illness and an immediate substantial likelihood of serious harm, then
- the person may be taken into custody without a civil order or warrant for immediate examination and certification of need for care and treatment.

33-6-Part 5 Standards for Commitment to Involuntary Care and Treatment

A person may be judicially committed to involuntary care and treatment in a hospital or treatment resource under Title 33, Chapter 6, IF and ONLY IF

- the person is mentally ill, AND
- the person poses a substantial likelihood of serious harm due to mental illness, AND
- the person needs care, training, or treatment due to mental illness, AND
- all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person.
- Two licensed physicians, or 1 licensed physician and 1 licensed clinical psychologist must certify that the above requirements are met and show the factual foundations for their conclusions.
- The parent, legal guardian, legal custodian, conservator, spouse, or a responsible relative of the person alleged to be in need of care and treatment, a licensed physician, licensed clinical psychologist who meets the requirements of 33-6-427(a), a health or public welfare officer, and an officer authorized to

make arrests in Tennessee, or the chief officer of a facility which the person is in, may file a complaint to require involuntary care and treatment of person with mental illness or serious emotional disturbance.

33-6-501 Substantial Likelihood of Serious Harm Defined

A person poses a “substantial likelihood of serious harm” if and only if the person

- has threatened or attempted suicide or attempted to inflict serious bodily harm on himself OR
- has threatened or attempted homicide or other violent behavior, OR
- has placed others in reasonable fear of violent behavior and serious physical harm to them OR
- is unable to avoid severe impairment or injury from specific risks AND
- there is substantial likelihood that such harm will occur unless the person is placed under involuntary treatment.

33-6-504 Persons Who May File Complaint for Commitment

- The parent, legal guardian, legal custodian, conservator, spouse, responsible relative of the person, a licensed physician, a licensed clinical psychologist who meets requirements of 33-6-427(a), a health or public welfare officer, an officer authorized to make arrests, or the chief officer of a facility,
- may file a complaint to require involuntary care and treatment
- of a person with mental illness or serious emotional disturbance.

33-6-602 Mandatory Outpatient Treatment for Discharged Involuntarily Committed Persons

Based on a review of person's history before and during hospitalization, if the hospital staff concludes that

- the person has mental illness or serious emotional disturbance or it is in remission, and unless the treatment is continued
- the person's condition resulting from mental illness or serious emotional disturbance will likely deteriorate rapidly to the point of "likelihood of serious harm" (33-6-501), and
- the person will likely participate in outpatient treatment if legally obligated, and
- the person will not likely participate in outpatient treatment unless legally obligated, and
- mandatory outpatient treatment (MOT) is a suitable less drastic alternative to commitment, then
- the person is eligible for discharge subject to the MOT for any medically appropriate outpatient treatment, including but not limited to
 - psychotherapy,
 - medication, or
 - day treatment
- under a plan approved by
 - the releasing facility, and
 - the outpatient qualified mental health professional.

33-6-603 to 608 Detailed Procedures and Requirement for MOT

- Outpatient treatment plan development described.
- Review of plan by court when requested after notification of release subject about the MOT.

- Court notified of discharge subject to MOT.
- MOT can be amended by qualified mental health professional and the obligation to participate in treatment continues.
- MH/DD will provide for the cost of outpatient services if the person is indigent or the person is not eligible for payment for services under any other governmentally or privately funded system.
- If a person is admitted to a hospital or treatment resource before the MOT is terminated, when discharged, the obligation resumes unless the MOT has been terminated.

33-6-609 et. seq. Failure to Comply with Outpatient Treatment Plan

- Affidavit alleging non-compliance with outpatient treatment plan may be filed by parent, legal guardian, conservator, spouse, responsible relative, or qualified mental health professional of a service recipient who has been discharged subject to the obligation to participate in outpatient treatment.
- Court may order patient to appear within 72 hours to determine compliance.

33-6-610 Release or Recommitment of Patient

- If the court determines noncompliance it may order patient to comply or order the patient be recommitted if the patient cannot be put in compliance immediately or cannot be expected to comply without further hospitalization.

33-6-611 Custody of Noncomplying Patient

- When patient does not respond to court order to appear on the issue of not complying with treatment plan, the court shall order patient taken into custody. Further orders are to take into account examination by treating professional.

33-6-616 Jurisdiction over Rehospitalization for Noncompliance

- The court where the hospital is located has jurisdiction to hold the hearing about rehospitalization.
- Hearing to be held with 72 hours of the person's receipt of the hearing notice.

33-6-618 Rights Regarding Outpatient Treatment Plans

- Establishing an outpatient treatment plan must be done by clear and convincing evidence.
- The patient shall be present at the hearing absent a waiver in writing signed by the patient.
- A guardian ad litem may be appointed.

33-6-620 Termination of Outpatient Treatment—Procedure

If at any time the qualified mental health professional determines

- The person with mental illness or serious emotional disturbance is likely to comply with outpatient treatment without being legally required; or
- the person no longer needs treatment for mental illness or serious emotional disturbance; then,

- the qualified mental health professional shall terminate the MOT; and
- the qualified mental health professional shall notify the committing court and the hospital that discharged the person.

33-6-621 Reinstatement of MOT

- During 6 months after discharge or the last renewal of an MOT; if,
- the person's condition is likely to deteriorate until they pose a likelihood of serious harm; then,
- the MOT is renewed for 6 months.

33-6-702 to 704 Initial and Subsequent Exams

- Involuntarily hospitalized mentally ill person is entitled to current examination of mental condition. A physician unconnected with the hospital shall participate if the patient requests and at the patient's expense. Indigent patients may obtain an independent physician paid by the state.
- Detailed provisions are set forth for release or continued hospitalization depending upon the results of these exams.

33-6-705 to 706 Discharge of Person No Longer Meeting Standards for Admission

- A person admitted to a hospital for treatment of mental illness or serious emotional disturbance must be discharged WHEN
- the person no longer meets the standards under which the admission took place;
- the person's detention is not authorized under which the admission took place.

33-6-708 Discharge Procedure for Involuntarily Committed Persons

- Court review is required to review eligibility for discharge when the person was committed by criminal court order.
- The court may reject the department's decision to release but only by clear and convincing evidence.

33-6-902 Transportation to Hospital/ Temporary Detention

The court shall arrange for transportation of the person to the hospital

- Whenever practicable, the person shall be permitted to be accompanied by one (1) or more friends or relatives who shall travel at their own expense.
- A person with mental illness or serious emotional disturbance taken into custody or ordered to be hospitalized under Chapter 6, Part 5 of this title may be detained in the person's home or in a suitable facility under such reasonable conditions as the court may order.
- The person shall not be detained in a non-medical facility used for the detention of persons charged with or convicted of criminal offenses.
- There shall be reasonable measures that are necessary to assure proper care of a person temporarily detained under this section including provision for medical care.

34-6-102**Durable Power of Attorney
Definition**

- Power of attorney by which principal designates another as the principal's attorney-in-fact in writing.
- The writing indicates that the power of attorney either commences or continues when the principal becomes disabled or incapacitated.

34-6-106**Bond—Power of Attorney**

The next of kin of any principal who has executed a durable power of attorney may

- upon the disability or incapacity of the principal
- petition a court to require a bond of attorney-in-fact.

34-6-108, 109**Restrictions of the Authority of
Attorneys-in-Fact**

Nothing in Secs. 34-6-108 or 109 shall be construed to limit the power of the principal to

- grant any additional power to the attorney-in-fact;
- delete any powers otherwise granted in Sec. 34-6-109 from the power of attorney.

Nothing in Sec. 34-6-109 (list of attorney-in-fact's powers) shall be construed to vest the attorney-in-fact with, or authorize the attorney-in-fact to exercise, any of the following powers:

- make gifts;
- exercise any powers of revocation, amendment, or appointment which the principal may have over the income or principal of any trust.

34-6-201**Durable Power of Attorney for Health Care Definition**

- A durable power of attorney for health is a durable power of attorney to the extent that it authorizes an attorney-in-fact to make health care decisions for the principal.

34-6-203**Requirements for Durable Power of Attorney for Health Care**

- An attorney-in-fact under a durable power of attorney for health care may not make health care decisions unless all of the following requirements are satisfied:
 - the durable power of attorney for health care specifically authorizes the attorney-in-fact to make health care decisions;
 - the durable power of attorney for health care is executed by the following method: (1) signed and acknowledged before a notary public and (2) signed by at least two witnesses who witnessed the signing of the power of attorney.
- The following may not be designated as the attorney-in-fact to make health care decisions under a durable power of attorney for health care:
 - the treating health care provider;
 - an employee of the treating health care provider;
 - the operator of a health care institution;
 - an employee of a health care institution.
- However, an employee may be designated attorney-in-fact to make health care decisions if
 - the employee is a relative of the principal by blood, marriage, adoption AND
 - the other requirements for durable powers of attorney for health care are satisfied.
- A health provider or an employee of a health care provider may not act as an attorney-in-fact to make

health care decisions if the health care provider becomes the principal's treating provider.

- A conservator may not be designated attorney-in-fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservator unless certain requirements are satisfied.

34-6-204 Powers and Limitations of Attorney-in-Fact

- Unless a durable power of attorney for health care provides otherwise, or unless a court with appropriate jurisdiction finds any clear and convincing evidence that the attorney-in-fact is acting on behalf of the principal in bad faith, the attorney-in-fact in a durable power of attorney for health care who is known to a health care provider to be available and willing to make health care decisions has priority over any other person to act for the principal in all matters of health care decisions.
- If a court appoints a conservator, guardian of the estate, or other fiduciary after execution of a durable power of attorney for health care, the fiduciary shall NOT have power to
 - revoke or amend the durable power of attorney for health care OR
 - replace the attorney-in-fact designated in the durable power of attorney for health care.
- Subject to any limitations in the durable power of attorney for health care, the attorney-in-fact may make health care decisions for a principal
 - before or after the principal's death, to the same extent as the principal could make health care decisions for the principal if the principal had the capacity to do so and

- who has a terminal condition as defined in Sec. 32-1-103(a). The decision to withhold or withdraw health care may be made by the attorney-in-fact permitting the principal to die naturally with only the administration of palliative care as defined in Sec. 32-11-103(6).

34-6-206 Access to Medical Records and Information

- A durable power of attorney for health care can limit the right of an attorney-in-fact to
 - receive information regarding proposed health care for the principal;
 - receive and review medical records; and
 - consent to the disclosure of medical records.
- Otherwise, an attorney-in-fact designated to make health care decisions under a durable power of attorney for health care has the same right as the principal to receive information, review medical records, and consent to the disclosure of medical records.

34-6-207 Revocation of Durable Power of Attorney for Health Care

- After executing a durable power of attorney for health care, the principal can
 - revoke the attorney-in-fact's appointment by notifying the attorney-in-fact orally or in writing or
 - revoke the authority granted to the attorney-in-fact to make health care decisions by notifying the health care provider orally or in writing.
- Unless the durable power of attorney for health care provides otherwise, if after execution the principal's

marriage is dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as an attorney-in-fact to make health care decisions for the principal.

- The authority of an attorney-in-fact acting under a durable power of attorney for health care
 - may be terminated or revoked only pursuant to the durable power of attorney for health care section and
 - shall NOT be affected by the existence of a living will executed by the principal.

**34-6-210 Principal’s Objection to
 Withholding or Withdrawal of Care**

- Nothing in the section on durable powers of attorney for health care authorizes an attorney-in-fact to consent to withholding or withdrawal of health care necessary to keep principal alive, if the principal objects to withdrawal or withholding of care.
- In such a case, the decision is governed by the law that would apply if there were no durable power of attorney for health care.
- With respect to other health care decisions, however, durable power of attorney remains in effect unless expressly revoked.

**34-6-211 Requiring Execution of Durable
 Power of Attorney for Health
 Care Prohibited**

- Unlawful to require execution of a durable power as a condition for admission, treatment, or insurance.

34-6-213 Life Insurance Unaffected

- Execution of a durable power of attorney for health care does not affect sale, procurement, or issuance of any life insurance policy or modify terms of existing life insurance policy.
- No life insurance policy shall be legally impaired or invalidated in any manner by withholding or withdrawal of health care from an insured principal.

34-6-214 Transfer of Patient

- Any health care provider shall arrange for the prompt and orderly transfer of a patient when as a matter of conscience the health care provider cannot implement the health care decisions made by the attorney-in-fact.

**36-6-215 Power of Attorney Executed
 Outside of Tennessee**

- Given effect in Tennessee if the durable power of attorney for health care is in compliance with either Tennessee law or the laws of the state of the principal's residence.

**34-7-101 to 105 Power and Duties of District
 Public Guardian**

- Serves as conservator for disabled persons who are 60 years of age or older who have no family members or other person, bank, or corporation willing and able to serve.
- Has no powers beyond those set out in Chapters 11, 12, and 13 of Title 34.
- Provides for the least intrusive alternatives; may accept a power of attorney.

- On the filing of a petition for appointment of a fiduciary under Sec. 34-11-106, the court shall appoint a guardian ad litem to represent the respondent.
- The court may appoint a guardian ad litem to represent a disabled person in any proceeding brought by the fiduciary.
- If the respondent is represented by adversary counsel who had made an appearance for the respondent, no guardian ad litem shall be appointed.
- Guardian ad litem is not an advocate for respondent, but has a duty to determine what is best for respondent's welfare.

*For provisions applicable to fiduciaries, including accounting to the court and sale of a disabled person's property, see Secs. 34-1-109 to 34-11-131.

34-11-04 Letters of Guardianship or Conservatorship

- No person shall undertake the administration of the estate of a minor or disabled person until receiving these letters.

34-11-127 Least Restrictive Alternative

- The court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the disabled person that are consistent with adequate protection of the disabled person and the disabled person's property.

34-13-101 Conservatorships Generally

A court will appoint a conservator to provide partially or full assistance for

- the disabled person
- the disabled person's property
- or both.

A disabled person is defined as any person

- eighteen years or older
- determined by the court to be in need of partial or full supervision, protection, and assistance due to
- mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity.

**34-13-102 Petition for Appointment of a
 Conservator**

- May be filed by a person having knowledge of circumstances necessitating the appointment of a conservator.

**34-13-106 Rights of the Respondent (Person
 for Whom Conservator Is Appointed)**

- A hearing on the issue of disability on demand by the respondent or the respondent's guardian ad litem
- to present evidence and cross-examine witnesses
- to appeal the final decision on the petition
- to attend any hearing
- to have an attorney ad litem appointed to advocate the interests of the respondent.

**34-13-107 Court Order Appointing
 Conservator**

- If a court orders a conservator, the order shall enumerate the powers removed from the respondent and vested in the conservator.
- To the extent powers are not specifically removed, the respondent retains and shall exercise all powers of a person who has not been found to be a disabled person.

**34-13-108 Discharge of a Conservator—
Modification of Duties—
Termination**

A conservator may be terminated if a court determines that

- the respondent is no longer disabled.
- it is in the disabled person’s best interest.
- the conservator has failed to perform duties.
- he/she has failed to act in the disabled person’s best interest.

**34-22-126 Prerequisite for Appointment of
Fiduciary**

Before a fiduciary can be appointed the court must find

- by clear and convincing evidence,
- that the respondent is fully or partially disabled, and
- that the respondent is in need of assistance from the court.

**36-3-404 Breach of Promise or Contract to
Marry When the Defendant Is Over 60**

- Defendant must be 60 years of age at time case is tried.
- Damages are limited to actual financial loss of plaintiff up to the date of the trial and no punitive damages shall be allowed.

36-3-601(1) Domestic Abuse Defined

- Inflicting or attempting to inflict physical injury on an adult by or other than accidental means
- Physical restraint
- Malicious damage to personal property of abused party

36-3-601(7) Preferred Response to Domestic Abuse

“Preferred response” means

- A law enforcement officer shall arrest a domestic abuser unless there is a clear and compelling reason not to arrest.

36-3-602 Who Can Seek Help with This Law (Domestic Abuse)

Anyone who has been

- subjected to or threatened with abuse
- by a present or former adult family or household member
- may seek relief by filing a petition alleging such abuse.

36-3-605 Protective Order to Protect from Domestic Abuse

- When a petition is filed under this part, a court may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause.
- If the petitioner proves the allegations of abuse by a preponderance of the evidence at a hearing, the protective order may be extended for one (1) year.

36-6-606 Scope of Protective Order

The scope of a protective order includes, but is not limited to

- directing the respondent to refrain from committing abuse or threatening to commit abuse against the petitioner or the petitioner's minor children;
- prohibiting respondent from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly;
- prohibiting respondent from stalking the petitioner, as defined in Sec. 39-17-315;
- granting the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, restoring possession to the petitioner, or both; directing the respondent to provide suitable alternative housing for the petitioner where the respondent is the sole owner or lessee of the residence or household;
- awarding temporary custody of, or establishing temporary visitation rights with regard to minor children born or adopted by the parties;
- awarding support to the petitioner and such persons as the respondent has a duty to support (except in cases of paternity, the court shall not have the authority to order financial support unless the petitioner and the respondent are legally married);

- directing the respondent to attend available counseling programs (violation of the part of a protective order that requires counseling may be punished as civil or criminal contempt).

36-3-608 Duration of a Protective Order

- Protective orders are effective for a fixed period of time up to one year, but court may modify original order.

36-3-609 Copies of the Protective Order

Copies of a protective order must be issued to

- petitioner
- respondent
- local law enforcement agencies having jurisdiction in the area in which the petitioner resides

Officer serving the protective order shall read the order to the respondent. Upon receipt of a copy of the protective order, the local law enforcement agency shall enter the order into the Tennessee Crime Information System.

36-3-610 Violation of Protective Order

- A court may hold the defendant in civil or criminal contempt for violating a protective order and punish the defendant in accordance with the law.
- A court may also assess a civil penalty against the defendant.

36-3-611 Arrest for Violation

- An officer can arrest with reasonable cause without a warrant.

36-3-612 Violation of Protection

- Charge of contempt for violation of order of protection.
- Hearing set usually within 10 working days of arrest.
- Bond is set pending the hearing.
- Person who procured the order of protection is notified and directed to show just cause why a contempt order should be issued.

36-3-613 Leaving Residence or Use of Necessary Force— Right to Relief Unaffected

The right to relief under this law is unaffected by

- leaving the residence or household to avoid abuse or
- use of such physical force against the abuser as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury or abuse.

36-3-615 Notification to Victim That Family or Household Member May Be Released on Bond

- After a family or household member has been arrested for assault pursuant to Sec. 39-13-101 or aggravated assault pursuant to Sec. 39-13-102 against another family or household member, the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date of trial.

36-3-617 Protective Order—Cost and Assistance

- The petitioner shall not be required to pay any filing fees, litigation taxes, or any other costs associated with filing, issuance, or enforcement of a protective order.
- Any agency that meets with a victim in person and recommends a protective order shall help the victim complete a form petition for filing with the clerk.
- No agency is required to provide assistance to a victim unless the agency is provided with appropriate forms by the clerk.

36-3-619(a) Arrest When Officer Responds to Domestic Abuse Calls

- If an officer believes that a person committed a crime involving domestic abuse, the preferred response is arrest.
- If an officer believes that two or more persons committed a crime involving domestic abuse, arrest is the preferred response only with respect to the primary aggressor.
- If the officer believes that all of the parties are equally responsible, the officer shall exercise his or her best judgment in determining whether to arrest all, any, or none of the parties.

36-3-619(c) Factors for Officer to Consider to Determine Who Is the Primary Aggressor

- History of domestic abuse between the parties
- Relative severity of the injuries
- Evidence from the person involved in the domestic abuse

- Likelihood of future injury to each person
- Whether one person acted in self-defense
- Evidence from witnesses of domestic abuse

36-3-619(g) Notice to Domestic Abuse Victim of Legal Rights

When responding to a domestic abuse call, the officer shall

- offer to transport the victim to a place of safety or arrange transportation,
- advise the victim of shelters/services in community AND
- give the victim notice of legal rights by providing a copy of the Victims of Domestic Abuse Rights Statement.

36-3-620 Seizure of Weapons

If an officer believes that a criminal offense involving abuse against a family or household member has occurred, the officer shall seize all weapons that are alleged to have been

- used by the abuser or
- threatened to be used by the abuser
- in the commission of a crime.

Furthermore, an officer may seize a weapon

- in plain view or
- discovered pursuant to a consensual search;
- an officer is NOT required to remove a weapon that he or she believes is needed by the victim for self-defense.

**39-13-502 Aggravated Rape—Penalty
Class A Felony**

Aggravated Rape is unlawful sexual penetration of a victim by the defendant by any of the following:

- Force or coercion is used to accomplish the act, armed with a weapon or any article fashioned in a manner to lead victim to reasonably believe to be a weapon.
- The defendant caused bodily injury to the victim.
- The defendant is aided or abetted by one (1) or more persons.
- The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless.

**39-13-507 Spousal Rape and Spousal Sexual
Battery**

Legal spouse does not commit a sexual offense except in the two situations of spousal rape and spousal battery:

- **Spousal Rape** is unlawful sexual penetration of one spouse by the other
 - the defendant is armed with a weapon,
 - the defendant causes serious bodily injury, or
 - the spouses are living apart and one spouse has filed for separate maintenance or divorce.
- **Spousal Sexual Battery** is unlawful sexual contact by one spouse or another where:
 - the defendant is armed with a weapon,
 - the defendant causes serious bodily injury, or
 - the spouses are living apart and one spouse has filed for separate maintenance or divorce.

40-39-101 et seq. Sexual Offender Registration and Monitoring System

- Purpose to protect vulnerable populations from potential harm.
- “Sexual offender” means a person who is or has been convicted of committing a sexual offense in this state, or convicted in another state or another country, or in a federal or military court of committing an act that would have constituted a sexual offense if it had been committed in this state.
- List of criminal offenses covered by this registration of offenders.
- Criteria for expungment of records.

40-39-108 Violation of Sexual Offender Registration/Monitoring Form Requirements—Penalties

The Tennessee Bureau of Investigation maintains a registry of sexual offenders. Knowing falsification of a sexual offender registration monitoring form is

- a Class A Misdemeanor for the first offense and
- a Class E Felony for a second or subsequent offense.

56-8-303 No Health Insurance Discrimination Against Abused

- No insurer or health carrier may engage in an unfairly discriminatory act or practice as defined in Sec. 56-8-304:
- against a subject of abuse
- on the basis of that abuse status.

62-37-101 to 139 Home Improvement Contractors Licensing Act

Home Improvement Contractors

- Are not allowed to take more than a third of their contract price up front.
- Must provide a complete written contract describing all the work the price and give a completion date.
- Must have a Tennessee home improvement license, which also requires them to carry a bond for the protection of a homeowner who suffers harm due to bad work or when the contract is not completed.

68-11-201 to 211 Licensing of Health Facilities

- Licensing of hospitals, recuperation centers, nursing homes, homes for the aged, home care organizations, residential hospices, ambulatory surgical treatment centers, and facilities operated for the provision of alcohol and drug prevention and/or treatment services is covered.

68-11-213 Injunction Against Health Care Facilities

- Injunctions for operating health care facilities without a license, violating other provisions of this part and violating rules, regulations, or orders issued under this part.

68-11-221 Special Monitors for Deficient Nursing Homes

- During a suspension of admissions pursuant to Sec. 68-11-207, the commissioner shall appoint one or more special monitors if the deficiency threatens

serious bodily harm to the patients or residents of the facility.

- The commissioner may appoint a special monitor(s) at any other time if deficiencies exist in a facility that are detrimental to the direct care of patients or residents.

68-11-228 Definition of Home Care Organization and Solicit

A “home care organization”

- provides home health services, home medical equipment, or hospice services to patients
- on an outpatient basis
- in either their regular or temporary place of residence. See Sec. 68-11-201.

“Solicit” means

- contact with a patient
- knowingly being treated by another home care organization
- for the purpose of attempting to persuade the patient to change home care organizations.

68-11-229 Solicitation of Other Home Care Organizations Prohibited

It is unlawful for

- any home care organization through its officers, directors, employees, or agents
- to knowingly solicit any patient to change home care organizations if that patient is being treated at the time by another home care organization.

Nothing in this statute

- limits the right of a home care organization patient to change home care organizations at any time the patient chooses;
- prohibits home care organization from discussing services with, or providing services to, someone who voluntarily makes an initial contact with the organization for the purpose of seeking services;
- prohibits home care organization from discussing services with, or providing services to, a patient when someone acting on the patient's behalf or in the patient's interest makes initial contact with the home care organization;
- prohibits a managed care organization from requiring its enrollees to use only those home care organizations with which it has contracts for services. See Sec. 68-11-230.

68-11-231 Penalties for Solicitation

- A home care organization found in violation of Sec. 68-11-229 shall be subject to an injunction prohibiting further solicitation.
- An action seeking injunctive relief may be initiated by any home care organization.
- The right to relief shall not prevent an offended organization from seeking monetary damages or any other relief against the offending organization.

68-11-256(a) Criminal Background Checks Required

- Requires all nursing homes to conduct criminal background check
- within seven days of employment

- for anyone employed to provide direct care to a resident or patient.
- Applies to any entity that provides or arranges for direct care staff for nursing homes.

68-11-303 Hospital’s Duty to Keep Records

Hospitals, their officers or employees, and medical and nursing personnel shall

- with reasonable promptness
- prepare and maintain accurate hospital records

68-11-304 Access to Medical Records

- Hospital records are the property of the hospital, subject to court order to produce them.
- Unless restricted by state or federal law or regulation, a hospital shall furnish to a patient or a patient’s authorized representative that patient’s records without unreasonable delay upon request in writing by the patient or representative.

**68-11-311 Violations—Civil Liability—Penalty
Class C Misdemeanor**

- A willful violation of the medical access records provisions is a Class C Misdemeanor.
- No hospital, its officers, employees, or medical and nursing personnel shall be civilly liable for violation of this part except to the extent of liability for actual damages in a civil action for willful, reckless, or wanton acts or omissions constituting such violation.

68-11-701 Legislative Intent—Patient Transfers

It is the intent of the legislature that the Department of Health, acting through the board of licensing for health care facilities

- shall promulgate rules to regulate the transfer of inpatients between hospitals AND
- that inpatients should not be involuntarily transferred for purely economic reasons, but should receive needed medical care as required by chapter 140, part 3 of Title 68.

68-11-702 Standards and Policies for Transfers

The Department of Health shall promulgate rules to provide standards governing the transfer of hospital inpatients. Rules shall provide that inpatient transfers between hospitals shall be accomplished in a medically reasonable manner by providing for

- the transfer of patients requiring emergency services.
- the use of medically reasonable life support measures.
- the transfer of any necessary records for continuing care.
- the prohibition of discrimination against patients based on race, religion, or national origin.

68-11-703 Notice and Correction of Violations

- If the board for licensing health care facilities finds that a hospital is violating or has violated a patient transfer rule, the board shall notify the hospital of its finding and shall provide the hospital a reasonable opportunity to correct.

68-11-704 Suspension or Revocation of License

- Violation of the patient transfer rules constitutes sufficient grounds for the suspension or revocation of the hospital's license (See Sec. 68-11-207) and shall further subject the institution to the penalties provided in Sec. 68-11-213.

68-11-705 Mentally Ill and Mentally Retarded Persons

- Neither the patient transfer rules nor the regulations promulgated pursuant to these rules shall constitute an amendment or modification of Title 33.

68-11-801 Fines and Penalties

The Commissioner of Health has the authority to

- impose civil monetary penalties upon deficient nursing homes, as defined by Sec. 68-11-201 and as required by the federal Nursing Home Reform Act of 1987.

68-11-802 Type A Civil Monetary Penalties

May be imposed whenever the commissioner finds

- the conditions in a nursing home are, or are likely to be
- detrimental to the health, safety, or welfare of the patients
- and the commissioner has accompanied this finding by ordering the nursing home to suspend admission of any new patients.

68-11-803 Type B Civil Monetary Penalties

Imposed when the residents are

- willfully abused or neglected as defined by Sec. 71-6-102 OR
- otherwise abused and neglected as defined in Sec. 68-11-803.

68-11-804 Type C Penalties

- Type C violations are neither directly detrimental to patients, nor directly impact their care, but have an indirect relationship to patient care.
- Type C penalties shall be imposed for any violation of standards set forth in Sec. 68-11-804(c).

68-11-806 Other Penalties and Fines

- Notifying a nursing home or causing a nursing home to be notified of the time of date of an inspection.
- Willfully and knowingly certifying a material and false statement in a resident assessment required by federal law.
- Willfully and knowingly causing another individual to certify a material and false statement in a resident assessment required by federal law.

68-11-811 Minimum and Maximum Penalties

- Type A—not less than \$1,500, not more than \$7,500.
- Type B—not less than \$500, not more than \$1,500.
- Type C—\$250 up to \$400.
- For second penalties imposed within 12 months, the penalty is doubled.

68-11-827 to 828 Trust Fund

- The commissioner shall establish and maintain a nursing home resident protection trust fund, created by the deposit of all penalty moneys collected from nursing homes and individuals.
- The purpose of the trust fund is to protect the residents of a nursing home whose noncompliance with state and federal laws, rules, and regulations threatens
 - the residents' care or property
 - the home's continued operation
 - the home's continued participation in the medical assistance program of Title 71, Chapter 5.
- Where complete relief cannot be afforded to a person with a just claim, the trust fund may be used to
 - assist with costs of relocating indigent residents upon voluntary or involuntary closure of nursing home.
 - reimburse a resident for personal funds lost while held in trust by a nursing home.
 - maintain the operation of a nursing home pending the conclusion of legal proceedings.

**68-11-829 Right of Action to Recover Moneys
Paid Out of Trust Fund**

- Any order under Sec. 68-11-828 that divests the assets of the nursing home resident protection trust shall give to the Commissioner as trustee, a right of action to recover any moneys paid out of the fund against the property of any person or organization who was legally liable for the expenditures.

68-11-901

Minimum Rights of Every Nursing Home Resident/Patient and Members of the Public Regarding Nursing Homes

- Privacy during treatment and care
- Visits with spouse
- Visits in private with any person during reasonable hours
- To communicate by telephone with any person
- To meet with members of, and take part in activities of social, commercial, religious, and community groups
- To delivery of mail, unopened
- To exercise their rights as a resident and citizen and voice grievances
- To retain and use personal clothing and possessions
- To be free from being required to work or perform services
- To choose a personal physician
- To refuse treatment
- To refuse experimental treatment and drugs
- To have records kept confidential
- Manage his/her financial affairs
- To be suitably dressed at all times
- For the family or guardian to be notified immediately of any accident, sudden illness, disease, unexplained absence, or anything unusual involving the resident
- To be free from detention against their will
- To not suffer discrimination or retaliation by the nursing home because the resident has reported or cooperated with any board or agency having the responsibility for protecting the rights of residents or has attempted to assert any right protected by state or federal law

- To be free from chemical drugs and physical restraints except upon a physician's orders
- To be free from willful abuse or neglect, as these terms are defined by Sec. 71-6-102
- To be told in writing before or at the time of admission about the services available in the facility and about any extra charges
- To exercise his/her own independent judgment by executing any documents, including admission forms
- To be treated with consideration, respect, and full recognition of his/her dignity and individuality
- To have the use and quiet enjoyment of the personal room respected
- To have requests for common room assignments honored when both residents make the request and are of the same sex or related by blood or marriage (subject to the availability of space)

68-11-902 Restriction of Minimum Rights

Rights can be restricted, limited, or amended when

- medically contraindicated or
- necessary to protect and preserve the rights and safety of the other residents in the facility.

68-11-903 Retaliation or Discrimination

No nursing home or home for the aged may retaliate or discriminate in any manner against any person who

- in good faith complains or provides information to, or otherwise cooperates with, any agency of government or any person or entity operating under contract with an agency of the government, having

any responsibility for protecting residents of nursing homes or homes for the aged or

- attempts to assert any right protected by state or federal law.

68-11-904 Confidential or Privileged Information

Whenever the department conducts inspections or investigations in response to complaints received from the public

- the identity of the complainants and
- the identity of the resident who is the subject of the complaint
- shall be treated as confidential
- and shall not be opened to inspection by members of the public.

68-11-905 Storage and Protection of Valuables

Each nursing home shall

- provide a reasonable amount of storage space for the personal property of residents.
- provide means of safeguarding small items of value for residents in their rooms or some part of the facility if the resident can have daily access.
- develop procedures for investigating complaints of theft.
- document investigations of all such complaints.

68-11-906 Deposit of Residents' Funds

- Nursing home shall deposit funds in excess of \$100.00 received from or on behalf of a resident in an interest-bearing account, insured by a federal agency.
- Account shall be maintained in a manner indicating that the facility has only a fiduciary interest in the funds.

**68-11-907 Involuntary Transfer or Discharge to
Location Outside of Nursing Home**

Unless a resident's treating physician documents that a failure to transfer the resident will threaten the health or safety of the resident or others, no involuntary transfer or discharge shall occur until the physician has certified in writing that

- he or she has examined the resident within 7 days before the proposed transfer or discharge
- he or she is familiar with the discharge and continuing care plans, AND
- the transfer or discharge will not pose a threat to the health or safety of the resident.

68-11-908 Refusal of Access

Nursing home administrators may refuse access to the facility to any person whose presence would be

- injurious to the health and safety of a resident or the staff OR
- would threaten the security or the property of the residents, staff, or facility.

68-11-910 Required Written Disclosures to Resident, Resident’s Authorized Representative, and Resident’s Next of Kin

- Rates
- Services and extra charges
- Right to review resident’s medical and financial records and to keep records confidential
- A copy of the policies and procedures required for protection of the resident’s rights
- Address and phone numbers of agencies that offer services without charge to residents

68-11-1001 Abuse Registry

- The Department of Health maintains a registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals.

68-11-1003 Access to Registry

- Names and information on the registry shall be accessible to the public.

**71-5-118 Fraudulently Obtaining Benefits or Payment for Medical Assistance—Penalty
Class E or D Felony**

- Vendor providing contracted services can be sanctioned by Commissioner of Health for
 - Billing for medical assistance that was not delivered;

- Providing medical assistance that was not medically necessary or justified;
- Providing medical assistance of a quality below professionally recognized standards;
- Failure to produce records necessary to substantiate the medical assistance for which claims have been submitted.
- A person commits an offense when she/he
 - Knowingly obtains, attempts to obtain, aids or abets any person to obtain by means of a willfully false statement, representation or impersonation, by concealment of any material fact or by any other fraudulent means, or by any unauthorized manner, medical assistance benefits;
 - For any medical assistance benefits to which such person is not entitled or for a greater value than they are authorized to receive.
 - The offense is a Class E Felony.
- A person, firm, corporation, partnership, vendor, or any other entity commits an offense when they
 - Obtain or attempt to obtain, aid or abet any person or entity to obtain by means of a willfully false statement, report, representation, claim or impersonation, by concealment or any other fraudulent or unauthorized means, medical assistance payments to which the person/entity is not entitled or is of a greater value than authorized.
 - The offense is a Class D Felony unless the value meets Class B or C standards.
- “Attempts to obtain” includes making or presenting a claim for payment, knowing such claim to be false, fictitious, or fraudulent.
- Can also be prosecuted for theft of property or services.

- Willfully false statements for insurance is a Class D Felony, unless the value meets Class B or C standards.
- Bureau of Tenn Care's program integrity unit will randomly investigate to monitor for violations.
- TBI is authorized to investigate and refer for prosecution any fraud in the provision of medical assistance, Medicare fraud, abuse or neglect in health care facilities or board and care facilities receiving payments under the state Medicaid plan.

**71-6-102(1) Tennessee Adult Protection Act—
Abuse and Neglect Defined**

The infliction of

- physical pain,
- injury,
- mental anguish, or
- the deprivation of services by a caretaker that are necessary to maintain health and welfare, or
- a situation in which an adult is unable to provide or obtain the services that are necessary to maintain his or her health or welfare.

71-6-102(2) Adult as Defined by Act

- Adults are persons 18 years of age or older who,
- because of mental or physical dysfunction or advanced age (60 years of age and above),
- are unable to manage their resources, carry out activities of daily living, or protect themselves from abuse or neglect without the assistance of others, and

- who have no available willing and responsibly able person to assist them, and
- who may be in need of protective services.

71-6-102(4) Capacity to Consent Defined

- The mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts, and to reach a rational judgment upon such facts.
- A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent.

71-6-102(8) Financial Exploitation

- The improper use by a caretaker of
- funds which have been paid by a governmental agency to
- an adult or to the caretaker for use or care of an adult.

71-6-102(9) Imminent Danger Defined

Conditions calculated to and capable of producing within a relatively short period of time a reasonably strong probability of irreparable

- physical harm or
- mental harm and/or
- the cessation of life.
- The department is not required to assume responsibility for a person in imminent danger unless sufficient resources exist.

71-6-102(12) Sexual Abuse Prohibited

Sexual abuse occurs when an adult is forced, tricked, threatened, or otherwise coerced by a person into

- sexual activity,
- involuntary exposure to sexually explicit material or language, or
- sexual contact against the adult's will.

Sexual abuse also occurs when an adult is

- unable to give consent to sexual activities or contact and
- is engaged in such activities or contact with another person.

71-6-103(b)(1) Duty to Report

If a person has

- reasonable cause to suspect
- that an adult has suffered abuse or neglect, or has been financially exploited,
- a report must be made to the Department of Human Services.
- Death of the adult does not relieve the responsibility for reporting such abuse, neglect, or exploitation.

71-6-103(d) Health Report Confirmed Abuse to TBI

- Requires the Commissioner of Health to also report confirmed cases of exploitation, abuse, or neglect of nursing home resident to the Tennessee Bureau of Investigation.

71-6-103(e)(f) Entry to Health Care Facilities and Private Premises

To investigate the alleged abuse, DHS may enter

- any health care facility to conduct investigations or
- any private premises with consent of the adult or the caretaker.
- If entry to private premises is denied, a search warrant can be issued upon probable cause to proceed with the investigation.

71-6-103(j)(1)(2)(3)(4) Access to Mental and Physical Health Records

- A DHS representative involved in investigating an abuse, neglect, or exploitation case
 - Shall have access to mental and physical health records of the adult that are in the possession of any individual, hospital, or other facility.
 - Shall have access to any law enforcement records or personnel records (not otherwise specifically protected by law) of the caretaker or the alleged perpetrator.
 - If access is refused, a court order can be obtained.
 - Shall have access to financial records in any financial institution regarding the adult, any caretaker, and any alleged perpetrator.
 - If needed, a judicial subpoena can be obtained.

71-6-103(k) Investigations into Allegations of Abuse and Neglect in State Institutions

- If as a result of an investigation DHS determines that an adult who is a resident or patient of a facility owned or operated by an administrative department of the state is in need of protective services AND
- the facility is unable or unwilling to take action to protect the resident or patient, THEN
- the department shall make a report of its investigation, along with any recommendations for needed services to the commissioner of the department having responsibility for the facility.

71-6-103(l) Medical or Mental Examinations

The Department of Human Services can obtain an order for a medical or mental examination of an adult when

- during an investigation, the department cannot make a determination of whether the adult (1) is in imminent danger or (2) lacks the capacity to consent to protective services AND
- the department can demonstrate probable cause.

71-6-104(a)(b) Temporary Restraining Orders and Injunctions

- Temporary restraining orders and injunctions are available to prohibit any violation.
- A court may enjoin persons who have engaged in abuse, neglect, or exploitation from providing care for any person on a temporary or permanent basis as an employee or volunteer.

71-6-105 Immunity from Liability and Protection from Job Discrimination

Persons reporting abuse or neglect of an adult

- are presumed to be acting in good faith and are immune from civil or criminal liability;
- have a civil cause of action for compensatory and punitive damages against any person who causes a detrimental change in employment status due to the report.

71-6-106 Confidentiality

- In hearings involving adult protection issues a chancellor may compel testimony of a spouse, otherwise confidential and privileged, if the disclosure is in the best interest of the adult.

71-6-107(a) Lack of Capacity to Consent to Protective Services

If the department determines that an adult who needs protective services

- lacks the capacity to consent to protective services and
- is in imminent danger of irreparable physical or mental harm, or both, and/or the cessation of life,
- it can file a complaint with the court for an order authorizing the provision of necessary protective services. Prior to filing a complaint with the court for an order authorizing removal of an adult from the adult's chosen place of residence, the department shall make reasonable efforts to exhaust all practical alternatives to removal.

**71-6-107(a)(1)(C) Sexual Abuse Grounds for
DHS Custody**

Sexual abuse as defined at 71-6-102(12) shall provide grounds for the department to obtain custody of an adult who lacks capacity to consent when such abuse relates to sexual activity or contact.

**71-6-107(b) Lack of Capacity without Imminent
Danger**

If an adult

- is not in imminent danger,
- but still needs protective services and
- lacks the capacity to consent,
- The Department of Human Services may petition the court for a hearing.

71-6-108 Commitments

- No commitments to mental institutions may be made under the Tennessee Adult Protection Act.

**71-6-110 Violation of Duty to Report—Penalty
Class A Misdemeanor**

It is unlawful for a person

- who has reasonable cause
- to suspect that an adult who has suffered abuse or neglect, or been financially exploited
- to knowingly fail to make a report to the Department of Human Services under Sec. 71-6-103(b).
- Punishable as a Class A Misdemeanor.

71-6-113(a) Cooperation by Other Departments

It is the legislative intent that

- the Department of Mental Health and Developmental Disabilities and
- the Department of Health
- shall assist the Department of Human Services in any way possible to provide the services required under the Adult Protection Act.

71-6-113(b) Priority for Specialized Care or Treatment Given to APS Clients

When the Department of Human Services is unable to find a resource for any person in need of protective services

- who needs specialized care or treatment
- because of mental illness or developmental disabilities,
- the Department of Mental Health and Developmental Disabilities shall give priority to the person for appropriate placement.

71-6-115 Cooperation by Law Enforcement Officials

- Law enforcement officials shall cooperate with DHS in providing protective services.
- Law enforcement officials shall give priority in providing assistance.
- Law enforcement shall assist in returning an adult to physical custody when DHS is unable to do so.

71-6-117 Willful Abuse or Neglect of Impaired Adult Prohibited—Penalty Class A Misdemeanor

- It is unlawful for any person to willfully abuse, neglect, or exploit any (impaired) adult.

71-6-118 Confidentiality—Penalty Class B Misdemeanor

It is unlawful to disclose

- the name of a person who reports abuse, neglect, or exploitation of an adult, or
- the records and information generated as a result of a report or investigation
- A violation is a Class B Misdemeanor.

71-6-119 Willful Physical Abuse or Gross Neglect of Impaired Adult Prohibited—Penalty Class C or D Felony

- Willful physical abuse or
- gross neglect
- of an impaired adult
- with resulting serious mental or physical harm
- shall be punishable as an aggravated assault.

71-6-120 Right of Elderly Person or Disabled Adult to Recover Damages for Abuse or Neglect, Sexual Abuse, or Exploitation or Theft

An elderly or disabled person can recover compensatory damages for abuse, neglect, sexual abuse, or exploitation

- If shown by clear and convincing evidence that the alleged perpetrator committed the abuse or exploitation.
- Right to recover not extinguished by death of the victim.
- Damage awards can include attorney's fees and court costs, in addition to compensatory damages.
- Money or property can be recovered if shown by clear and convincing evidence that the perpetrator obtained by fraud, deceit, coercion, or other means.
- Action can be filed by victim, their conservator, or personal representative.
- Punitive damages can be recovered if perpetrator was a licensed health care practitioner, or staff of a licensed facility, or required to be licensed, under the health and mental health licensing laws.

TO REPORT ABUSE, NEGLECT OR EXPLOITATION OF A VULNERABLE ADULT IN TENNESSEE

**CONTACT THE NEAREST ADULT PROTECTIVE
SERVICES INTAKE OFFICE**

If you can make a local call to the city listed below, dial the local number:

CHATTANOOGA (423) 634-6624

KNOXVILLE (865) 594-5685

MEMPHIS (901) 320-7220

NASHVILLE (615) 532-3492

If it is a long distance call for you to reach the offices above, dial the toll free number listed below:

**1-888-APS-TENN
1-888-277-8366**

The Department of Human Services is committed to principles of equal opportunity, equal access, and affirmative action. Contact the Department of Human Services, EEO/AA-ADA Coordinator, 400 Deaderick Street, Citizens Plaza Building, 3rd Floor, Nashville, Tennessee 37248-2000 or call (615) 313-5570 or V/TTY 1(800)-270-1349 for further information.

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