

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 11, 2001

ALL-COUNTY INFORMATION NOTICE NO: I-84-01

TO: ALL-COUNTY WELFARE DIRECTORS:
ADULT PROTECTIVE SERVICES
PROGRAM MANAGERS

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

This All-County Information Notice (ACIN) provides general information regarding temporary emergency protective orders. Chapter 913, Statutes of 1996 (Assembly Bill 2881, Woods) added Chapter 12, Protective Placement and Custody of Endangered Adults, to the Elderly and Dependent Adult Act to authorize law enforcement and other designated parties to take endangered adults into emergency protective custody. Supporters of AB 2881 suggested that the addition of Chapter 12 was necessary to protect elders and dependent adults who are in danger. The Legislature's intention is stated in Welfare and Institutions Code (WIC) Section 15700(b):

"It is the intent of the Legislature, in enacting this chapter, to enhance the protection of elderly persons and dependent adults by providing a mechanism for temporary emergency protective custody of elderly or dependent adults who are suspected victims of abuse or neglect, and who are found to be in a situation that poses an immediate risk of serious injury or death, and when no other means are available to mitigate the risk to the elderly or dependent adult."

The provisions of this statute are entirely voluntary, and the statute may not be implemented within a county until the Board of Supervisors of the county has voted to do so. What follows is the complete text of the Chaptered AB 2881 (Woods). It is intended as a guide for any county that may wish to adopt procedures for temporary emergency protective custody.

Any questions regarding the information in this ACIN, or about the Adult Protective Services program in general, may be directed to your assigned analyst at (916) 229-0323.

A handwritten signature in black ink, appearing to read "Donna L. Mandelstam". The signature is fluid and cursive, with a long horizontal stroke at the end.

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachment

WELFARE AND INSTITUTIONS CODE

SECTION 15700

15700. (a) The Legislature finds and declares all of the following:

(1) Elder and dependent adults may be subjected to abuse, neglect, or abandonment, and that this state has a responsibility to protect those persons.

(2) Most elder and dependent adults who are at greatest risk of abuse, neglect, or abandonment by their families or caretakers, suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(3) A significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(4) In cases of severe elder and dependent adult abuse or neglect, endangered adults are often placed in situations that pose an immediate risk of serious injury or death.

(5) In cases of severe elder and dependent adult abuse or neglect, endangered adults are frequently deprived of their personal autonomy and dignity by their abusers, thus preventing them from acting on their own needs or desires to free themselves from serious, and even life-threatening, abuse or neglect.

(6) Due to limited resources, court delays, and limitations of existing law, authorities are often unable to intervene in time to prevent victims of abuse and neglect from being seriously injured or killed.

(7) These limitations have left endangered adults, or elder and dependent adults subject to avoidable pain, suffering, and death, and has resulted in the expenditure of public funds of the treatment of major injuries and health conditions that could have been avoided with proper and timely intervention.

(b) It is the intent of the Legislature, in enacting this chapter, to enhance the protection of elderly persons and dependent adults by providing a mechanism for temporary emergency protective custody of elderly or dependent adults who are suspected victims of abuse or neglect, and who are found to be in a situation that poses an immediate risk of serious injury or death, and when no other means are available to mitigate the risk to the elderly or dependent adult.

WELFARE AND INSTITUTIONS CODE

SECTION 15701-15701.4

15701. The definitions contained in this article shall govern the construction of this chapter, unless the context requires otherwise.

15701.05. "Appropriate temporary residence" means any of the following:

(a) A home or dwelling belonging to a member of the endangered adult's family or next of kin, if it would not constitute a risk to the endangered or dependent adult.

(b) An adult residential care facility or residential care facility for the elderly designated by the county as an emergency shelter and that is licensed by the State of California to deal with the needs of elder or dependent adults.

(c) A 24-hour health facility, as designated by Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(d) This chapter shall not be used to circumvent or supplant the involuntary detention and evaluation process provided for pursuant to Chapter 2 (commencing with Section 5150) of Part 1 of Division 5. A person shall not be deemed an "endangered adult" for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone, in lieu of medical treatment.

(e) This chapter shall not be used to effectuate placement in jails or correctional treatment centers, as defined in paragraph (1) of subdivision (j) of Section 1250 of the Health and Safety Code.

15701.1. "Local law enforcement" means a city police department or a county sheriff department.

15701.15. "Dependent adult" means any person who is not less than 18 years of age but not more than 64 years of age, who has a physical or mental limitation that restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, any person who has physical or developmental disabilities, or whose physical or mental capacities have diminished because of age.

15701.2. "Elder adult" means any person who is 65 years of age or older.

15701.25. "Endangered adult" means a dependent or elder adult who is at immediate risk of serious injury or death, due to suspected abuse or neglect and who demonstrates the inability to take action to protect himself or herself from the consequences of remaining in that situation or condition.

15701.35. "Long-term health care facility" means the same as defined in Section 1418 of the Health and Safety Code.

15701.4. "Appropriate temporary protective services" means those services provided to ensure that the endangered adult is protected from the immediate risk of serious injury or death due to suspected abuse or neglect, and that the effects of the abuse or neglect are remedied in accordance with the endangered adult's needs. These services may include, but not be limited to, any of the following:

(a) Social services case work and case management, including, but not limited to, evaluations of the endangered adult's functional capacity and community resources.

(b) The development of an appropriate individualized service plan.

(c) Appropriate referral and emergency response services.

(d) Counseling.

(e) Temporary shelter.

(f) Emergency services.

(g) Respite services.

- (h) Alternative housing and housing assistance.
- (i) In-home supportive services.
- (j) Adaptive equipment.
- (k) Transportation.
- (l) Psychology services.
- (m) Other health related services and referrals to legal services and advocate agencies.

WELFARE AND INSTITUTIONS CODE

SECTION 15703-15705.40

15703. (a) When, from personal observation, an authorized state or local law enforcement officer or designated employee of a county department of social services or mental health determines that an adult is an endangered adult, and no other option is available to mitigate the circumstances of that adult, the person may take the endangered adult into temporary emergency protective custody, and initiate adult protective proceedings.

(b) When an authorized person takes an endangered adult into temporary emergency protective custody and initiates adult protective proceedings, the person shall cause the endangered adult to be transported to a hospital as soon as possible if medical evaluation and any necessary treatment is required.

(c) Upon taking an endangered adult into custody pursuant to this chapter, the law enforcement agency taking the endangered adult into custody shall notify:

- (1) The superior court.
- (2) The endangered person's next of kin, when appropriate.
- (3) Adult protective services.
- (d) This article shall not apply to state-licensed facilities.

15703.05. Whether or not medical treatment is required, a physician treating an adult may, if he or she determines that the person is an endangered adult, delay the release of the endangered adult until a local law enforcement agency takes custody of the endangered adult, it is determined by the responding agency the adult is not endangered, or the responding agency takes other appropriate action to ensure the safety of the endangered adult.

15703.1. (a) Temporary emergency protective custody under this chapter shall not exceed a period commencing at the time the endangered adult has been taken into protective custody to the first court day commencing not more than 72 hours thereafter.

(b) Upon being taken into temporary emergency custody, the endangered adult shall be transferred to an appropriate temporary residence, pending the outcome of investigation and judicial hearing required by this chapter.

15705. (a) A designated county agency shall initiate an investigation and file a petition for issuance of an emergency protective services order within 24 hours after the endangered adult has been taken into temporary emergency protective custody.

(b) (1) The court shall hold a preliminary hearing no later than the first court day commencing after a period of 48 hours after the endangered adult

has been taken into temporary emergency custody to establish probable cause for grounds for protective custody.

(2) The court shall render its decision on the petition no later than the first court day following a period of 72 hours after the endangered adult has been taken into protective custody.

15705.05. If, as a result of the preliminary hearing, the court determines that probable cause does not exist to continue temporary emergency protective custody, the adult shall be released from temporary protective custody.

15705.1. If, as a result of the preliminary hearing, the court determines that probable cause continues to exist for temporary emergency protective custody, the court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on clear and convincing evidence, that all of the following apply:

(a) The adult is an endangered adult.

(b) No other appropriate means are available to mitigate the situation that placed the endangered adult at risk of serious bodily harm or death.

15705.15. In issuing an emergency order under this article, the court shall adhere to all of the following limitations:

(a) Only those protective services that are necessary to remove the conditions creating the emergency shall be ordered, and the court shall specifically designate the approved services in the emergency order.

(b) Protective services authorized by an emergency order shall not include hospitalization or a change of residence unless the court specifically finds that action is necessary and gives specific approval for that action in its order.

(c) Protective services may be provided through an emergency order for no more than 14 days, exclusive of Saturdays, Sundays, and legal holidays pending a hearing for long-term custody.

(d) (1) In its emergency order under this article, the court shall appoint the petitioner, next of kin, or other interested person, as appropriate, as a temporary conservator of the endangered adult.

(2) The court's appointee shall be responsible for the care of the endangered adult.

(3) The court's appointee may, until the expiration of the court's order, give consent for the provision of protective services for the endangered adult, in accordance with the emergency order.

(e) The issuance of an emergency order and the appointment of a temporary conservator of the endangered adult shall not deprive that endangered adult of any rights except to the extent provided in the order of appointment.

15705.2. A petition for an emergency order under this article shall set forth all of the following information:

(a) The name, address, and interest of the petitioner.

(b) The name, age, and address of the person in need of protective service.

(c) The proposed protective services.

(d) The petitioner's reasonable belief, together with facts supportive thereof, of the existence of those circumstances that warrant the issuance of an emergency order.

(e) A statement of the petitioner's attempts to obtain the consent of the person for whom the protective services are proposed, and the outcome of those attempts.

15705.25. (a) Notice of the filing of a petition for an emergency order shall be given, in language as understandable by the endangered adult as reasonably possible, at least 24 hours prior to the hearing on the petition for emergency intervention.

(b) The court may waive the 24-hour notice requirement on a showing that immediate and reasonably foreseeable physical harm to the person or other persons will result from the 24-hour delay, and reasonable attempts have been made to give notice. Notice of the final order of the court shall be given to each of the parties to the petition hearing.

15705.30. The hearing on a petition for an emergency order under this article shall be held under all of the following conditions:

(a) The person with respect to whom an emergency order is sought shall be present unless that person knowingly and voluntarily waives the right to be present or due to the person's physical or psychological condition, he or she is unable to be present. Waiver or inability to be present shall not be presumed from that nonappearance of the endangered adult, but shall be determined on the basis of factual information supplied to the court by counsel or a representative appointed by the court.

(b) The endangered adult has the right to counsel, regardless of whether he or she is present at the hearing. If the person is indigent or lacks the capacity to waive counsel, the court shall appoint counsel. The attorney shall advise the endangered adult of his or her rights in relation to the proceeding and shall represent him or her before the court.

(c) The endangered adult or his or her representative may present evidence and cross-examine witnesses.

(d) The hearing shall be held no earlier than 24 hours after the notice of the hearing has been given, unless the notice has been waived by the court.

(e) The court shall issue, for the record, a statement of its findings in support of any order for emergency protective services.

15705.35. Before any law enforcement agency may implement this article, including the taking of any person into protective custody pursuant to Section 15703, the law enforcement agency shall enter into a signed agreement with the county adult protective services agency that specifies the protocol that the county and the law enforcement agency shall follow in implementing this article.

15705.37. This chapter shall be operative in a county only if the county board of supervisors has adopted a resolution to make this chapter operative in that county.

15705.40. This article shall not be used to circumvent the involuntary commitment process provided for pursuant to Chapter 2 (commencing with Section 5150) of Part 1 of Division 5.
