

CHAPTER NO. 204

HOUSE BILL NO. 1392

By Representatives Hargett, Boyer

Substituted for: Senate Bill No. 1669

By Senators Fowler, Clabough

AN ACT to amend Titles 45 and 71 of the Tennessee Code Annotated, relative to services to adults.

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

SECTION 1. Tennessee Code Annotated, Section 71-6-103(j), is amended by deleting the last sentence, by designating the existing language of the subsection, as amended, as subdivision (1), and by adding the following new subdivisions:

(2) To complete the investigation required by this part, any authorized representative of the department actively involved in the conduct of an investigation pursuant to this part shall be allowed access to any law enforcement records or personnel records, not otherwise specifically protected by statute, of any person who is:

(A) a caretaker of the adult, or

(B) the alleged perpetrator of abuse, neglect or exploitation of the adult, who is the subject of the investigation.

(3)

(A) If refused any information pursuant to subdivisions (1) and (2) , any information from any records necessary for conducting investigations pursuant to this part may be obtained upon motion by the department to the circuit, chancery or general sessions court of the county where such records are located, or in the court in which any proceeding concerning the adult may have been initiated or in the court in the county in which the investigation is being conducted.

(B) The order on the department's motion may be entered ex parte upon a showing by the department of an immediate need for such information.

(C) The court may enter such orders as may be necessary to ensure that the information sought is maintained pending any hearing on the motion, and to protect the information obtained from further disclosure if the information is made available to the department pursuant to the court's order.

(4)

(A) The department may be allowed access to financial records that are contained in any financial institution, as defined by § 45-10-102(3) regarding:

- (i) the person who is the subject of the investigation;
- (ii) any caretaker of such person; and
- (iii) any alleged perpetrator of abuse, neglect or exploitation of such person;

(B) by the issuance of an administrative subpoena in the name of the commissioner or an authorized representative of the commissioner which is:

- (i) directed to the financial institution, and
- (ii) which complies with the provisions of §§ 45-10-106 and 45-10-107; or

(C) by application, as otherwise required pursuant to § 45-10-117, to the circuit or chancery court in the county in which the financial institution is located, or in the court in which any proceeding concerning the adult may have been initiated or in which the investigation is being conducted, for the issuance of a judicial subpoena that complies with the requirements of § 45-10-107; provided that the department shall not be required to post a bond pursuant to § 45-10-107(4).

(D) Nothing in this subdivision shall be construed to supersede the provision of financial records pursuant to the permissible acts allowed pursuant to § 45-10-103.

(4) Any records received by the department, the confidentiality of which is protected by any other statute or regulation, shall be maintained as confidential pursuant to the provisions of such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to its authority pursuant to this part or title 33 or 34.

SECTION 2. Tennessee Code Annotated, Section 71-6-103(k), is amended deleting subdivision (2) in its entirety and by substituting instead the following as a new subdivision (2):

(2) Notwithstanding any other provisions of subdivision (1) or this part to the contrary, the department of human services shall not be required to investigate, and the department of mental health and developmental disabilities shall not be required to report to the department of human services, any allegations of abuse, neglect or exploitation involving an individual that arise from conduct occurring in any institutions operated directly by the department of mental health and developmental disabilities. Allegations of abuse, neglect or exploitation of individuals occurring in such institutions shall be investigated by investigators of the department of mental health and developmental disabilities who have been assigned to investigate such allegations.


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

PASSED: May 3, 2001


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 10th day of May 2001


DON SUNDQUIST, GOVERNOR