



Adult Protective Services Legal Interventions

Policy 8.20

Effective: January 15, 2025

Introduction

The Tennessee Adult Protection Act allows the Tennessee Department of Human Services to pursue court intervention in order to complete an investigation of an APS report and to provide protection to clients who are determined to need protective services.

Scope

This policy allows Adult Protective Services to pursue legal intervention as needed to protect its clients. Failure to intervene in life-threatening situations could result in irreparable harm or death to a client.

Policy

Exhaustion of Other Alternatives

Prior to initiating legal intervention, all other alternatives that allow the client to remain safely at home and adequately protected from imminent danger of abuse, neglect, and/or exploitation (A/N/E) must have been exhausted. These alternatives might include:

- placement with relatives,
- home health care,
- other home-based services, or
- temporary restraining orders and orders of protection.

Basis for Legal Intervention to Provide Protective Services

The client's capacity to make decisions must be reviewed if there is a question regarding imminent danger and/or cognitive ability. The specific legal authority requested must be based on the needs of the client and the level of risk. If determined that a client needs protective services and lacks capacity to consent, Adult Protective Services (APS) staff must consult with his/her supervisor and schedule a legal call via the case management system (CMS) as soon as possible. If the client is in imminent danger of irreparable harm or death, the Tennessee Department of Human Services (TDHS) may seek emergency custody. Emergency custody is a legal intervention in which APS assumes control of a vulnerable adult for the purpose of placement and routine medical care.

Notice and Right to Counsel

If a client who is not in imminent danger refuses services, TDHS may file a request for a court order to provide services without taking custody. The client and spouse, if applicable, must receive notice ten (10) days prior to the hearing. Failure to notify the client (and spouse) may lead to financial sanctions against TDHS.

The client (and spouse) have a right to counsel in this type of court proceeding. If the client is indigent or the court determines he/she lacks capacity to waive the right to counsel, the client will be appointed a legal representative. If the client is indigent, the court may order TDHS to pay court costs and attorney's fees. The court is not required to appoint, and TDHS is not required to pay for, counsel for the spouse unless it is determined the spouse did not receive proper notice from TDHS.

Note: Staff shall not give legal advice to persons who contact APS or recommend a specific attorney; staff may only advise them to seek the advice of legal counsel.

Legal Interventions

1. Non-emergency interventions include:

- Order to Grant Authority to TDHS to Consent to In-Home Services,
- Conservatorship,
- Consultation Regarding Orders of Protection under the Domestic Violence Act, and
- Custody

2. Emergency interventions include:

- Custody,
- Custody – Other than APS,
- Custody + Temporary Guardianship,
- Custody + Temporary Guardianship – Other than APS
- Custody Client – DNR (Do Not Resuscitate) Request
- Involuntary Physical/Mental Examination,
- Search Warrant, and
- Injunction/Restraining Order

Uncommon Legal Proceedings

APS staff are prohibited from participating in or attending legal proceedings initiated by third (3rd) parties without prior approval of APS leadership and Office of General Counsel (OGC) staff. These may include but are not limited to:

- Conservatorship actions not initiated by TDHS
- Hearings regarding Orders of Protection/No Contact Orders
- Evictions
- Civil lawsuits
- Criminal hearings
- Juvenile court proceedings

Note: If a subpoena is received staff must immediately notify legal staff via the OGC portal as well as their supervisor.

Non-Custodial Court Orders to Provide Protective Services

A non-custodial order gives APS the authority to consent to services in a non-emergency situation. It is typically used to authorize in-home services, if sufficient, to provide protection to a client who is not in imminent danger of harm. If there is a need for services and the client's physical/mental status does not support seeking custody, the law provides for non-custodial court intervention on behalf of the client.

For a non-custodial order, the client must:

- be in need of protective services,
- be shown to lack capacity to consent, and
- have a funding source.

1. Search Warrant

A search warrant is used to complete an investigation when:

- unable to gain access to the client because the client is unable to consent to entry or
- a caregiver refuses to allow staff to enter the premises.

Requirements:

- Criteria for APS involvement has been met; and
- The investigation cannot be initiated due to inability to access the client.

Note: Lack of capacity and imminent danger are not required for search warrants.

2. Order of Protection

An order of protection is an order granted for a fixed period, not to exceed one (1) year, to protect a client from abuse. This order is granted by a court with jurisdiction over domestic relations matters. Although this is an available option, APS would not obtain the order for the client. Other family members or service agencies may assist the client with obtaining an order of protection. If after a legal call, it is determined that this is the best intervention to protect an APS client, OGC may assist the family member/client in obtaining the order of protection.

3. Involuntary Mental/Physical Examination

A mental/physical examination can be requested when there is cause to question a client's mental capacity or reason to believe they may be in imminent danger of irreparable harm or death. The evidence that is currently available is inadequate to petition the court for an order granting the authority to consent to placement, treatment, or other services. The following applies to orders for involuntarily mental/physical examinations:

- Staff must not consent to any examinations or treatment not described in the order without consultation with OGC and authorization from the court.
- Staff must identify a facility/physician willing to conduct the examination and a payment source.
- The client may be transported and/or hospitalized, if necessary, to complete the examination and evaluated only for conditions described in the order.
- Unless an order for protective services is granted, the client must be returned to his/her residence upon completion of the examination.

Orders may require the client to be examined by:

- a physician;
- a psychologist in consultation with a physician; or
- a psychiatrist to determine the client's capacity to consent and/or if the client is in imminent danger of irreparable harm or death.

Notice shall be given to the client and the client's caregiver, if applicable, that TDHS intends to seek a court order to require a physical/mental examination – unless it is an emergency situation. In emergency situations, orders may be issued without the client or caregiver receiving notice or being present (“ex parte” orders) through affidavit or sworn testimony of the APS staff if:

- there is probable cause to believe that the client is in imminent danger and
- delay for a hearing could substantially increase the potential for:
 - irreparable physical/mental harm, and/or
 - death.

Evidence of probable cause may be based on:

- observations of the client by the investigative specialist,
- records, and/or
- contacts with those having knowledge of the client's condition

Payment of Court Ordered Examinations

The client must pay the cost of the examinations from his/her own resources. Any available insurance, Medicare, TennCare, or indigent medical services will be used.

4. Temporary Restraining Order/Injunctive Relief

A temporary restraining order temporarily orders a person to cease actions that violate APS statutes. The remedy may include prohibiting the person from providing care for a vulnerable adult if found to have abused, neglected, or exploited that adult. A temporary restraining order can be converted to an injunction which can be temporary or permanent.

An injunction is a judicial order that restrains a person from beginning or continuing an action threatening or invading the legal right of another, or that compels a person to carry out a certain act, e.g. to confirm the caregiver ensures receipt of medical care as needed.

A temporary restraining order/injunction may be used to:

- ensure the protection of the client,
- prevent the caregiver from interfering with provision of protective services,
- require the caregiver to disclose whereabouts of a client,
- prevent interference in medical care,
- protect other vulnerable clients from an indicated perpetrator when the identity cannot be released without the provision of appropriate due process procedures, and/or
- protect the client from further contact with an indicated perpetrator.

Note: It may be used in other situations as approved by OGC.

Requirements:

- Need for protective services for the adult
- Evidence or knowledge which shows caregiver/perpetrator is interfering with necessary care or is impeding an investigation

Custodial Orders to Provide Protective Services

Custodial orders are utilized to ensure appropriate treatment and/or placement. To justify requesting a court order for custody, the client must:

- need protective services,
- lack capacity to consent, and
- be in imminent danger of irreparable physical/mental harm or death.

In addition:

- TDHS must have exhausted all other alternatives.
- Approved funding and placement must be identified prior to seeking custody. If the client has resources other than social security benefits, a temporary guardian must be appointed to manage the client's finances.
- TDHS or the entity given custody maintains responsibility for the client's care until relieved by the court.

- Custody may be given to someone other than TDHS. The public guardian may agree to serve in this capacity but is not required to do so. Relatives may also serve as custodian. The request to appoint a relative(s) must be approved on the legal call and clearly stated on the legal referral.

If TDHS has custodial authority as sanctioned by the court, this includes the power to consent to place the client in a safe, appropriate placement and consent to ordinary/routine medical care. All documentation signed by staff shall be approved by OGC prior to returning the signed document. This may include:

- hospitalization,
- nursing home admission,
- specific or general medical or nursing care, or
- alternative living arrangements.

If a client has financial resources in addition to social security income (i.e., owning property/house) that require management while in custody, a temporary guardian must be appointed to pay for the placement from the client's resources. Some clients may not qualify for placement resources such as CHOICES; therefore, they will be considered private pay.

TDHS cannot be appointed as the temporary guardian and staff is not authorized to assume control of a client's financial or physical assets. The temporary guardian order is obtained at the same time as the custody order. The custody order does not expire; but temporary guardianship is valid for only six (6) months and must be renewed in court or converted to a long-term conservatorship for finances. Options for a temporary guardian include:

- the public guardianship program,
- private conservators, or
- attorneys appointed by the court.

If APS obtains custody of a vulnerable adult who can pay for their care, control of financial resources must be transferred to a third (3rd) party. If a client has resources:

- a temporary guardian must be appointed when petitioning for custody or
- a conservator for property must be appointed when petitioning for conservatorship.

Note: If a person who is terminally ill has a living will, TDHS cannot seek custody to provide medical care which would conflict with the terms of the living will. However, if the medical care that is needed does not present a conflict, custody can be obtained for that purpose.

The available custodial interventions are:

1. Custody

Custody is a legal intervention in which APS obtains legal control over a vulnerable adult for the purposes of ensuring their safety and well-being. Prior to requesting custody, the investigator should secure a placement for the client and a funding source to pay for the placement. An [APS Physician's Statement of Need for Court Ordered Protective Services \(1125\)](#) is required for this intervention. Completion of an 1125 should not be requested until directed to do so by OGC.

2. Temporary Guardianship

If TDHS seeks custody of a client unable to obtain the care/treatment required but has sufficient resources, the petition must include a request for appointment of a temporary guardian to disburse/manage the client's resources. If this need arises after the petition is filed, OGC must be advised to amend the petition to appoint a temporary guardian.

The court may appoint a temporary guardian for no longer than six (6) months from the entry of the order authorizing provision of protective services; the order may be extended for up to six (6) additional months. If an extension is needed, OGC must be contacted to extend the temporary guardian's authority prior to the expiration of

the order. The court-appointed guardian is required to file an accounting with the court of the resources used to provide care for the client. In most APS cases, the Public Guardian will be appointed as temporary guardian. TDHS staff cannot serve as the temporary guardian of the vulnerable adult.

Requirements:

- Court order to consent to care, treatment, or placement has been granted to TDHS or other party,
- The vulnerable adult has resources to pay for care/treatment; and
- The vulnerable adult cannot access the resources needed to obtain care/treatment without the appointment of a temporary guardian.

Note: The APS case must remain open while a temporary guardian is involved.

3. Conservatorship

Conservatorship is a legal intervention in which APS requests the court to appoint a person who will be responsible for making medical and financial decisions for a vulnerable adult who lacks capacity but is not in imminent danger. A legal referral is required. If the vulnerable adult is in imminent danger, an emergent intervention may be appropriate. A sworn [HS-3193 Medical Report for the Establishment of Conservatorship](#) is required for this intervention but must not be requested from the client's physician until directed by OGC. Unlike temporary guardianship, conservatorship does not expire.

TDHS will provide legal services to establish a conservatorship for APS clients for the following reasons:

- A more effective initial means of providing protective services to the client,
- To transition a client from TDHS temporary custody to long-term care and supervision by a suitable relative or other suitable person, and/or
- The temporary guardian's term of service for a client in TDHS custody will soon expire.

TDHS will **not** provide legal services to establish a conservatorship for APS clients for the following reasons:

- the client does not meet the criteria for a custodial petition and is not in TDHS custody,
- when the client only needs a conservator to manage finances or property,
- as a legal service to the client or family members who cannot afford or do not want to pay for legal services to establish a conservatorship or, for any other reasons, do not want to undertake the legal process necessary, or
- because members of the community feel APS should undertake the establishment of a conservatorship for the client.

APS shall plan to convert all custody clients to a conservatorship for long term protection. TDHS/APS cannot serve as a conservator so staff must secure an appropriate person or entity to serve in this role.

Identifying a Proposed Conservator

Per statute Tenn. Code Ann. § 34-3-103, relatives must first be considered as outlined in statute. When there are no appropriate or willing relatives, staff shall seek other options to obtain a conservator as listed below.

The Tennessee District Public Guardian may be appointed as a conservator for any APS client who has no family member or other willing/appropriate person to serve.

1. For clients age sixty (60) and above:

- A public guardianship referral shall be completed and submitted to the Public Guardianship Program for approval.
- Once staff obtain approval from the Public Guardianship Program, the public guardian shall be listed in the legal referral as the proposed conservator.

2. For clients under age sixty (60), APS can seek to have the public guardian serve provided the public guardian is willing and has capacity to do so, and obtains approval from TCAD. The public guardian may serve clients who are enrolled in Employment and Community First (ECF) CHOICES or the Department of Disability and Aging (DDA) (formerly Department of Intellectual and Developmental Disabilities (DIDD)) Waiver program who do not have assets or resources that must be managed. For ECF CHOICES/ DDA Waiver participants who do not have resources to be managed, a corporate conservator may be requested.

For custody clients, regardless of age, who are enrolled in ECF CHOICES or DDA Waiver program, a corporate conservator must be requested from DDA using the process outlined in the [Interagency Cooperative Agreement: APS and DIDD](#). The only exception is a client who has assets or resources that must be managed. Staff must request the public guardian serve as conservator for all ECF CHOICES/DDA Waiver clients who require a conservator of property.

Review and Monitoring of Court Orders Granting TDHS Authority to Consent to Services

A review of the court order must be requested when:

- custody is no longer needed to prevent immediate and irreparable harm or death to the client, or
- the client regains capacity to consent to services.

For cases in which a court order gives TDHS authority to consent to protective services, APS staff must:

- Monitor the client's condition for changes that may warrant restoration of the client's rights.
- Review and document the case at least every six (6) months to determine if the custody order is still appropriate with the team coordinator and, if necessary, OGC.
- Document the client's capacity to consent and the risk to the client if the order is changed and his/her rights are restored.

Payment for Services

TDHS cannot pay the cost of the client's care. When the court orders treatment and/or a protective placement, APS will ensure that the client has available resources to meet his/her needs.

A temporary guardian may be appointed by the court to liquidate the client's existing resources to pay for his/her care. The need for a temporary guardian should be determined when the court places custody of the client with TDHS. Payment for court-ordered care should be established as follows:

- If the client's income and resources are adequate, the court-ordered care must be paid from the client's resources.
- If the client does not have adequate resources to pay for necessary services, APS must initiate applications for income and medical coverage, such as:
 - Supplemental Security Income (SSI),
 - TennCare,
 - [CHOICES/ECF](#)

Post-Placement Examinations

Clients taken into legal custody and placed in a non-medical setting must be examined to determine the cause of the client's lack of capacity to consent. This examination is required unless such determination was made at the time of the final hearing. The required examination(s) should be obtained within two (2) weeks of placement. When the cause of the incapacity is determined, prescribed treatment must be arranged.

Note: This typically does not apply because APS procedures require that medical evidence be provided prior to taking custody.

Prohibitions on Use of the Adult Protection Act

APS is legally prohibited from taking action in the following situations:

- Legal intervention will not be sought to provide medical care for a terminally ill client who has executed an unrevoked living will when the provision of medical care would conflict with the terms of the living will.
- A client who relies on or is receiving treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment shall not be considered to be abused or neglected.

Legal intervention will not be sought for the sole purpose of making end-of-life decisions for a terminally ill client who is **not** in APS custody.

Supporting Documents

[APS Physician's Statement of Need for Court Ordered Protective Services \(1125\)](#)

[HS-3193 Medical Report for the Establishment of Conservatorship](#)

[CHOICES/ECE](#)

[APS Legal Intervention Procedures](#)

Definitions/Acronyms

Term	Definition
A/N/E	Abuse, neglect, exploitation
APS	Adult Protective Services
CMS	Case Management System
Custody	Tennessee Department of Human Services or other person or entity legally responsible for the client's welfare is authorized to assume legal and physical control over the client to have the client transported to and/or retained in a hospital, nursing home, etc. and to consent to the provision of any protective services ordered or permitted by the court's order to prevent irreparable harm or death to the client.
DDA	Department of Disability and Aging
DIDD	Department of Intellectual and Developmental Disabilities
ECF	Employment and Community First
Imminent Danger	Conditions calculated to, and capable of, producing within a relatively short period of time a reasonable probability of irreparable harm and/or cessation of life if conditions aren't removed or alleviated.
Power of Attorney	Allows someone to designate a person (an agent) to handle decision making for them. This power may extend to financial decisions in addition to other duties as specified in the executed power of attorney document.
DNR	Do Not Resuscitate
OGC	Office of General Counsel
SSI	Supplemental Security Income
TDHS	Tennessee Department of Human Services

Supersedes

8.20 APS Legal Interventions, eff. date 08/01/2023

Approval History

Approved By	Approver Title	Approved Date	Effective Date
Clarence H. Carter	Commissioner	01/03/2025	01/15/2025
Cherrell Campbell-Street	Deputy Commissioner	07/17/2023	08/01/2023
Clarence H. Carter	Commissioner	06/29/2022	07/15/2022

Revision History

Date	Version	Location of Change	Description/Reason for Change
01/03/2025	01/15/2025	Policy Section	This policy revision clarified when a Public Guardian may be appointed and replaced DIDD with DDA due to creation of new department.
07/17/2023	08/01/2023	Policy Section	Fixed formatting issues and clarified language, added verbiage about the new OGC portal
06/29/2022	07/15/2022	N/A	New Policy

Approved By	<i>Clarence H. Carter</i>	Approval Date	01/03/2025
Authority	Tenn. Code Ann. § 71-6-107, 71-6-114 Tenn. Code Ann. § 71-6-103(f) [Private Premises to Investigate] Tenn. Code Ann. § 71-6-104 [Temporary Restraining Orders Injunctive Relief] Tenn. Code Ann. § 34-3-103 Tenn. Code Ann. § 36-3-611 Tenn. Code Ann. § 45-10 [Financial Records Privacy Act]	Effective Date	01/15/2025
Application	Adult Protective Services staff		