

REPORTING ABUSE OF A VULNERABLE ADULT

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Gene Davis

LONG TITLE

Committee Note:

The Administrative Rules Review Committee recommended this bill.

General Description:

This bill modifies Chapter 3, Aging and Adult Services, of Title 62A, Utah Human Services Code, by amending definitions.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "emotional or psychological abuse;" and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-301, as last amended by Laws of Utah 2011, Chapter 320

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-3-301** is amended to read:

62A-3-301. Definitions.



28 As used in this part:

29 (1) "Abandonment" means any knowing or intentional action or failure to act,
30 including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves
31 the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
32 medical or other health care.

33 (2) "Abuse" means:

34 (a) knowingly or intentionally:

35 (i) attempting to cause harm;

36 (ii) causing harm; or

37 (iii) placing another in fear of harm;

38 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
39 causes or is likely to cause harm to a vulnerable adult;

40 (c) emotional or psychological abuse;

41 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;

42 or

43 (e) deprivation of life sustaining treatment, or medical or mental health treatment,

44 except:

45 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

46 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

47 (3) "Adult" means a person who is 18 years of age or older.

48 (4) "Adult protection case file" means a record, stored in any format, contained in a
49 case file maintained by Adult Protective Services.

50 (5) "Adult Protective Services" means the unit within the division responsible to
51 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
52 protective services.

53 (6) "Capacity to consent" means the ability of a person to understand and communicate
54 regarding the nature and consequences of decisions relating to the person, and relating to the
55 person's property and lifestyle, including a decision to accept or refuse services.

56 (7) "Caretaker" means each person, entity, corporation, or public institution that
57 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
58 supervision, medical or other health care, resource management, or other necessities.

59 (8) "Counsel" means an attorney licensed to practice law in this state.

60 (9) "Database" means the statewide database maintained by the division under Section
61 62A-3-311.1.

62 (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

63 (11) "Elder adult" means a person 65 years of age or older.

64 (12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
65 risk of death, serious physical injury, or serious physical, emotional, or financial harm.

66 (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
67 nonverbal conduct directed at a vulnerable adult that results [~~or could result~~] in the vulnerable
68 adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or
69 confusion.

70 (b) "Emotional or psychological abuse" includes [~~ridiculing,~~] intimidating, [~~yelling,~~
71 ~~swearing,~~] threatening, isolating, coercing, or harassing.

72 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
73 by a vulnerable adult who lacks the capacity to intentionally or knowingly:

74 (i) engage in the conduct; or

75 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation,
76 or confusion.

77 (14) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section
78 76-5b-202.

79 (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
80 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
81 knowingly or intentionally.

82 (16) "Inconclusive" means a finding by the division that there is not a reasonable basis
83 to conclude that abuse, neglect, or exploitation occurred.

84 (17) "Intimidation" means communication through verbal or nonverbal conduct which
85 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
86 supervision, health care, or companionship, or which threatens isolation or abuse.

87 (18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
88 from having contact with another person by:

89 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,

90 contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor
91 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
92 knowing that communication to be false;

93 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
94 from meeting with a visitor; or

95 (iii) making false or misleading statements to the vulnerable adult in order to induce
96 the vulnerable adult to refuse to receive communication from visitors or other family members.

97 (b) The term "isolation" does not include an act intended to protect the physical or
98 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
99 instructions of a physician or other professional advisor of the vulnerable adult.

100 (19) "Lacks capacity to consent" is as defined in Section 76-5-111.

101 (20) (a) "Neglect" means:

102 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
103 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
104 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
105 assistance; or

106 (B) failure of a caretaker to provide protection from health and safety hazards or
107 maltreatment;

108 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
109 with the degree of care that a reasonable person in a like position would exercise;

110 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
111 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
112 heating, or other services necessary to maintain the vulnerable adult's well being;

113 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
114 plan that causes or is likely to cause harm to the vulnerable adult;

115 (v) self-neglect by the vulnerable adult; or

116 (vi) abandonment by a caretaker.

117 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
118 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

119 (21) "Physical injury" includes the damage and conditions described in Section
120 76-5-111.

121 (22) "Protected person" means a vulnerable adult for whom the court has ordered
122 protective services.

123 (23) "Protective services" means services to protect a vulnerable adult from abuse,
124 neglect, or exploitation.

125 (24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
126 water, medication, health care, shelter, cooling, heating, safety, or other services necessary to
127 maintain the vulnerable adult's well being when that failure is the result of the adult's mental or
128 physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be
129 evidence of self-neglect.

130 (25) "Serious physical injury" is as defined in Section 76-5-111.

131 (26) "Supported" means a finding by the division that there is a reasonable basis to
132 conclude that abuse, neglect, or exploitation occurred.

133 (27) "Undue influence" occurs when a person uses the person's role, relationship, or
134 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
135 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
136 deceptively over the decision making of the vulnerable adult.

137 (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical
138 impairment which substantially affects that person's ability to:

- 139 (a) provide personal protection;
- 140 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 141 (c) obtain services necessary for health, safety, or welfare;
- 142 (d) carry out the activities of daily living;
- 143 (e) manage the adult's own financial resources; or
- 144 (f) comprehend the nature and consequences of remaining in a situation of abuse,
145 neglect, or exploitation.

146 (29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Legislative Review Note
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Office of Legislative Research and General Counsel