

1 **AGING AND ADULT SERVICES AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rebecca Chavez-Houck**

5 Senate Sponsor: Brian E. Shiozawa

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a
10 Vulnerable Adult.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "limited capacity";
- 14 ▶ clarifies the powers and duties of Adult Protective Services;
- 15 ▶ gives Adult Protective Services access to a vulnerable adult's records if, for a
16 vulnerable adult who lacks or has limited capacity to consent, Adult Protective
17 Services issues an administrative subpoena; and
- 18 ▶ makes the vulnerable adult database and the adult protection case file available to
19 city attorneys.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **62A-3-301**, as last amended by Laws of Utah 2012, Chapter 149

27 **62A-3-303**, as last amended by Laws of Utah 2008, Chapter 91



28 [62A-3-312](#), as last amended by Laws of Utah 2008, Chapters 91 and 382

29

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

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

32 **62A-3-301. Definitions.**

33 As used in this part:

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

38 (2) "Abuse" means:

39 (a) knowingly or intentionally:

40 (i) attempting to cause harm;

41 (ii) causing harm; or

42 (iii) placing another in fear of harm;

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

45 (c) emotional or psychological abuse;

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

47 or

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

49 except:

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

51 (ii) when informed consent, as defined in Section [76-5-111](#), has been obtained.

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

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

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

58 (6) "Capacity to consent" means the ability of a person to understand and communicate

59 regarding the nature and consequences of decisions relating to the person, and relating to the
60 person's property and lifestyle, including a decision to accept or refuse services.

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

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

65 (9) "Database" means the statewide database maintained by the division under Section
66 [62A-3-311.1](#).

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

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

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

71 (13) (a) "Emotional or psychological abuse" means knowing or intentional verbal or
72 nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering
73 mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

74 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,
75 coercing, or harassing.

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

78 (i) engage in the conduct; or

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

81 (14) "Exploitation" means an offense described in Subsection [76-5-111\(4\)](#) or Section
82 [76-5b-202](#).

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

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

88 (17) "Intimidation" means communication through verbal or nonverbal conduct which
89 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,

90 supervision, health care, or companionship, or which threatens isolation or abuse.

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

93 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
94 contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor
95 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
96 knowing that communication to be false;

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

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

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

104 (19) "Lacks capacity to consent" is as defined in Section [76-5-111](#).

105 (20) "Limited capacity to consent" means that an adult's ability to understand,
106 communicate, or make decisions regarding the nature and consequences of the adult's life or
107 property due to a mental illness, developmental disability, organic brain disorder, physical
108 illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or
109 other cause is limited in one or more, but not all, functional areas, consistently or during
110 identified times of day.

111 [~~20~~] (21) (a) "Neglect" means:

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

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

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

120 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed

121 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
122 heating, or other services necessary to maintain the vulnerable adult's well being;

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

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

126 (vi) abandonment by a caretaker.

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

129 ~~[(21)]~~ (22) "Physical injury" includes the damage and conditions described in Section
130 76-5-111.

131 ~~[(22)]~~ (23) "Protected person" means a vulnerable adult for whom the court has
132 ordered protective services.

133 ~~[(23)]~~ (24) "Protective services" means services to protect a vulnerable adult from
134 abuse, neglect, or exploitation.

135 ~~[(24)]~~ (25) "Self-neglect" means the failure of a vulnerable adult to provide or obtain
136 food, water, medication, health care, shelter, cooling, heating, safety, or other services
137 necessary to maintain the vulnerable adult's well being when that failure is the result of the
138 adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by
139 themselves, be evidence of self-neglect.

140 ~~[(25)]~~ (26) "Serious physical injury" is as defined in Section 76-5-111.

141 ~~[(26)]~~ (27) "Supported" means a finding by the division that there is a reasonable basis
142 to conclude that abuse, neglect, or exploitation occurred.

143 ~~[(27)]~~ (28) "Undue influence" occurs when a person uses the person's role, relationship,
144 or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
145 fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control
146 deceptively over the decision making of the vulnerable adult.

147 ~~[(28)]~~ (29) "Vulnerable adult" means an elder adult, or an adult who has a mental or
148 physical impairment which substantially affects that person's ability to:

149 (a) provide personal protection;

150 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

151 (c) obtain services necessary for health, safety, or welfare;

- 152 (d) carry out the activities of daily living;
- 153 (e) manage the adult's own financial resources; or
- 154 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 155 neglect, or exploitation.

156 ~~[(29)]~~ (30) "Without merit" means a finding that abuse, neglect, or exploitation did not
 157 occur.

158 Section 2. Section **62A-3-303** is amended to read:

159 **62A-3-303. Powers and duties of Adult Protective Services.**

160 In addition to all other powers and duties that Adult Protective Services is given under
 161 this part, Adult Protective Services:

- 162 (1) shall maintain an intake system for receiving and screening reports;
- 163 (2) shall investigate ~~[reports]~~ referrals that meet the intake criteria;
- 164 (3) shall conduct assessments of vulnerability and functional capacity as it relates to an
 165 allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;

166 ~~[(3)]~~ (4) shall perform assessments based on protective needs ~~[assessments]~~ and risks
 167 for a vulnerable adult who is the subject of a report;

168 ~~[(4)]~~ (5) ~~[may coordinate with, or make referrals to, community resources]~~ may address
 169 any protective needs by making recommendations to and coordinating with the vulnerable adult
 170 or by making referrals to community resources;

171 ~~[(5)]~~ (6) may provide short-term, limited services to a vulnerable adult~~[, on a~~
 172 ~~temporary basis,]~~ when family or community resources are not available to provide for the
 173 protective needs of the vulnerable adult;

174 ~~[(6)]~~ (7) shall have access to facilities licensed by, or ~~[contracting]~~ contracted with, the
 175 department or the Department of Health for the purpose of conducting investigations;

176 ~~[(7)]~~ (8) shall be given access to, or provided with, written statements, documents,
 177 exhibits, and other items related to an investigation, including private, controlled, or protected
 178 medical or financial records of a vulnerable adult who is the subject of an investigation if:

179 (a) for a vulnerable adult who does not lack ~~[the]~~ capacity to consent, or who does not
 180 have limited capacity to consent, the vulnerable adult signs a release of information; or

181 (b) for a vulnerable adult who lacks ~~[the]~~ capacity to consent, or has limited capacity to
 182 consent, an administrative subpoena is issued by Adult Protective Services;

183 ~~[(8)]~~ (9) may ~~[institute]~~ initiate proceedings in a court of competent jurisdiction to seek
184 relief necessary to carry out the provisions of this chapter;

185 ~~[(9)]~~ (10) may require all persons, including family members of a vulnerable adult and
186 any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this
187 chapter, including the provision of statements, documents, exhibits, and other items that assist
188 Adult Protective Services in conducting investigations and providing protective services;

189 ~~[(10)]~~ (11) may require all officials, agencies, departments, and political subdivisions
190 of the state to assist and cooperate within their jurisdictional power with the court, the division,
191 and Adult Protective Services in furthering the purposes of this chapter;

192 ~~[(11)]~~ (12) may conduct studies and compile data regarding abuse, neglect, and
193 exploitation; and

194 ~~[(12)]~~ (13) may issue reports and recommendations.

195 Section 3. Section **62A-3-312** is amended to read:

196 **62A-3-312. Access to information in database.**

197 The database and the adult protection case file:

198 (1) shall be made available to law enforcement agencies, the attorney general's office,
199 city attorneys, and county or district attorney's offices;

200 (2) shall be released as required under Subsection [63G-2-202\(4\)\(c\)](#); and

201 (3) may be made available, at the discretion of the division, to:

202 (a) subjects of a report as follows:

203 (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or
204 that adult's attorney or legal guardian; and

205 (ii) a person identified in a report as having abused, neglected, or exploited a
206 vulnerable adult, or that person's attorney; and

207 (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

208 (i) an employee or contractor of the department who is responsible for the evaluation or
209 assessment of an adult protection case file;

210 (ii) a multidisciplinary team approved by the division to assist Adult Protective
211 Services in the evaluation, assessment, and disposition of a vulnerable adult case;

212 (iii) an authorized person or agency providing services to, or responsible for, the care,
213 treatment, assessment, or supervision of a vulnerable adult named in the report as a victim,

214 when in the opinion of the division, that information will assist in the protection of, or provide
215 other benefits to, the victim;

216 (iv) a licensing authority for a facility, program, or person providing care to a victim
217 named in a report; and

218 (v) legally authorized protection and advocacy agencies when they represent a victim
219 or have been requested by the division to assist on a case, including:

220 (A) the Office of Public Guardian, created in Section [62A-14-103](#); and

221 (B) the Long-Term Care Ombudsman Program, created in Section [62A-3-203](#).

Legislative Review Note
as of 12-6-13 2:21 PM

Office of Legislative Research and General Counsel