

# HB0534

~~{Omitted text}~~ shows text that was in HB0534 but was omitted in HB0534S01

**inserted text** shows text that was not in HB0534 but was inserted into HB0534S01

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## Adult Protective Services Amendments

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Anthony E. Loubet**

Senate Sponsor:Evan J. Vickers

# LONG TITLE

### General Description:

This bill amends provisions regarding Adult Protective Services.

### Highlighted Provisions:

This bill:

- ▶ amends definitions and defines terms;
- ▶ allows Adult Protective Services to make a substantiated finding of abuse, neglect, or exploitation of a vulnerable adult if the alleged perpetrator refuses to provide certain documents;and
- ▶ { ~~amends provisions regarding the procedure by which an alleged perpetrator challenges a reported finding of abuse, neglect, or exploitation of a vulnerable adult, and limitations on those challenges; and~~ }
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

## HB0534 compared with HB0534S01

AMENDS:

**26B-6-201** , as last amended by Laws of Utah 2024, Chapter 364 , as last amended by Laws of Utah 2024, Chapter 364

**26B-6-203** , as last amended by Laws of Utah 2023, Chapter 318 and renumbered and amended by Laws of Utah 2023, Chapter 308 , as last amended by Laws of Utah 2023, Chapter 318 and renumbered and amended by Laws of Utah 2023, Chapter 308

~~{26B-6-211 , as renumbered and amended by Laws of Utah 2023, Chapter 308 , as renumbered and amended by Laws of Utah 2023, Chapter 308}~~

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

Section 1. Section **26B-6-201** is amended to read:

**26B-6-201. Definitions.**

As used in this part:

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

(2) "Abuse" means:

(a) knowingly[-or] , intentionally, or recklessly:

(i) attempting to cause harm;

(ii) causing harm;[-or]

(iii) placing another in fear of imminent harm;

(iv) causing physical injury by acts or omissions; or

(v) engaging in a pattern of neglect;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that, unless the physical restraint, medication, or isolation furthers the health and safety of the vulnerable adult:

(i) causes or is likely to cause harm to a vulnerable adult;

(ii) conflicts with a physician's orders; or

(iii) is used as an unauthorized substitute for treatment;

(c) emotional or psychological abuse;

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

## HB0534 compared with HB0534S01

- 51 (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:  
52 (i) as provided in Title 75A, Chapter 3, Health Care Decisions; or  
53 (ii) when informed consent~~[, as defined in Section 76-5-111,]~~ has been obtained.  
54 (3) "Adult" means an individual who is 18 years old or older.  
55 (4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained  
by Adult Protective Services.  
57 (5) "Adult Protective Services" means the unit within the division responsible to investigate abuse,  
neglect, and exploitation of vulnerable adults and provide appropriate protective services.  
60 (6) "Capacity" means that an individual has sufficient understanding and memory to comprehend the  
individual's situation and the nature, purpose, and consequence of an act or transaction into which  
the individual enters or proposes to enter.  
63 ~~[(6)]~~ (7) "Capacity to consent" means the ability of an individual to understand and communicate  
regarding the nature and consequences of decisions relating to the individual, and relating to the  
individual's property and lifestyle, including a decision to accept or refuse services.  
67 ~~[(7)]~~ (8) "Caretaker" means a person or public institution that is entrusted with or assumes the  
responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or  
other health care, resource management, or other necessities for pecuniary gain, by contract, or as a  
result of friendship, or who is otherwise in a position of trust and confidence with a vulnerable adult,  
including a relative, a household member, an attorney-in-fact, a neighbor, a person who is employed  
or who provides volunteer work, a court-appointed or voluntary guardian, or a person who contracts  
or is under court order to provide care.  
75 ~~[(8)]~~ (9) "Counsel" means an attorney licensed to practice law in this state.  
76 ~~[(9)]~~ (10) "Database" means the statewide database maintained by the division under Section  
26B-6-210.  
78 (11) "Decision-making ability" means an individual's capacity to receive, process, and understand  
information, to comprehend the individual's circumstances, and to understand the likely  
consequences of the individual's decisions.  
81 ~~[(10)]~~ (12)  
(a) "Dependent adult" means an individual 18 years old or older, who has a physical or mental  
impairment that restricts the individual's ability to carry out normal activities or to protect the  
individual's rights.

## HB0534 compared with HB0534S01

- 84 (b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose  
physical or mental capacity has substantially diminished because of age.
- 87 [(11)] (13) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
- 88 [(12)] (14) "Elder adult" means an individual 65 years old or older.
- 89 [(13)] (15) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of  
death, serious physical injury, or serious physical, emotional, or financial harm.
- 92 [(14)] (16) "Emergency protective services" means measures taken by Adult Protective Services under  
time-limited, court-ordered authority for the purpose of remediating an emergency.
- 95 [(15)] (17)
- (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct  
directed at a vulnerable adult that ~~[results in the vulnerable adult suffering]~~ would cause a  
reasonable individual to suffer mental anguish, emotional distress, fear, humiliation, degradation,  
agitation, or confusion.
- 99 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or  
harassing.
- 101 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable  
adult who lacks the capacity to intentionally or knowingly:
- 103 (i) engage in the conduct; or
- 104 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
- 106 (18) "Endangerment" means an offense described in Section 76-5-112 or 76-5-112.5.
- 107 [(16)] (19) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.
- 109 [(17)] (20) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological  
damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or,  
intentionally.
- 112 [(18)] (21) "Inconclusive" means a finding by the division that there is not a reasonable basis to  
conclude that abuse, neglect, or exploitation occurred.
- 114 (22) "Informed consent" means:
- 115 (a) a written expression by the individual, or authorized by the individual, that:
- 116 (i) is given while the individual is of sound mind;
- 117 (ii) is witnessed by at least two individuals who do not benefit from the withdrawal of services; and
- 119 (iii) states that:

## HB0534 compared with HB0534S01

- 120 (A) the individual fully understands the potential risks and benefits of the withdrawal of food, water,  
124 medication, medical services, shelter, cooling, heating, or other services necessary to maintain  
125 minimum physical or mental health; and
- 124 (B) the individual desires that the services be withdrawn; or
- 125 (b) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other  
services necessary to maintain minimum physical or mental health, as permitted by court order.
- 128 [(19)] (23) "Intimidation" means communication through verbal or nonverbal conduct which threatens  
deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care,  
or companionship, or which threatens isolation or abuse.
- 131 [(20)] (24)
- (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with  
another person, unless the restriction of personal rights is authorized by court order, by:
- 134 (i) preventing the vulnerable adult from communicating, visiting, interacting, or initiating  
interaction with others, including receiving or inviting visitors, mail, or telephone calls,  
contrary to the expressed wishes of the vulnerable adult, or communicating to a visitor that the  
vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that  
communication to be false;
- 139 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting  
with a visitor; or
- 141 (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable  
adult to refuse to receive communication from visitors or other family members.
- 144 (b) "Isolation" does not include an act:
- 145 (i) intended in good faith to protect the physical or mental welfare of the vulnerable adult; or
- 147 (ii) performed pursuant to the treatment plan or instructions of a physician or other professional advisor  
of the vulnerable adult.
- 149 [(21)] (25) "Lacks capacity to consent" is as defined in Section 76-5-111.4.
- 150 [(22)] (26)
- [(a)] "Neglect" means:
- 151 [(i)] (a)

## HB0534 compared with HB0534S01

- [(A)] (i) failure of a caretaker to provide [~~necessary care, including~~] nutrition, clothing, shelter, supervision, personal care, or dental[, ~~medical,~~] or other health care[ ~~for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance~~]; or
- 155 [(B)] (ii) failure of a caretaker to provide protection from health and safety hazards or maltreatment;
- 157 [(iii)] (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
- 159 [(iii)] (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
- 163 [(iv)] (d) [~~knowing or~~] intentional failure by a caretaker to carry out a prescribed treatment plan that [~~causes or is likely to cause~~] results or could result in physical injury or physical harm to the vulnerable adult; or
- 166 [(v) self-neglect by the vulnerable adult; or]
- 167 [(vi)] (e) abandonment by a caretaker.
- 168 [(b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75A, Chapter 3, Health Care Decisions:]
- 170 [(23)] (27) "Physical injury" includes the damage and conditions described in Section 76-5-111.
- 172 (28) "Position of trust and confidence" means the position of a person who:
- 173 (a) is a parent, spouse, adult child, or other relative of a vulnerable adult;
- 174 (b) is a joint tenant or tenant in common with a vulnerable adult;
- 175 (c) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator;
- 178 (d) is a caretaker of a vulnerable adult; or
- 179 (e) is a person whom a vulnerable adult has come to trust.
- 180 [(24)] (29) "Protected person" means a vulnerable adult for whom the court has ordered protective services.
- 182 [(25)] (30) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.
- 184 [(26)] (31) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical

## HB0534 compared with HB0534S01

impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

189 [(27)] (32) "Serious physical injury" is as defined in Section 76-5-111.

190 [(28)] (33) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

192 [(29)] (34) "Undue influence" occurs when a person:

193 (a) uses influence to take advantage of a vulnerable adult's mental or physical impairment; or

195 (b) uses the person's role, relationship, ~~or~~ power, or trust:

196 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or

198 (ii) to gain control deceptively over the decision making of the vulnerable adult.

199 [(30)] (35) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or physical impairment which substantially affects that person's ability to:

201 (a) provide personal protection;

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

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

205 (d) carry out the activities of daily living;

206 (e) manage the adult's own ~~financial~~ resources; or

207 (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

209 [(31)] (36) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

207 Section 2. Section **26B-6-203** is amended to read:

### 208 **26B-6-203. Powers and duties of Adult Protective Services.**

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

215 (1) shall maintain an intake system for receiving and screening reports;

216 (2) shall investigate referrals that meet the intake criteria;

217 (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;

219 (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;

## HB0534 compared with HB0534S01

- 221 (5) may address any protective needs by making recommendations to and coordinating with the  
vulnerable adult or by making referrals to community resources;
- 223 (6) may provide short-term, limited services to a vulnerable adult when family or community resources  
are not available to provide for the protective needs of the vulnerable adult;
- 226 (7) shall have access to facilities licensed by, or contracted with, the department for the purpose of  
conducting investigations;
- 228 (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items  
related to an investigation, including private, controlled, or protected medical or financial records of  
a vulnerable adult who is the subject of an investigation if:
- 232 (a) for a vulnerable adult who has the capacity to consent, the vulnerable adult signs a release of  
information; or
- 234 (b) an administrative subpoena is issued by Adult Protective Services:
- 235 (i) for a vulnerable adult who has limited capacity to consent;
- 236 (ii) for a vulnerable adult whose legal guardian refuses to consent;
- 237 (iii) to a custodian of records or other items for a vulnerable adult, if the custodian refuses to allow  
access to the records or items without a subpoena; or
- 239 (iv) when the records or other items sought are reasonably necessary for Adult Protective Services to:
- 241 (A) investigate the alleged abuse, neglect, or exploitation of a vulnerable adult; or
- 242 (B) protect the vulnerable adult who may be the victim of abuse, neglect, or exploitation;
- 244 (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the  
provisions of this chapter;
- 246 (10) may make a supported finding of abuse, neglect, or exploitation of a vulnerable adult against an  
alleged perpetrator if documents subpoenaed or requested by Adult Protective Services are not  
provided by the alleged perpetrator;
- 249 ~~[(10)]~~ (11) shall, subject to Section 26B-6-217, provide emergency protective services;
- 250 ~~[(11)]~~ (12) may require all persons, including family members of a vulnerable adult and any caretaker,  
to cooperate with Adult Protective Services in carrying out its duties under this chapter, including  
the provision of statements, documents, exhibits, and other items that assist Adult Protective  
Services in conducting investigations and providing protective services;

255



## HB0534 compared with HB0534S01

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

[(13)] (14) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

[(14)] (15) may issue reports and recommendations.

~~{Section 3. Section 26B-6-211 is amended to read: }~~

### **26B-6-211. Notice of supported finding -- Procedure for challenging finding -- Limitations.**

(1)

(a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).

(b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:

(i) the delay is necessary in order to:

(A) avoid impeding an ongoing criminal investigation or proceeding; or

(B) protect the safety of a person; and

(ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.

(2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.

(3) The notice described in Subsection (1)(a) shall:

(a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

(b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;

(c) include a summary of the facts that are the basis for the supported finding;

(d) indicate that the supported finding may result in disqualifying the person from:

(i) being licensed, certified, approved, or employed by a government agency;

## HB0534 compared with HB0534S01

(ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or

(iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);

(e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;

(f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and

(g) inform the alleged perpetrator of:

(i) the right described in Subsection (4)(a); and

(ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.

(4)

(a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.

(b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.

(5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.

(6) At the hearing, if the division provides evidence sufficient to suggest, by a preponderance of the evidence, that the alleged perpetrator likely committed abuse, neglect, or exploitation of a vulnerable adult, the alleged perpetrator must present credible evidence that the division's evidence does not establish by a preponderance of the evidence that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, in order to successfully rebut the division's findings.

~~[(6)]~~ (7) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if:

(a) a court [of competent] with jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based[-] ; or

## HB0534 compared with HB0534S01

319 (b) a court with jurisdiction accepted a plea deal from the alleged perpetrator concerning the same set of  
facts upon which the supported finding is based.

321 [(7)] (8) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not  
have an opportunity to challenge the division's finding that resulted in the listing, may at any time:

324 (a) request that the division reconsider the division's finding; or

325 (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures  
Act, to challenge the finding.

257 Section 3. **Effective date.**

Effective Date.

This bill takes effect on May 7, 2025.

3-4-25 11:41 AM