

Anthony E. Loubet proposes the following substitute bill:

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
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-6-201, 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

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

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

(i) as provided in Title 75A, Chapter 3, Health Care Decisions; or

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

(3) "Adult" means an individual who is 18 years old or older.

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

(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.

(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.

~~[(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.

~~[(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.

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

[(9)] (10) "Database" means the statewide database maintained by the division under Section 26B-6-210.

(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.

[(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.

(b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.

[(11)] (13) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

[(12)] (14) "Elder adult" means an individual 65 years old or older.

[(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.

[(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.

[(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.

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

(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:

(i) engage in the conduct; or

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

(18) "Endangerment" means an offense described in Section 76-5-112 or 76-5-112.5.

~~[(16)]~~ (19) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.

~~[(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.

~~[(18)]~~ (21) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

(22) "Informed consent" means:

(a) a written expression by the individual, or authorized by the individual, that:

(i) is given while the individual is of sound mind;

(ii) is witnessed by at least two individuals who do not benefit from the withdrawal of services; and

(iii) states that:

(A) the individual fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health; and

(B) the individual desires that the services be withdrawn; or

(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.

~~[(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.

~~[(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:

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

(b) "Isolation" does not include an act:

- (i) intended in good faith to protect the physical or mental welfare of the vulnerable adult; or
- (ii) performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

~~[(21)]~~ (25) "Lacks capacity to consent" is as defined in Section 76-5-111.4.

~~[(22)]~~ (26)(a) "Neglect" means:

- ~~[(i)]~~ (a)(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
- ~~[(B)]~~ (ii) failure of a caretaker to provide protection from health and safety hazards or maltreatment;
- ~~[(ii)]~~ (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;
- ~~[(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;
- ~~[(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
- ~~[(v)]~~ self-neglect by the vulnerable adult; or]
- ~~[(vi)]~~ (e) abandonment by a caretaker.

~~[(b)]~~ "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75A, Chapter 3, Health Care Decisions.]

166 ~~[(23)]~~ (27) "Physical injury" includes the damage and conditions described in Section
167 76-5-111.

168 (28) "Position of trust and confidence" means the position of a person who:

169 (a) is a parent, spouse, adult child, or other relative of a vulnerable adult;

170 (b) is a joint tenant or tenant in common with a vulnerable adult;

171 (c) has a legal or fiduciary relationship with a vulnerable adult, including a
172 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or
173 conservator;

174 (d) is a caretaker of a vulnerable adult; or

175 (e) is a person whom a vulnerable adult has come to trust.

176 ~~[(24)]~~ (29) "Protected person" means a vulnerable adult for whom the court has ordered
177 protective services.

178 ~~[(25)]~~ (30) "Protective services" means services to protect a vulnerable adult from abuse,
179 neglect, or exploitation.

180 ~~[(26)]~~ (31) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
181 water, medication, health care, shelter, cooling, heating, safety, or other services
182 necessary to maintain the vulnerable adult's well being when that failure is the result of
183 the adult's mental or physical impairment. Choice of lifestyle or living arrangements
184 may not, by themselves, be evidence of self-neglect.

185 ~~[(27)]~~ (32) "Serious physical injury" is as defined in Section 76-5-111.

186 ~~[(28)]~~ (33) "Supported" means a finding by the division that there is a reasonable basis to
187 conclude that abuse, neglect, or exploitation occurred.

188 ~~[(29)]~~ (34) "Undue influence" occurs when a person:

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

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

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

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

195 ~~[(30)]~~ (35) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental
196 or physical impairment which substantially affects that person's ability to:

197 (a) provide personal protection;

198 (b) provide necessities such as food, shelter, clothing, or ~~[mental]~~ medical or other health
199 care;

- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own ~~[financial]~~ resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

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

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

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:

- (1) shall maintain an intake system for receiving and screening reports;
- (2) shall investigate referrals that meet the intake criteria;
- (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;
- (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
- (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
- (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;
- (7) shall have access to facilities licensed by, or contracted with, the department for the purpose of conducting investigations;
- (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:
 - (a) for a vulnerable adult who has the capacity to consent, the vulnerable adult signs a release of information; or
 - (b) an administrative subpoena is issued by Adult Protective Services:
 - (i) for a vulnerable adult who has limited capacity to consent;
 - (ii) for a vulnerable adult whose legal guardian refuses to consent;
 - (iii) to a custodian of records or other items for a vulnerable adult, if the custodian

- 234 refuses to allow access to the records or items without a subpoena; or
- 235 (iv) when the records or other items sought are reasonably necessary for Adult
- 236 Protective Services to:
- 237 (A) investigate the alleged abuse, neglect, or exploitation of a vulnerable adult; or
- 238 (B) protect the vulnerable adult who may be the victim of abuse, neglect, or
- 239 exploitation;
- 240 (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to
- 241 carry out the provisions of this chapter;
- 242 (10) may make a supported finding of abuse, neglect, or exploitation of a vulnerable adult
- 243 against an alleged perpetrator if documents subpoenaed or requested by Adult Protective
- 244 Services are not provided by the alleged perpetrator;
- 245 ~~[(10)]~~ (11) shall, subject to Section 26B-6-217, provide emergency protective services;
- 246 ~~[(11)]~~ (12) may require all persons, including family members of a vulnerable adult and any
- 247 caretaker, to cooperate with Adult Protective Services in carrying out its duties under
- 248 this chapter, including the provision of statements, documents, exhibits, and other items
- 249 that assist Adult Protective Services in conducting investigations and providing
- 250 protective services;
- 251 ~~[(12)]~~ (13) may require all officials, agencies, departments, and political subdivisions of the
- 252 state to assist and cooperate within their jurisdictional power with the court, the division,
- 253 and Adult Protective Services in furthering the purposes of this chapter;
- 254 ~~[(13)]~~ (14) may conduct studies and compile data regarding abuse, neglect, and exploitation;
- 255 and
- 256 ~~[(14)]~~ (15) may issue reports and recommendations.

257 Section 3. **Effective Date.**

258 This bill takes effect on May 7, 2025.