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76-5-111 Abuse of a vulnerable adult -- Penalties.

- (1)
- (a) As used in this section:
 - (i) "Abandonment" means a knowing or intentional action or 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.
 - (ii) "Abuse" means:
 - (A) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;
 - (B) causing physical injury by knowing or intentional acts or omissions;
 - (C) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's or physician assistant's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the vulnerable adult; or
 - (D) deprivation of life-sustaining treatment, except:
 - (I) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
 - (II) when informed consent, as defined in this section, has been obtained.
 - (iii) "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, or other necessities for pecuniary gain, by contract, or as a result of friendship, or 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.
 - (iv)
 - (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.
 - (v) "Elder adult" means an individual 65 years old or older.
 - (vi) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.
 - (vii) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.
 - (viii) "Informed consent" means:
 - (A) a written expression by the individual or authorized by the individual, stating that 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 that the individual desires that the services be withdrawn, except that a written expression is valid only if the individual is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; 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.

(ix)

(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 express 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, physician assistant, or other professional advisor of the vulnerable adult.

(x) "Neglect" means:

- (A) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;
- (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;
- (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;
- (D) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or
- (E) abandonment by a caretaker.

(xi)

(A) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition.

(B) "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

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

- (A) is a parent, spouse, adult child, or other relative of a vulnerable adult;
- (B) is a joint tenant or tenant in common with a vulnerable adult;
- (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; or
- (D) is a caretaker of a vulnerable adult.

(xiii) "Serious physical injury" means any physical injury or set of physical injuries that:

- (A) seriously impairs a vulnerable adult's health;

- (B) was caused by use of a dangerous weapon;
 - (C) involves physical torture or causes serious emotional harm to a vulnerable adult; or
 - (D) creates a reasonable risk of death.
- (xiv) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental or physical impairment which substantially affects that individual's ability to:
- (A) provide personal protection;
 - (B) provide necessities such as food, shelter, clothing, or medical or other health care;
 - (C) obtain services necessary for health, safety, or welfare;
 - (D) carry out the activities of daily living;
 - (E) manage the adult's own resources; or
 - (F) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor, including a caretaker, commits abuse of a vulnerable adult if the actor, under circumstances other than those likely to produce death or serious physical injury:
- (a) causes a vulnerable adult to suffer harm, abuse, or neglect;
 - (b) having the care or custody of a vulnerable adult, causes or permits that vulnerable adult's person or health to be injured, abused, or neglected; or
 - (c) causes or permits a vulnerable adult to be placed in a situation in which the vulnerable adult's person or health is endangered.
- (3)
- (a) A violation of Subsection (2):
 - (i) is a class A misdemeanor if done intentionally or knowingly;
 - (ii) is a class B misdemeanor if done recklessly; or
 - (iii) is a class C misdemeanor if done with criminal negligence.
 - (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) that is based on isolation of a vulnerable adult is a third degree felony.
- (4)
- (a) It does not constitute a defense to a prosecution for a violation of this section that the actor did not know the age of the vulnerable adult.
 - (b) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.
- (5) If an actor, including a caretaker, violates this section by willfully isolating a vulnerable adult, in addition to the penalties under Subsection (3), the court may require that the actor:
- (a) undergo appropriate counseling as a condition of the sentence; and
 - (b) pay for the costs of the ordered counseling.