

ADULT PROTECTIVE SERVICES**AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia W. Jones

This act repeals and reenacts Part 3, Abuse, Neglect, or Exploitation of Disabled Adult, of the Human Services Code. The act also amends the Utah Criminal Code. The act revises and clarifies the definition of certain terms and adds definitions for certain other terms. The act sets forth the purposes, powers, and duties of Adult Protective Services. The act modifies the mandatory reporting law and adds penalties for obstructing investigations and for threatening or intimidating reporters, victims, or witnesses. The act clarifies who may have access to reports and information in the possession of Adult Protective Services. The act provides that a vulnerable adult victim of exploitation has a private right of action against the perpetrator. The act clarifies provisions regarding various petitions that can be filed in district court by Adult Protective Services in behalf of vulnerable adults. The act clarifies that information and records relating to investigations by Adult Protective Services are protected records under Title 63, Chapter 2, Government Records Access and Management Act. The act modifies provisions describing the crimes of abuse or exploitation of a vulnerable adult. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-3-311.1, as last amended by Chapter 276, Laws of Utah 1999

63-2-304, as last amended by Chapters 232 and 335, Laws of Utah 2000

76-5-111, as last amended by Chapter 289, Laws of Utah 1997

ENACTS:

62A-3-313, Utah Code Annotated 1953

62A-3-314, Utah Code Annotated 1953

62A-3-315, Utah Code Annotated 1953

62A-3-316, Utah Code Annotated 1953

62A-3-317, Utah Code Annotated 1953

62A-3-318, Utah Code Annotated 1953

62A-3-319, Utah Code Annotated 1953

62A-3-320, Utah Code Annotated 1953

62A-3-321, Utah Code Annotated 1953

REPEALS AND REENACTS:

62A-3-301, as last amended by Chapter 43, Laws of Utah 2001

62A-3-302, as last amended by Chapter 130, Laws of Utah 1996

62A-3-303, as last amended by Chapter 130, Laws of Utah 1996

62A-3-304, as last amended by Chapter 43, Laws of Utah 2001

62A-3-305, as last amended by Chapter 130, Laws of Utah 1996

62A-3-306, as last amended by Chapter 39, Laws of Utah 1998

62A-3-307, as last amended by Chapter 130, Laws of Utah 1996

62A-3-308, as last amended by Chapter 130, Laws of Utah 1996

62A-3-309, as last amended by Chapter 130, Laws of Utah 1996

62A-3-311, as last amended by Chapters 130 and 248, Laws of Utah 1996

62A-3-312, as last amended by Chapter 130, Laws of Utah 1996

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

Section 1. Section 62A-3-301 is repealed and reenacted to read:

Part 3. Abuse, Neglect, or Exploitation of Vulnerable Adults

62A-3-301. Definitions.

As used in this part:

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

(2) "Abuse" means:

(a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or

knowingly placing another in fear of imminent harm;

(b) 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 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult;

(c) emotional or psychological abuse;

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

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

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

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

(4) "Adult protection case file" means documents and information contained in the file maintained by Adult Protective Services on a particular case, including any report or other notification received by the division or 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) "Caretaker" means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.

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

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

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

(10) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death or serious physical injury or is at risk of immediate, serious harm. Risk of immediate, serious harm includes exploitation that results in the inability of a vulnerable adult to provide funds for immediate needs, including food, shelter, and necessary medical care.

(11) "Emotional or psychological abuse" means intentional or knowing verbal or nonverbal conduct directed at a vulnerable adult including ridiculing, intimidating, yelling, swearing, threatening, isolating, coercing, harassing, or other forms of intimidating behavior that results or could result in the vulnerable adult suffering mental anguish or emotional distress, including fear, humiliation, degradation, agitation, confusion, or isolation.

(12) "Exploitation" means the offense described in Subsection 76-5-111(4).

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

(14) "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.

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

(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including 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) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(16) "Lacks capacity to consent" has the meaning as provided in Section 76-5-111.

(17) "Neglect" means:

(a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care,

or dental, medical, or other health care; or

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

(e) self-neglect by the vulnerable adult; or

(f) abandonment by a caretaker.

(18) "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. "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 a vulnerable adult and is not a serious physical injury as defined in this section.

(19) "Protected person" means a vulnerable adult for whom the court has ordered protective services, including a vulnerable adult for whom emergency protective services have been established under the provisions of this chapter.

(20) "Protective services" means any services provided by Adult Protective Services to a vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's guardian or conservator, or by court order, if that adult has been abused, neglected, exploited, or is in a state of self-neglect; protective services may include:

(a) an intake system for receiving and screening reports;

(b) investigation of referrals in accordance with statutory and policy guidelines;

(c) protective needs assessment;

(d) coordination and referral to community resources for services; or

(e) short-term, limited services including emergency shelter or respite when family or other community resources are not available to provide protection.

(21) "Self-neglect" means the failure of a vulnerable adult to provide 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 impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

(22) "Serious physical injury" has the meaning as provided in Section 76-5-111.

(23) "Substantiated" or "substantiation" means a finding, based upon a preponderance of the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred, regardless of whether there is an identified perpetrator or current need for protective services. If more than one allegation is made or identified during the course of the investigation, any allegation determined to meet the criteria for substantiation requires a case finding of "substantiated."

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

(25) "Unsubstantiated" means a finding, based upon a preponderance of the evidence, that there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.

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

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental 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.

Section 2. Section **62A-3-302** is repealed and reenacted to read:

62A-3-302. Purpose of Adult Protective Services Program.

Adult Protective Services shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults occurring in all settings and, where appropriate, shall provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult. The division may promulgate rules and develop procedures and policies to be used in reporting incidents of abuse, neglect, or exploitation, and in investigating and providing protective services to the extent that funds are appropriated by the Legislature.

Section 3. Section **62A-3-303** is repealed and reenacted to read:

62A-3-303. 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 have access to facilities licensed by or contracting with either the department or the Department of Health for the purpose of conducting investigations;

(2) has authority to receive, upon request, written statements, documents, exhibits, and other items pertinent to an investigation including medical or financial records of a vulnerable adult who is the subject of an investigation when:

(a) a release of information is provided by the vulnerable adult who does not lack capacity to consent; or

(b) a vulnerable adult lacks the capacity to consent, and an administrative subpoena has been issued through Adult Protective Services;

(3) has authority to institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

(4) has authority to 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 conducting investigations and providing protective services;

(5) 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;

(6) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

(7) may issue reports and recommendations.

Section 4. Section **62A-3-304** is repealed and reenacted to read:

62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution may not use its own confidentiality standards as a basis for failure to:

(1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;

(2) cooperate with any Adult Protective Services investigation;

(3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or

(4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

Section 5. Section **62A-3-305** is repealed and reenacted to read:

62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.

(1) Any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

(2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult, it shall notify the nearest local

law enforcement agency. That law enforcement agency shall initiate an investigation in cooperation with Adult Protective Services.

(3) Anyone who in good faith makes a report or otherwise notifies a law enforcement agency, the division, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

(5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) The physician-patient privilege does not constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or administrative proceeding resulting from a report made in good faith pursuant to this part.

(7) 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.

Section 6. Section **62A-3-306** is repealed and reenacted to read:

62A-3-306. Anonymity of reporter.

The identity of any person reporting or otherwise giving notice of allegations of abuse, neglect, or exploitation of a vulnerable adult may not be released to any person other than employees of the division, except as provided in Section 62A-3-312.

Section 7. Section **62A-3-307** is enacted to read:

62A-3-307. Photographing, video, and audio taping.

In order to document or preserve information regarding the alleged abuse, neglect, or exploitation of a vulnerable adult, if the vulnerable adult consents or lacks capacity to consent law enforcement or Adult Protective Services investigators may take, or cause to be taken, photographs or video tape recordings of the trauma or injury visible on the vulnerable adult, or audio or video tape accounts of the alleged abuse, neglect, or exploitation.

Section 8. Section **62A-3-308** is enacted to read:

62A-3-308. Peace officers authority to transport -- Notification.

(1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if the officer has probable cause to believe that by reason of abuse, neglect, or exploitation there exist emergency exigent circumstances and:

(a) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;

(b) the vulnerable adult refuses to consent or lacks capacity to consent; and

(c) there is not time to notify interested parties or to apply for a warrant or other court order.

(2) The peace officer shall notify Adult Protective Services within four hours of transporting a vulnerable adult to a medical or shelter facility. Adult Protective Services or the division shall file a petition with the court for an emergency protective order under Section 62A-3-320 within 24 hours after being notified, not including Saturdays, Sundays, and legal holidays.

Section 9. Section **62A-3-309** is enacted to read:

62A-3-309. Enforcement by division -- Duty of county or district attorney.

(1) It is the duty of the county or district attorney, as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7, to assist and represent the division and to initiate legal proceedings to protect vulnerable adults and take appropriate action to prosecute the alleged offenders.

(2) When the county or district attorney fails to act upon the request of the division to provide legal assistance within 30 days of the request, the division may request the attorney general to act and, in the attorney general's discretion, the attorney general may assume the responsibilities and carry the action forward in place of the county or district attorney.

Section 10. Section **62A-3-311** is repealed and reenacted to read:

62A-3-311. Requests for information.

Requests for information contained in an adult protection case file shall be made in writing to Adult Protective Services. Requests should indicate the specific information requested and the reason for the request. Notwithstanding the provisions of Title 63, Chapter 2, Government Records Access and Management Act, nothing may be released in response to a request except as provided

in Section 62A-3-312.

Section 11. Section **62A-3-311.1** is amended to read:

62A-3-311.1. Statewide data base -- Restricted use and access.

(1) The division shall maintain a data base for reports of [~~disabled or elder~~] vulnerable adult abuse, neglect, [~~emotional or psychological abuse,~~] or exploitation made pursuant to this part.

(2) The data base shall include:

(a) the names and identifying data of the abused, neglected, or exploited adult and the reported abuser;

(b) information regarding whether or not the abuse, [~~emotional or psychological abuse,~~] neglect, or exploitation was substantiated or unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division, subject to the restrictions of [~~Subsection 62A-3-311(2)~~] Section 62A-3-306.

(3) Information obtained from the data base may be used only for:

(a) compiling statistical summaries that do not include names or other identifying data;

(b) granting or denying licenses or other grants of privilege by the department where identification as a possible adult abuser may be relevant to the privilege in question, in accordance with Subsection (4);

(c) investigation and action by the Division of Occupational and Professional Licensing regarding registration of a health care assistant under Title 58, Chapter 62, Health Care Assistant Registration Act; and

(d) licensing purposes by the Bureau of Licensing within the Department of Health, as provided for in Section 26-21-9.5, in determining whether a person associated with a covered health care facility who provides direct care to [~~disabled or elder~~] vulnerable adults has a substantiated finding of [~~disabled or elder~~] vulnerable adult abuse, neglect, or exploitation if identification as a possible perpetrator is relevant to the employment activities of that person.

(4) (a) A license or privilege may not be denied under Subsection (3) solely on the basis of information in the data base.

(b) Before a license or privilege may be denied under Subsection (3), the department taking the action shall conduct a review and provide the person making application for the license or privilege with notice and an opportunity to be heard in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 12. Section **62A-3-312** is repealed and reenacted to read:

62A-3-312. Access to information in data base.

The records and information contained in the data base and the adult protection case file are protected records under Title 63, Chapter 2, Government Records Access and Management Act. However, notwithstanding the provisions of Title 63, Chapter 2, Government Records Access and Management Act, information and records contained in the data base and in the adult protection case file are not open to public inspection. Pertinent parts of the data base and the adult protection case file shall be made available to law enforcement agencies, the attorney general's office, and county or district attorney's offices and may be made available, at the discretion of the division, to:

(1) subjects of a report as follows:

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

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

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

(a) an employee of the department who is responsible for the evaluation or assessment of an adult protection case file;

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

(c) an authorized person or agency providing services to or responsible for the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division that information will assist in the protection of or provide other benefits to the victim;

(d) a licensing authority for a facility, program, or person providing care to a victim named

in a report;

(e) the person or entity that reported the abuse, neglect, or exploitation, as considered necessary on an individual case basis by the division; and

(f) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case.

Section 13. Section **62A-3-313** is repealed and reenacted to read:

62A-3-313. Penalty for unauthorized release of information.

Any person who willfully permits or aids and abets the release of any report, part of a report, or other information in violation of this part is guilty of a class B misdemeanor.

Section 14. Section **62A-3-314** is enacted to read:

62A-3-314. Private right of action -- Estate asset.

(1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

(2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.

Section 15. Section **62A-3-315** is enacted to read:

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) The court may order protective services to be provided to a vulnerable adult who does

not consent or who lacks capacity to consent to services in accordance with this part.

Section 16. Section **62A-3-316** is enacted to read:

62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

(1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section 62A-3-315;

(2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or

(3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

Section 17. Section **62A-3-317** is enacted to read:

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

Section 18. Section **62A-3-318** is enacted to read:

62A-3-318. Petition by division for protective services -- Notice -- Rights of adult.

(1) If the division determines that a vulnerable adult is in need of protective services but lacks capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:

(a) the name, address, and age of the adult who is the subject of the petition;

(b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;

(c) the name and address of any court-appointed guardian or conservator for the adult;

(d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and

(e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

(2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least ten days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).

(3) The notice shall be in plain language and large type, at least 14 font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.

(4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be determined by the court on the basis of evidence provided to the court.

(5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.

(6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorneys fees.

(7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.

(8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

Section 19. Section **62A-3-319** is enacted to read:

62A-3-319. Court order for protective services -- Review.

(1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.

(2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under Section 62A-3-318 lacks capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.

(3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within ten days after the date the order was entered.

Section 20. Section **62A-3-320** is enacted to read:

62A-3-320. Petition for emergency order -- Protective services -- Temporary guardian -- Forcible entry.

(1) Upon petition therefor, if the court finds that the subject of the petition is a vulnerable adult, that the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties, that an emergency exists, and that the welfare, safety, or best interests of the adult require immediate action, the court may, without notice, order appropriate protective services. The order shall specifically designate the protective services which are being approved, together with supporting facts.

(2) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.

(3) Protective services shall be provided through an emergency order for a period not to exceed three business days, at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services has been filed. If a petition for guardianship,

conservatorship, or other protective services is filed within the three-business-day period, the emergency order may be continued for as long as 15 days from the date the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect.

(4) In its emergency order, the court may appoint the petitioner or another interested person as temporary guardian, in accordance with Section 75-5-310.

(5) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the protected person is residing only upon a showing that voluntary access into the premises is not possible and that forcible entry is required.

Section 21. Section **62A-3-321** is enacted to read:

62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services or to order other appropriate relief.

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under Section 62A-3-318 or Section 62A-3-320.

Section 22. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person

if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-3(3);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

- (10) records the disclosure of which would jeopardize the life or safety of an individual;
- (11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;
- (12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- (13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- (14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- (15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;
- (17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;
- (18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;
- (19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;
- (20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course

of action, or made the legislation or course of action public; and

(b) for purposes of this ~~subsection~~ Subsection (20), a "Request For Legislation" submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator submits the "Request For Legislation" with a request that it be maintained as a protected record until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative

proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

- (a) the donor requests anonymity in writing;
- (b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and
- (c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205; ~~and~~

(40) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a record~~[-];~~
and

(41) information contained in the data base described in Section 62A-3-311.1.

Section 23. Section **76-5-111** is amended to read:

76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.

(1) As used in this section:

(a) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person or entity 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.

~~[(a)]~~ (b) "Abuse" means:

(i) attempting to cause harm, [or] intentionally or knowingly causing [physical] harm, or intentionally or knowingly placing another in fear of imminent harm;

~~[(ii) placing another in fear of imminent physical harm;]~~

~~[(iii)]~~ (ii) causing physical injury ~~[caused]~~ by knowing or intentional acts or omissions;

~~[(iv) unlawful detention or unreasonable confinement;]~~

~~[(v) gross lewdness; or]~~

(iii) 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 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or

~~[(vi)]~~ (iv) deprivation of life-sustaining treatment, except:

(A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(B) when informed consent, as defined in this section, has been obtained.

~~[(b)]~~ (c) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.

~~[(c)]~~ (d) "Caretaker" means any person~~[-, corporation, or public institution that has assumed by relationship, contract, or court order]~~, entity, corporation, or public institution that assumes the responsibility to provide a ~~[disabled or elder]~~ vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.

~~[(d)]~~ (e) "Deception" means:

(i) a misrepresentation or concealment:

(A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a ~~[disabled or elder]~~ vulnerable adult;

(B) of the terms of a contract or agreement entered into with a ~~[disabled or elder]~~ vulnerable adult; or

(C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a ~~[disabled or elder]~~ vulnerable adult; or

(ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a ~~[disabled or elder]~~ vulnerable adult to enter into a contract or

agreement.

~~[(e) "Disabled adult" means a person 18 years of age or older who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person, or is unable to care for his own personal safety or provide necessities such as food, shelter, clothing, or medical care, without which physical injury or illness may occur. A person who is, in good faith, under treatment solely of a spiritual means, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, and by an accredited practitioner thereof, shall not be considered a disabled adult for that reason alone.]~~

(f) "Elder adult" means a person ~~[who is]~~ 65 years of age or older.

(g) "Endeavor" means to attempt or try.

(h) "Exploitation" means the offense described in Subsection (4).

(i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

~~[(h)]~~ (j) "Informed consent" means:

(i) a written expression by the person or authorized by the person, stating that ~~[he]~~ the person 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 ~~[he]~~ the person desires that the services be withdrawn. A written expression is valid only if the person 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

(ii) 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.

~~[(i)]~~ (k) "Intimidation" means communication [by word or act to a disabled or elder adult that he will be deprived] conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, [or medical services, or that he will suffer physical violence] health care, or companionship, or which threatens isolation or harm.

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

(A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including 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;

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

(C) 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.

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

~~[(j)]~~ (m) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a [disabled or elder] vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning [his] the adult's person or property.

~~[(k)]~~ (n) "Neglect" means:

(i) [the] failure of a caretaker to provide [habilitation, care,] nutrition, clothing, shelter, supervision, [or medical] personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment; [or]

(ii) 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;

~~[(i)]~~ (iii) a pattern of conduct by a caretaker, without the [disabled or elder] vulnerable adult's informed consent, resulting in deprivation of food, water, medication, [medical services] health care, shelter, cooling, heating, or other services necessary to maintain [minimum physical or mental health.] the vulnerable adult's well being;

(iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or

(v) abandonment by a caretaker.

~~[(H)]~~ (O) "Physical injury" ~~[means the impairment of physical condition and includes any]~~ 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. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure ~~[sores]~~ sore, bleeding, malnutrition, dehydration, ~~[burns]~~ 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 ~~[disabled or elder]~~ vulnerable adult and ~~[that]~~ is not a serious physical injury as defined in this section.

~~[(m)]~~ (p) "Position of trust and confidence" means the position of a person who:

- (i) is a parent, spouse, adult child, or other relative by blood or marriage of a ~~[disabled or elder]~~ vulnerable adult;
- (ii) is a joint tenant or tenant in common with a ~~[disabled or elder]~~ vulnerable adult;
- (iii) has a legal or fiduciary relationship with a ~~[disabled or elder]~~ vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
- (iv) is a caretaker of a ~~[disabled or elder]~~ vulnerable adult.

~~[(n)]~~ (q) "Serious physical injury" means any physical injury or set of physical injuries that:

- (i) seriously impairs a ~~[disabled or elder]~~ vulnerable adult's health;
- (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;
- (iii) involves physical torture or causes serious emotional harm to a ~~[disabled or elder]~~ vulnerable adult; or
- (iv) creates a reasonable risk of death.

~~[(o)]~~ (r) "Sexual exploitation" means the production, distribution, possession, or possession with the intent to distribute material or a live performance depicting a nude or partially nude ~~[disabled or elder]~~ vulnerable adult who lacks the capacity to consent, for the purpose of sexual

arousal of any person.

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

(t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:

- (i) provide personal protection;
- (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- (iii) obtain services necessary for health, safety, or welfare;
- (iv) carry out the activities of daily living;
- (v) manage the adult's own resources; or
- (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a ~~[disabled or elder]~~ vulnerable adult to suffer serious physical injury or, having the care or custody of a ~~[disabled or elder]~~ vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a ~~[disabled or elder]~~ vulnerable adult to be placed in a situation where ~~[his]~~ the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a ~~[disabled or elder]~~ vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a second degree felony;
- (b) if done recklessly, the offense is third degree felony; and
- (c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a ~~[disabled or elder]~~ vulnerable adult to suffer ~~[physical injury]~~ harm, abuse, or neglect~~[-];~~; or, having the care or custody of a ~~[disabled or elder]~~ vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a ~~[disabled or elder]~~ vulnerable adult to be placed in a situation where ~~[his]~~ the

adult's person or health is endangered, is guilty of the offense of abuse of a [~~disabled or elder~~] vulnerable adult as follows:

- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- (b) if done recklessly, the offense is a class B misdemeanor; and
- (c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) (a) A person commits the offense of exploitation of a [~~disabled or elder~~] vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the [~~disabled or elder~~] vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the [~~disabled or elder~~] vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the [~~disabled or elder~~] vulnerable adult of the use, benefit, or possession of [~~his~~] the adult's property, for the benefit of someone other than the [~~disabled or elder~~] vulnerable adult;

(ii) knows or should know that the [~~disabled or elder~~] vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the [~~disabled or elder~~] vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the [~~disabled or elder~~] vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the [~~disabled or elder~~] vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a [~~disabled or elder~~] vulnerable adult for the profit or advantage of someone other than the [~~disabled or elder~~] vulnerable adult;

(iv) unjustly or improperly uses a [~~disabled or elder~~] vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the [~~disabled or elder~~] vulnerable adult;

(v) involves a [~~disabled or elder~~] vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or

(vi) commits sexual exploitation of a [~~disabled or elder~~] vulnerable adult.

(b) A person is guilty of the offense of exploitation of a [~~disabled or elder~~] vulnerable adult

as follows:

(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;

(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;

(iii) if done recklessly, the offense is a class A misdemeanor; or

(iv) if done with criminal negligence, the offense is a class B misdemeanor.

(5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.

(6) 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.