

**SEXUAL EXPLOITATION OF A VULNERABLE
ADULT**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Jennifer M. Seelig

LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code relating to the crime of sexual exploitation of a vulnerable adult.

Highlighted Provisions:

This bill:

- ▶ modifies and describes the elements of the crime of sexual exploitation of a vulnerable adult;
- ▶ makes sexual exploitation of a vulnerable adult a ~~§~~→ [second] third ←~~§~~ degree felony; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-111, as last amended by Laws of Utah 2007, Chapter 31

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

Section 1. Section **76-5-111** is amended to read:



28 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

29 (1) As used in this section:

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

34 (b) "Abuse" means:

35 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally
36 or knowingly placing another in fear of imminent harm;

37 (ii) causing physical injury by knowing or intentional acts or omissions;

38 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation
39 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
40 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
41 health and safety of the adult; or

42 (iv) deprivation of life-sustaining treatment, except:

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

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

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

47 (d) "Caretaker" means any person, entity, corporation, or public institution that
48 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
49 supervision, medical or other health care, or other necessities. "Caretaker" includes a relative
50 by blood or marriage, a household member, a person who is employed or who provides
51 volunteer work, or a person who contracts or is under court order to provide care.

52 (e) "Deception" means:

53 (i) a misrepresentation or concealment:

54 (A) of a material fact relating to services rendered, disposition of property, or use of
55 property intended to benefit a vulnerable adult;

56 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

57 (C) relating to the existing or preexisting condition of any property involved in a
58 contract or agreement entered into with a vulnerable adult; or

59 (ii) the use or employment of any misrepresentation, false pretense, or false promise in
60 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

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

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

63 (h) "Exploitation" means ~~§~~ **[the] an** ~~§~~ offense described in Subsection (4) ~~§~~ **or (5)** ~~§~~ .

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

67 (j) "Informed consent" means:

68 (i) a written expression by the person or authorized by the person, stating that the
69 person fully understands the potential risks and benefits of the withdrawal of food, water,
70 medication, medical services, shelter, cooling, heating, or other services necessary to maintain
71 minimum physical or mental health, and that the person desires that the services be withdrawn.
72 A written expression is valid only if the person is of sound mind when the consent is given, and
73 the consent is witnessed by at least two individuals who do not benefit from the withdrawal of
74 services; or

75 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
76 heating, or other services necessary to maintain minimum physical or mental health, as
77 permitted by court order.

78 (k) "Intimidation" means communication conveyed through verbal or nonverbal
79 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
80 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

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

83 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
84 contrary to the express wishes of the vulnerable adult, including communicating to a visitor
85 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
86 knowing that communication to be false;

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

89 (C) making false or misleading statements to the vulnerable adult in order to induce the

90 vulnerable adult to refuse to receive communication from visitors or other family members.

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

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

99 (n) "Neglect" means:

100 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
101 care, or dental or other health care, or failure to provide protection from health and safety
102 hazards or maltreatment;

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

105 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
106 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
107 heating, or other services necessary to maintain the vulnerable adult's well being;

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

110 (v) abandonment by a caretaker.

111 (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
112 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
113 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot
114 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a
115 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,
116 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
117 injury to any internal organ, or any other physical condition that imperils the health or welfare
118 of the vulnerable adult and is not a serious physical injury as defined in this section.

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

120 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable

121 adult;

122 (ii) is a joint tenant or tenant in common with a vulnerable adult;

123 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
124 court-appointed or voluntary guardian, trustee, attorney, or conservator; or

125 (iv) is a caretaker of a vulnerable adult.

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

127 (i) seriously impairs a vulnerable adult's health;

128 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

129 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

130 (iv) creates a reasonable risk of death.

131 [~~(r)~~ "Sexual exploitation" means the production, distribution, possession, or possession
132 with the intent to distribute material or a live performance depicting a nude or partially nude
133 vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any
134 person.]

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

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

141 (i) provide personal protection;

142 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

143 (iii) obtain services necessary for health, safety, or welfare;

144 (iv) carry out the activities of daily living;

145 (v) manage the adult's own resources; or

146 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
147 neglect, or exploitation.

148 (2) Under any circumstances likely to produce death or serious physical injury, any
149 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
150 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
151 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the

152 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
153 vulnerable adult as follows:

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

157 (3) Under circumstances other than those likely to produce death or serious physical
158 injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse,
159 or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's
160 person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to
161 be placed in a situation where the adult's person or health is endangered, is guilty of the offense
162 of abuse of a vulnerable adult as follows:

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

166 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the
167 person:

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

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

179 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
180 profit or advantage of someone other than the vulnerable adult;

181 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
182 for the profit or advantage of someone other than the vulnerable adult; or

183 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
 184 furtherance of any criminal activity~~[-or].~~

185 [~~vi) commits sexual exploitation of a vulnerable adult.~~]

186 (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

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

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

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

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

194 (5) A person is guilty of sexual exploitation of a vulnerable adult if:

195 (a) (i) the person, with the intent to sexually arouse any person, produces, distributes,
 196 possesses, or possesses with the intent to distribute, material that depicts a nude or partially
 197 nude vulnerable adult; and

198 (ii) the vulnerable adult does not consent, or lacks the capacity to consent, to the
 199 production, distribution, possession, or possession with the intent to distribute, the material
 200 described in Subsection (5)(a)(i); or

201 (b) (i) the person, with the intent to sexually arouse any person, solicits, requests,
 202 commands, coerces, encourages, or intentionally aids a vulnerable adult to engage in a
 203 performance in a nude or partially nude condition; and

204 (ii) the vulnerable adult does not consent, or lacks the capacity to consent, to engaging
 205 in the performance described in Subsection (5)(b)(i).

206 (6) Sexual exploitation of a vulnerable adult is a ~~§~~→ [second] third ←~~§~~ degree felony.

207 [~~5)] (7) It does not constitute a defense to a prosecution for any violation of this
 208 section that the accused did not know the age of the victim.~~

209 [~~6)] (8) An adult is not considered abused, neglected, or a vulnerable adult for the
 210 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
 211 lieu of medical care.~~

Legislative Review Note
as of 2-9-10 1:09 PM

Office of Legislative Research and General Counsel

S.B. 180 - Sexual Exploitation of a Vulnerable Adult

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
