

SB0202S01 compared with SB0202

~~{deleted text}~~ shows text that was in SB0202 but was deleted in SB0202S01.

Inserted text shows text that was not in SB0202 but was inserted into SB0202S01.

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Senator Todd Weiler proposes the following substitute bill:

VULNERABLE ADULT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to vulnerable adults.

Highlighted Provisions:

This bill:

- ▶ amends definitions applicable to abuse, neglect, or exploitation of a vulnerable adult;
- ▶ creates an offense for personal dignity exploitation of a vulnerable adult;
- ▶ modifies penalties;
- ▶ authorizes a court to order counseling; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-111, as last amended by Laws of Utah 2011, Chapter 320

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

Section 1. 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.

(b) "Abuse" means:

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

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

(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

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

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

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

(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.

(d) (i) "Caretaker" means [~~any~~] a person [~~, entity, corporation,~~] or public institution [~~that~~] who has a pattern of being:

(A) entrusted with or assuming [~~assumes~~] the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other

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necessities[-] whether by pecuniary gain, by contract, or as a result of friendship; or

(B) in a position of trust and confidence with a vulnerable adult.

(ii) "Caretaker" includes a relative [~~by blood or marriage~~], 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.

(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 vulnerable adult;

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

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

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

(f) (i) "Dependent adult" means any individual 18 years of age 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.

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

~~(f)~~ (g) "Elder adult" means [~~a person~~] an individual 65 years of age or older.

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

~~(h)~~ (i) "Exploitation" means an offense described in Subsection (4) or Section 76-5b-202.

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

~~(j)~~ (k) "Informed consent" means:

(i) a written expression by the [~~person~~] individual or authorized by the [~~person~~] individual, stating that the [~~person~~] individual fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or

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other services necessary to maintain minimum physical or mental health, and that the ~~[person]~~ individual desires that the services be withdrawn~~[-A]~~, except that a written expression is valid only if the ~~[person]~~ 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

(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.

~~[(k)]~~ (l) "Intimidation" means communication conveyed 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 harm.

~~[(h)]~~ (m) (i) "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:

(A) preventing the vulnerable adult from communicating, visiting, ~~for~~ interacting, or initiating interaction with others, including receiving or inviting visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, ~~[including]~~ and 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"]~~ "Isolation" does not include an act:

(A) intended in good faith to protect the physical or mental welfare of the vulnerable adult ~~[or an act]~~; or

(B) performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

~~[(m)]~~ (n) "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 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions

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concerning the adult's person or property.

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

(i) 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;

(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;

(iii) 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) 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.

~~[(o)]~~ (p) (i) "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.

(ii) "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.

~~[(p)]~~ (q) "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 vulnerable adult;

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

(iii) 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

(iv) is a caretaker of a vulnerable adult.

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

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- (i) seriously impairs a 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 vulnerable adult; or
- (iv) creates a reasonable risk of death.

~~[(+)]~~ (s) "Undue influence" occurs when a person uses influence to take advantage of a vulnerable adult's mental or physical impairment or 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.

~~[(s)]~~ (t) "Vulnerable adult" means an elder adult, or ~~[an adult 18 years of age or older]~~ a dependent adult who has a mental or physical impairment which substantially affects that ~~[person's]~~ individual'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]~~ a person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a 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) (a) Under circumstances other than those likely to produce death or serious physical injury, except as provided in Subsection (3)(b), any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect~~;~~₂ or, having the care or custody of a

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vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:

~~[(a)]~~ (i) if done intentionally or knowingly, the offense is a class A misdemeanor;

~~[(b)]~~ (ii) if done recklessly, the offense is a class B misdemeanor; and

~~[(c)]~~ (iii) if done with criminal negligence, the offense is a class C misdemeanor.

(b) A violation of this Subsection (3) that is based on isolation of a vulnerable adult is a ~~second~~ third degree felony.

(4) (a) A paid or volunteer caretaker of a vulnerable adult commits the offense of personal dignity exploitation of the vulnerable adult if the caretaker:

(i) takes, transmits, or displays a photographic or electronic image of the vulnerable adult:

(A) that is likely to subject the vulnerable adult to ridicule, harassment, or degradation; and

(B) for a purpose unrelated to monitoring or providing care, treatment, or diagnosis, or investigating abuse, neglect, or exploitation; or

(ii) performs an act, or causes the vulnerable adult to participate in an act, that is likely to subject the vulnerable adult to ridicule, harassment, or degradation.

(c) It is a separate offense under Subsection (4)(a)(ii) for each vulnerable adult involved in the same or related acts that subject each vulnerable adult to ridicule, harassment, or degradation.

(d) It is not a defense that the vulnerable adult was unaware of or unaffected by an act under Subsection (4)(a)(ii).

(e) The offense of personal dignity exploitation of a vulnerable adult is:

(i) if done intentionally or knowingly, a Class A misdemeanor; and

(ii) if done recklessly, a Class B misdemeanor.

~~[(4)]~~ (5) (a) A person commits the offense of financial exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception

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or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the 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 vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of ~~his~~ the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

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

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

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.

(b) A person is guilty of the offense of financial exploitation of a 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)~~1(6) 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)~~1(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.

~~(7)~~8 If an individual, including a caretaker, violates this section by willfully isolating a vulnerable adult, in addition to the penalties under Subsection (2) or (3), the court may

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require that the individual:

- (a) undergo appropriate counseling as a condition of the sentence; and
- (b) pay for the costs of the ordered counseling.