

REPORTING REQUIREMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends reporting requirements regarding abuse, neglect, and exploitation of certain individuals.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the reporting requirement for the abuse, neglect, and exploitation of a vulnerable adult;
- ▶ provides certain exceptions to the reporting requirement for the abuse, neglect, and exploitation of a vulnerable adult;
- ▶ addresses civil and criminal liability for failure to notify Adult Protective Services or the nearest police officer or law enforcement agency;
- ▶ modifies the reporting requirement for the abuse and neglect of a child;
- ▶ provides certain exceptions to the reporting requirement for the abuse and neglect of a child;
- ▶ addresses civil and criminal liability for failure to notify the Division of Child and Family Services or the nearest police officer or law enforcement agency;
- ▶ repeals a statute with a reporting requirement for abuse, neglect, or exploitation of a vulnerable adult; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **62A-3-305**, as last amended by Laws of Utah 2012, Chapter 328

35 **62A-4a-403**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

36 REPEALS:

37 **76-5-111.1**, as last amended by Laws of Utah 2004, Chapter 50



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

40 Section 1. Section **62A-3-305** is amended to read:

41 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**
42 **Penalty -- Nonmedical healing.**

43 ~~[(1) A person who has reason to believe that a vulnerable adult has been the subject of~~
44 ~~abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the~~
45 ~~nearest law enforcement agency. When the initial report is made to law enforcement, law~~
46 ~~enforcement shall immediately notify Adult Protective Services intake. Adult Protective~~
47 ~~Services and law enforcement shall coordinate, as appropriate, their efforts to provide~~
48 ~~protection to the vulnerable adult.]~~

49 (1) As used in this section:

50 (a) (i) "Assistance" means making a reasonable effort to report abuse, neglect, or
51 exploitation to Adult Protective Services or the nearest peace officer or law enforcement
52 agency.

53 (ii) "Assistance" does not include action that places the individual taking the action, or
54 another individual, in danger.

55 (b) "Legal privilege" means any privilege designated by common law, statute, or rule
56 of evidence.

57 (2) Except as provided in Subsection (5)(c), an individual shall provide assistance if
58 the individual:

59 (a) (i) has personal knowledge that a vulnerable adult is the subject of abuse, neglect,
60 or exploitation; or

61 (ii) observes that abuse, neglect, or exploitation of a vulnerable adult is occurring or
62 has occurred; and

63 (b) is able to provide assistance for the vulnerable adult described in Subsection (2)(a).

64 (3) (a) If a peace officer or a law enforcement agency receives a report under
65 Subsection (2), the peace officer of the law enforcement agency shall immediately notify Adult
66 Protective Services.

67 (b) Adult Protective Services and the peace officer or the law enforcement agency shall
68 coordinate, as appropriate, efforts to investigate the report under Subsection (2) and to provide
69 protection to the vulnerable adult.

70 ~~[(2)]~~ (4) When [the initial report or] a report under Subsection (2), or a subsequent
71 investigation by Adult Protective Services, indicates that a criminal offense may have occurred
72 against a vulnerable adult:

73 (a) Adult Protective Services shall notify the nearest local law enforcement agency
74 regarding the potential offense; and

75 (b) the law enforcement agency [may] shall initiate an investigation in cooperation
76 with Adult Protective Services.

77 ~~[(3) A person who in good faith makes a report or otherwise notifies a law enforcement~~
78 ~~agency or Adult Protective Services of suspected abuse, neglect, or exploitation is immune~~
79 ~~from civil and criminal liability in connection with the report or other notification.]~~

80 ~~[(4) (a) A person who willfully fails to report suspected abuse, neglect, or exploitation~~
81 ~~of a vulnerable adult is guilty of a class B misdemeanor.]~~

82 ~~[(b) A covered provider or covered contractor, as defined in Section 26-21-201, that~~
83 ~~knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a~~
84 ~~private right of action and liability for the abuse or neglect of another person that is committed~~
85 ~~by the individual who was not reported to Adult Protective Services in accordance with this~~
86 ~~section.]~~

87 (5) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails
88 to provide assistance under Subsection (2).

89 (b) An individual is not guilty of violating Subsection (5)(a) if the individual

90 reasonably believes another individual has, or likely has, already provided or is providing
91 assistance to the vulnerable adult described in Subsection (2)(a).

92 (c) Subsection (5)(a) does not apply to the extent that an individual is prohibited from
93 providing assistance by a legal privilege.

94 (6) Notwithstanding any contrary provision of law, a prosecuting attorney may not use
95 an individual's violation of Subsection (5)(a) as the basis for charging the individual with
96 another offense.

97 (7) (a) Except as provided in Subsection (7)(c), Subsections (2) and (5)(a) do not create
98 an independent basis for civil liability for failure to provide the assistance described in
99 Subsection (2).

100 (b) The fact that an individual is charged with, or convicted of, an offense under
101 Subsection (5)(a) may not be used to establish that the individual violated a duty on which a
102 claim for personal injuries may be based.

103 (c) A covered provider or covered contractor, as defined in Section 26-21-201, that
104 fails to provide assistance under Subsection (2), is subject to a private right of action and
105 liability for the abuse, neglect, or exploitation of a vulnerable adult who was not provided
106 assistance under this section.

107 ~~[(5)]~~ (8) Under circumstances not amounting to a violation of Section 76-8-508, a
108 person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the
109 subject of a report, a witness, the ~~[person who made the report]~~ individual who provided
110 assistance under Subsection (2), or any other person cooperating with an investigation
111 conducted ~~[pursuant to]~~ in accordance with this chapter is guilty of a class B misdemeanor.

112 (9) The physician-patient privilege does not constitute grounds for excluding evidence
113 regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any
114 judicial or administrative proceeding resulting from a report under Subsection (2).

115 ~~[(6)]~~ (10) An adult is not considered abused, neglected, or a vulnerable adult for the
116 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
117 lieu of medical care.

118 Section 2. Section 62A-4a-403 is amended to read:

119 **62A-4a-403. Reporting requirements -- Investigation -- Penalty -- Legal privileges**
120 **-- Liability.**

121 ~~[(1) (a) Except as provided in Subsection (2), when any individual, including an~~
 122 ~~individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67,~~
 123 ~~Utah Medical Practice Act, has reason to believe that a child has been subjected to abuse or~~
 124 ~~neglect, or observes a child being subjected to conditions or circumstances that would~~
 125 ~~reasonably result in abuse or neglect, that individual shall immediately report the alleged abuse~~
 126 ~~or neglect to the nearest peace officer, law enforcement agency, or office of the division.]~~

127 ~~[(b) (i) Upon receipt of a report described in Subsection (1)(a)]~~

128 (1) As used in this section:

129 (a) (i) "Assistance" means making a reasonable effort to report to the division or the
 130 nearest peace officer or law enforcement agency.

131 (ii) "Assistance" does not include action that places the individual taking the action, or
 132 another individual, in danger.

133 (b) "Legal privilege" means any privilege designated by common law, statute, or rule
 134 of evidence.

135 (2) Except as provided in Subsections (4) and (6)(c), an individual, including an
 136 individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67,
 137 Utah Medical Practice Act, shall provide assistance if the individual:

138 (a) (i) has personal knowledge that a child is the subject of abuse or neglect; or

139 (ii) observes that abuse or neglect of a child is occurring or has occurred; and

140 (b) is able to provide assistance for the child described in Subsection (2)(a).

141 (3) (a) (i) If a peace officer or a law enforcement agency receives a report under
 142 Subsection (2), the peace officer or law enforcement agency shall immediately notify the
 143 nearest office of the division.

144 (ii) ~~[If an initial report of abuse or neglect is made to the division]~~ If the division
 145 receives a report under Subsection (2), the division shall immediately notify the appropriate
 146 local law enforcement agency.

147 ~~[(c)]~~ (b) (i) The division shall, in addition to the division's own investigation in
 148 accordance with Section [62A-4a-409](#), coordinate with law enforcement on investigations by
 149 law enforcement undertaken to investigate ~~[a report described in Subsection (1)(a)]~~ the report
 150 of abuse or neglect under Subsection (2).

151 (ii) If law enforcement undertakes an investigation of a ~~[report described in Subsection~~

152 ~~(1)(a)~~ report under Subsection (2), the law enforcement agency undertaking the investigation
153 shall provide a final investigatory report to the division upon request.

154 ~~[(2)] (4)~~ Subject to Subsection ~~[(3)] (5)~~, the ~~[notification]~~ reporting requirement
155 described in Subsection ~~[(1)(a)] (2)~~ does not apply to a member of the clergy, with regard to
156 any confession made to the member of the clergy while functioning in the ministerial capacity
157 of the member of the clergy and without the consent of the individual making the confession,
158 if:

159 (a) the perpetrator made the confession directly to the member of the clergy; and

160 (b) the member of the clergy is, under canon law or church doctrine or practice, bound
161 to maintain the confidentiality of that confession.

162 ~~[(3)] (5)~~ (a) When a member of the clergy receives information about abuse or neglect
163 from any source other than confession of the perpetrator, the member of the clergy is required
164 to report that information even though the member of the clergy may have also received
165 information about abuse or neglect from the confession of the perpetrator.

166 (b) Exemption of the reporting requirement for a member of the clergy does not
167 exempt the member of the clergy from any other efforts required by law to prevent further
168 abuse or neglect by the perpetrator.

169 (6) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails
170 to provide assistance under Subsection (2).

171 (b) An individual is not guilty of violating Subsection (6)(a) if the individual
172 reasonably believes another individual has, or likely has, already provided or is providing
173 assistance to the child described in Subsection (2)(a).

174 (c) Subsection (6)(a) does not apply to the extent that an individual is prohibited from
175 providing assistance by a legal privilege.

176 (d) Notwithstanding any contrary provision of law, a prosecutor may not use an
177 individual's violation of Subsection (6)(a) as the basis for charging the individual with another
178 offense.

179 (7) (a) Subsections (2) and (6)(a) do not create an independent basis for civil liability
180 for failure to provide the assistance described in Subsection (2).

181 (b) The fact that an individual is charged with, or convicted of, an offense under
182 Subsection (6)(a) may not be used to establish that the individual violated a duty on which a

183 claim for personal injuries may be based.

184 Section 3. **Repealer.**

185 This bill repeals:

186 Section **76-5-111.1, Reporting requirements -- Investigation -- Immunity --**

187 **Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.**