

Representative Brian S. King proposes the following substitute bill:

REPORTING REQUIREMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses reporting requirements for the abuse, neglect, or exploitation of certain individuals.

Highlighted Provisions:

This bill:

- ▶ amends the reporting requirement for the suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ provides exceptions to the reporting requirement for suspected abuse, neglect, or exploitation of a vulnerable adult;
- ▶ addresses civil and criminal liability for reporting, or failing to report, suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services or the nearest police officer or law enforcement agency;
- ▶ amends the reporting requirement for the suspected abuse or neglect of a child;
- ▶ provides exceptions to the reporting requirement for suspected abuse or neglect of a child;
- ▶ addresses civil and criminal liability for reporting, or failing to report, suspected abuse or neglect of a child to the Division of Child and Family Services or the nearest police officer or law enforcement agency;



26 ▶ makes it a crime for an individual to threaten, intimidate, or attempt to intimidate
27 certain individuals when a report is made, or an investigation is being conducted, in
28 regards to the abuse or neglect of a child;

29 ▶ repeals a statute with a reporting requirement for abuse, neglect, or exploitation of a
30 vulnerable adult; and

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **62A-3-305**, as last amended by Laws of Utah 2012, Chapter 328

39 **62A-4a-403**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

40 **62A-4a-410**, as last amended by Laws of Utah 2008, Chapters 382 and 395

41 **62A-4a-411**, as last amended by Laws of Utah 2008, Chapter 299

42 REPEALS:

43 **76-5-111.1**, as last amended by Laws of Utah 2004, Chapter 50



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

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

47 **62A-3-305. Reporting requirements -- Investigation -- Exceptions -- Immunity --**
48 **Penalties -- Nonmedical healing.**

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

55 (1) Except as provided in Subsection (4), if an individual has reason to believe that a
56 vulnerable adult is, or has been, the subject of abuse, neglect, or exploitation, the individual

57 shall immediately report the suspected abuse, neglect, or exploitation to Adult Protective
58 Services or to the nearest peace officer or law enforcement agency.

59 (2) (a) If a peace officer or a law enforcement agency receives a report under
60 Subsection (1), the peace officer of the law enforcement agency shall immediately notify Adult
61 Protective Services.

62 (b) Adult Protective Services and the peace officer or the law enforcement agency shall
63 coordinate, as appropriate, efforts to investigate the report under Subsection (1) and to provide
64 protection to the vulnerable adult.

65 ~~[(2)]~~ (3) When ~~[the initial report or]~~ a report under Subsection (1), or a subsequent
66 investigation by Adult Protective Services, indicates that a criminal offense may have occurred
67 against a vulnerable adult:

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

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

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

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

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

82 (4) Subject to Subsection (5), the reporting requirement described in Subsection (1)
83 does not apply to:

84 (a) a member of the clergy, with regard to any confession made to the member of the
85 clergy while functioning in the ministerial capacity of the member of the clergy and without the
86 consent of the individual making the confession, if:

87 (i) the perpetrator made the confession directly to the member of the clergy; and

88 (ii) the member of the clergy is, under canon law or church doctrine or practice, bound
89 to maintain the confidentiality of that confession;

90 (b) an attorney, or an individual employed by the attorney, if knowledge of the
91 suspected abuse, neglect, or exploitation of a vulnerable adult arises from the representation of
92 a client, unless the attorney is permitted to reveal the suspected abuse, neglect, or exploitation
93 of the vulnerable adult to prevent reasonably certain death or substantial bodily harm in
94 accordance with Utah Rules of Professional Conduct, Rule 1.6; or

95 (c) an individual who reasonably believes that reporting the suspected abuse, neglect,
96 or exploitation of the vulnerable adult places the individual, or another individual, in danger.

97 (5) (a) When a member of the clergy receives information about abuse, neglect, or
98 exploitation of a vulnerable adult from any source other than confession of the perpetrator, the
99 member of the clergy is required to report that information even though the member of the
100 clergy may have also received information about abuse or neglect from the confession of the
101 perpetrator.

102 (b) Exemption of the reporting requirement for an individual described in Subsection
103 (4) does not exempt the individual from any other efforts required by law to prevent further
104 abuse, neglect, or exploitation of a vulnerable adult by the perpetrator.

105 (c) The physician-patient privilege does not constitute grounds for excluding evidence
106 regarding a vulnerable adult's injuries, or the cause of the vulnerable adult's injuries, in any
107 judicial or administrative proceeding resulting from a report under Subsection (1).

108 (6) (a) An individual who in good faith makes a report under Subsection (1), or who
109 otherwise notifies Adult Protective Services or a peace officer or law enforcement agency, is
110 immune from civil and criminal liability in connection with the report or notification.

111 (b) A covered provider or covered contractor, as defined in Section [26-21-201](#), that
112 knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to
113 Adult Protective Services, or to the nearest peace officer or law enforcement agency, under
114 Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or
115 exploitation of a vulnerable adult that is committed by the individual who was not reported to
116 Adult Protective Services or to the nearest peace officer or law enforcement agency.

117 (c) This Subsection (6) does not provide immunity with respect to acts or omissions of
118 a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity

119 Act of Utah.

120 (7) If Adult Protective Services has substantial grounds to believe that an individual
121 has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in
122 accordance with this section, Adult Protective Services shall file a complaint with:

123 (a) the Division of Occupational and Professional Licensing if the individual is a health
124 care provider, as defined in Section 62A-4a-404, or a mental health therapist, as defined in
125 Section 58-6-102;

126 (b) the appropriate law enforcement agency if the individual is a law enforcement
127 officer, as defined in Section 53-13-103;

128 (c) the State Board of Education if the individual is an educator, as defined in Section
129 53E-6-102; and

130 (d) the individual's employer.

131 (8) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails
132 to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective
133 Services, or to the nearest peace officer or law enforcement agency under Subsection (1).

134 (b) If an individual is convicted under Subsection (8)(a), the court may order the
135 individual, in addition to any other sentence the court imposes, to:

136 (i) complete community service hours; or

137 (ii) complete a program on preventing abuse, neglect, and exploitation of vulnerable
138 adults.

139 (c) Notwithstanding any contrary provision of law, a prosecuting attorney may not use
140 an individual's violation of Subsection (8)(a) as the basis for charging the individual with
141 another offense.

142 (d) A prosecution for failure to report under Subsection (8)(a) shall be commenced
143 within four years from the date that the individual had knowledge of the offense and willfully
144 failed to report.

145 ~~[(5)]~~ (9) Under circumstances not amounting to a violation of Section 76-8-508, [a
146 person who] an individual is guilty of a class B misdemeanor if the individual threatens,
147 intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report[~~,-~~a
148 witness, the person who made the report] under Subsection (1), the individual who made the
149 report under Subsection (1), a witness, or any other person cooperating with an investigation

150 conducted [~~pursuant to~~] in accordance with this chapter [~~is guilty of a class B misdemeanor~~].

151 [~~(6)~~] (10) An adult is not considered abused, neglected, or a vulnerable adult for the
152 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
153 lieu of medical care.

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

155 **62A-4a-403. Reporting requirements -- Exceptions.**

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

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

163 (1) Except as provided in Subsections (3), if an individual, including an individual
164 licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical
165 Practice Act, has reason to believe that a child is, or has been, the subject of abuse or neglect,
166 or observes a child being subjected to conditions or circumstances that would reasonably result
167 in abuse or neglect, the individual shall immediately report the suspected abuse or neglect to
168 the division or to the nearest peace office or law enforcement agency.

169 (2) (a) (i) If a peace officer or a law enforcement agency receives a report under
170 Subsection (1), the peace officer or law enforcement agency shall immediately notify the
171 nearest office of the division.

172 (ii) [~~If an initial report of abuse or neglect is made to the division~~] If the division
173 receives a report under Subsection (1), the division shall immediately notify the appropriate
174 local law enforcement agency.

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

179 (ii) If law enforcement undertakes an investigation of a [~~report described in Subsection~~
180 ~~(1)(a)] report under Subsection (1), the law enforcement agency undertaking the investigation~~

181 shall provide a final investigatory report to the division upon request.

182 ~~[(2)]~~ (3) Subject to Subsection ~~[(3)]~~ (4), the ~~[notification]~~ reporting requirement
183 described in Subsection ~~[(1)(a)]~~ (1) does not apply to:

184 (a) a member of the clergy, with regard to any confession made to the member of the
185 clergy while functioning in the ministerial capacity of the member of the clergy and without the
186 consent of the individual making the confession, if:

187 ~~[(a)]~~ (i) the perpetrator made the confession directly to the member of the clergy; and

188 ~~[(b)]~~ (ii) the member of the clergy is, under canon law or church doctrine or practice,
189 bound to maintain the confidentiality of that confession~~[-];~~

190 (b) an attorney, or an individual employed by the attorney, if the knowledge or belief of
191 the suspected abuse or neglect of a child arises from the representation of a client, unless the
192 attorney is permitted to reveal the suspected abuse or neglect of the child to prevent reasonably
193 certain death or substantial bodily harm in accordance with Utah Rules of Professional
194 Conduct, Rule 1.6; or

195 (c) an individual who reasonably believes that reporting the suspected abuse or neglect
196 of the child places the individual, or another individual, in danger.

197 ~~[(3)]~~ (4) (a) When a member of the clergy receives information about abuse or neglect
198 from any source other than confession of the perpetrator, the member of the clergy is required
199 to report that information even though the member of the clergy may have also received
200 information about abuse or neglect from the confession of the perpetrator.

201 (b) Exemption of the reporting requirement for ~~[a member of the clergy]~~ an individual
202 described in Subsection (3) does not exempt the [member of the clergy] individual from any
203 other efforts required by law to prevent further abuse or neglect by the perpetrator.

204 Section 3. Section **62A-4a-410** is amended to read:

205 **62A-4a-410. Immunity from liability -- Exception.**

206 (1) (a) Any person who in good faith makes a report under Section [62A-4a-403](#),
207 [62A-4a-404](#), or [62A-4a-405](#), or who otherwise notifies the division or a peace officer or law
208 enforcement agency of suspected abuse or neglect of a child, is immune from civil and criminal
209 liability in connection with the report or notification.

210 ~~[(1)]~~ (b) Except as provided in Subsection (3), any person, official, or institution
211 ~~[participating in good faith in making a report,]~~ taking photographs or X-rays, assisting an

212 investigator from the division, serving as a member of a child protection team, or taking a child
213 into protective custody [~~pursuant to~~] in accordance with this part, is immune from [~~any~~
214 ~~liability, civil or criminal, that otherwise might result by reason of those actions~~] civil or
215 criminal liability in connection with those actions.

216 (2) This section does not provide immunity with respect to acts or omissions of a
217 governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity
218 Act of Utah.

219 (3) The immunity described in Subsection (1)(b) does not apply if the person, official,
220 or institution:

221 (a) acted or failed to act through fraud or willful misconduct;

222 (b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a
223 lawful oath or in any form allowed by law as a substitute for an oath, false testimony material
224 to the issue or matter of inquiry in the proceeding; or

225 (c) intentionally or knowingly:

226 (i) fabricated evidence; or

227 (ii) except as provided in Subsection (4), with a conscious disregard for the rights of
228 others, failed to disclose evidence that:

229 (A) was known to the person, official, or institution; and

230 (B) (I) was known by the person, official, or institution to be relevant to a material
231 issue or matter of inquiry in a pending judicial or administrative proceeding if the person,
232 official, or institution knew of the pending judicial or administrative proceeding; or

233 (II) was known by the person, official, or institution to be relevant to a material issue or
234 matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was
235 requested of the employee by a party to the proceeding or counsel for a party to the proceeding.

236 (4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or
237 institution:

238 (a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person,
239 official, or institution is prohibited by law from disclosing the evidence; or

240 (b) (i) [~~pursuant to~~] in accordance with the provisions of 45 [~~CFR~~] C.F.R.
241 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(ii) to a person who
242 requested the evidence; and

243 (ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or
244 responded to a valid court order or valid subpoena received by the person, official, or
245 institution to disclose the evidence described in Subsection (3)(c)(ii).

246 Section 4. Section **62A-4a-411** is amended to read:

247 **62A-4a-411. Failure to report -- Threats and intimidation -- Penalties.**

248 [~~Any person, official, or institution required to report a case of suspected abuse, neglect,~~
249 ~~fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a~~
250 ~~class B misdemeanor. Action for failure to report must be commenced within four years from~~
251 ~~the date of knowledge of the offense and the willful failure to report.]~~

252 (1) If the division has substantial grounds to believe that an individual has knowingly
253 failed to report suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in
254 accordance with this part, the division shall file a complaint with:

255 (a) the Division of Occupational and Professional Licensing if the individual is a health
256 care provider, as defined in Section [62A-4a-404](#), or a mental health therapist, as defined in
257 Section [58-6-102](#);

258 (b) the appropriate law enforcement agency if the individual is a law enforcement
259 officer, as defined in Section [53-13-103](#);

260 (c) the State Board of Education if the individual is an educator, as defined in Section
261 [53E-6-102](#); and

262 (d) the individual's employer.

263 (2) (a) An individual is guilty of a class B misdemeanor if the individual willfully fails
264 to report the suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency in
265 accordance with this part.

266 (b) If an individual is convicted under Subsection (2)(a), the court may order the
267 individual, in addition to any other sentence the court imposes, to:

268 (i) complete community service hours; or

269 (ii) complete a program on preventing abuse and neglect of children.

270 (c) Notwithstanding any contrary provision of law, a prosecuting attorney may not use
271 an individual's violation of Subsection (2)(a) as the basis for charging the individual with
272 another offense.

273 (d) A prosecution for failure to report under Subsection (2)(a) shall be commenced

274 within four years from the date that the individual had knowledge of the offense and willfully
275 failed to report.

276 (3) Under circumstances not amounting to a violation of Section 76-8-508, an
277 individual is guilty of a class B misdemeanor if the individual threatens, intimidates, or
278 attempts to intimidate a child who is the subject of a report under this part, the individual who
279 made the report, a witness, or any other person cooperating with an investigation conducted in
280 accordance with this chapter.

281 Section 5. **Repealer.**

282 This bill repeals:

283 Section **76-5-111.1, Reporting requirements -- Investigation -- Immunity --**
284 **Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.**