

HOUSE BILL 2159

By Keisling

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Title 71, relative to elderly and
vulnerable adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Elderly and Vulnerable Adult Protection Act of 2018."

SECTION 2. Tennessee Code Annotated, Section 39-15-501, is amended by adding the following as new subdivisions:

() "Abandonment" means the knowing desertion or forsaking of an elderly or vulnerable adult by a caregiver under circumstances in which there is a reasonable likelihood that physical harm could occur;

() "Abuse" means the infliction of physical harm or psychological injury on an elderly or vulnerable adult;

() "Confinement":

(A) Means the knowing restriction of movement of an elderly or vulnerable adult by a caregiver. Restricting one's movement includes, but is not limited to, the use of force, medication, intimidation, or restraint; and

(B) Does not include restricting an elderly or vulnerable adult's movement for the safety of the elderly or vulnerable adult as directed under current medical supervision;

()

(A) "Neglect" means:

(i) The failure of a caregiver to provide the care, supervision, or services necessary to maintain the physical and psychological health of an elderly or vulnerable adult, including, but not limited to, the provision of food, water, clothing, medicine, shelter, medical services, a medical treatment plan prescribed by a healthcare professional, basic hygiene, or supervision that a reasonable person would consider essential for the well-being of an elderly or vulnerable adult;

(ii) The failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse, neglect, or exploitation by others;

(iii) Abandonment; or

(iv) Confinement; and

(B) Neglect can be the result of repeated conduct or a single incident;

() "Physical harm" means physical pain or injury, regardless of gravity or duration;

(1) "Psychological injury" means the infliction of emotional or mental anguish or an injury to the intellectual functioning of an elderly or vulnerable adult as evidenced by an observable or measurable reduction in the elderly or vulnerable adult's intellectual function;

() "Serious physical harm " means physical harm of such gravity that:

(A) Would normally require medical treatment or hospitalization;

(B) Involves acute pain of such duration that it results in substantial suffering;

(C) Involves any degree of prolonged pain or suffering; or

(D) Involves any degree of prolonged incapacity;

() "Serious psychological injury" means a psychological injury of such gravity as would normally require psychological or medical treatment;

() "Sexual exploitation" means an act committed upon or in the presence of an elderly or vulnerable adult without that adult's consent for purposes of sexual gratification, which includes but is not limited to fondling, exposure of genitals to an elderly or vulnerable adult, exposure of sexual acts to an elderly or vulnerable adult, or exposure of an elderly or vulnerable adult's sexual organs. "Sexual exploitation" does not include any act intended for a valid medical purpose, or any act that may reasonably be construed to be a normal caregiving act or an appropriate display of affection.

SECTION 3. Tennessee Code Annotated, Section 39-15-506, is amended by deleting subdivision (a)(1) and substituting instead the following:

(a)

(1) Following a conviction for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509(a)-(c), § 39-15-510, or § 39-15-511, or at the discretion of the court for a conviction of § 39-15-509(d), the clerk of the court shall notify the department of health of the conviction by sending a copy of the judgment in the manner set forth in § 68-11-1003 for inclusion on the registry pursuant to title 68, chapter 11, part 10.

SECTION 4. Tennessee Code Annotated, Section 39-15-506, is amended by deleting subdivision (b)(1) and substituting instead the following:

(b)

(1) In addition to any other punishment that may be imposed for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509, § 39-15-510, or § 39-15-511, the court shall impose a fine of not less than five hundred dollars (\$500) for Class A or Class B misdemeanor convictions, and a fine of not less than one thousand dollars (\$1,000) for felony convictions. The fine shall not exceed the maximum fine established for the appropriate offense classification.

SECTION 5. Tennessee Code Annotated, Title 39, Chapter 15, Part 5, is amended by adding the following new sections:

39-15-507.

(a) It is an offense for a person to knowingly abuse an elderly or vulnerable adult.

(b) The offense of abuse of an elderly adult is a Class E felony.

(c) The offense of abuse of a vulnerable adult is a Class D felony.

39-15-508.

(a) A person commits the offense of aggravated abuse of an elderly or vulnerable adult who knowingly commits abuse pursuant to § 39-15-507, and:

(1) The act results in serious psychological injury or serious physical harm;

(2) A deadly weapon is used to accomplish the act;

(3) The abuse is committed by two (2) or more persons; or

(4) The abuse results in serious bodily injury.

(b) In order to prosecute and convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by § 39-13-102, but only that the abuse resulted in serious psychological injury or serious physical harm as defined in § 39-15-501.

(c) A violation of subdivision (a)(1) is a Class C felony.

(d) A violation of subdivision (a)(2)-(4) is a Class B felony.

39-15-509.

(a) It is an offense for a caregiver to knowingly neglect an elderly or vulnerable adult, so as to adversely affect the person's health or welfare.

(b) The offense of neglect of an elderly adult is a Class E felony.

(c) The offense of neglect of a vulnerable adult is a Class D felony.

(d) If the neglect is a result of abandonment or confinement and no injury occurred, then the neglect by abandonment or confinement of an elderly or vulnerable adult is a Class A misdemeanor.

39-15-510.

(a) A caregiver commits the offense of aggravated neglect of an elderly or vulnerable adult who commits neglect pursuant to § 39-15-509, and the act:

(1) Results in serious psychological injury or serious physical harm; or

(2) Results in serious bodily injury.

(b) In order to prosecute and convict a person for a violation of subdivision (a)(1), it is not necessary for the state to prove the elderly or vulnerable adult sustained serious bodily injury as required by § 39-13-102, but only that the neglect resulted in serious psychological injury or serious physical harm as defined in § 39-15-501.

(c) A violation of subdivision (a)(1) is a Class C felony.

(d) A violation of subdivision (a)(2) is a Class B felony.

39-15-511.

(a) It is an offense for any person to knowingly sexually exploit an elderly or vulnerable adult.

(b) The offense of sexual exploitation of an elderly adult is a Class E felony.

(c) The offense of sexual exploitation of a vulnerable adult is a Class D felony.

39-15-512.

(a) Any person having reasonable suspicion that an elderly or vulnerable adult is suffering or has suffered abuse, neglect, financial exploitation, or sexual exploitation shall report such abuse, neglect, financial exploitation, or sexual exploitation to adult protective services pursuant to title 71, chapter 6, or to a local law enforcement agency.

(b) Any person who fails to make a report required by subsection (a) commits a Class A misdemeanor.

(c) Upon good cause shown, adult protective services shall cooperate with law enforcement to identify those persons who knowingly fail to report abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult.

(d) Upon commencement of criminal prosecution of abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general a complete and unredacted copy of adult protective services' entire investigative file.

(e) Upon return of a criminal indictment or presentment alleging abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult, adult protective services shall provide to the district attorney general the identity of the person reporting the abuse, neglect, financial exploitation, or sexual exploitation.

SECTION 6. Tennessee Code Annotated, Section 39-13-202(a)(2), is amended by deleting the language "kidnapping" and substituting instead the language "kidnapping, aggravated abuse of an elderly or vulnerable adult, aggravated neglect of an elderly or vulnerable adult".

SECTION 7. Tennessee Code Annotated, Section 39-13-502(a), is amended by adding the following new subdivision:

(4) The defendant knows or has reason to know that the victim is an elderly or vulnerable adult as defined by § 39-15-501, and the penetration is accomplished by a caregiver, as defined by § 39-15-501, or by an individual providing services to the victim who is paid by the victim or by a third party for the benefit of the victim, and includes those in a contractual relationship with the third party payor.

SECTION 8. Tennessee Code Annotated, Section 39-13-504(a), is amended by adding the following new subdivision:

(5) The defendant knows or has reason to know that the victim is an elderly or vulnerable adult as defined by § 39-15-501, and the unlawful sexual contact is accomplished by a caregiver, as defined by § 39-15-501, or by an individual providing services to the victim who is paid by the victim or by a third party for the benefit of the victim, and includes those in a contractual relationship with the third party payor.

SECTION 9. Tennessee Code Annotated, Section 40-11-150(k)(1), is amended by deleting the language "§ 71-6-119 involving physical harm or abuse in which the alleged victim is an adult of advanced age as those terms are defined in § 71-6-102" and substituting instead the language "§ 39-15-507, § 39-15-508, § 39-15-509, § 39-15-510, or § 39-15-511 involving abuse, aggravated abuse, neglect, aggravated neglect, or sexual exploitation".

SECTION 10. Tennessee Code Annotated, Section 40-35-313(a)(1)(B)(i)(c), is amended by deleting the language "§ 71-6-117, or § 71-6-119" and substituting instead the language "§ 39-15-508, § 39-15-510, or § 39-15-511".

SECTION 11. Tennessee Code Annotated, Section 40-35-313(a)(3)(A), is amended by deleting the language "on or after July 1, 2004" and substituting instead the language "on or after July 1, 2004, and prior to July 1, 2018, or charged with a violation of § 39-15-507 or § 39-15-509 on or after July 1, 2018".

SECTION 12. Tennessee Code Annotated, Section 71-6-124, is amended by adding the following as a new subsection:

(f) For purposes of this section, "adult" means an elderly adult or vulnerable adult as defined in § 39-15-501.

SECTION 13. Tennessee Code Annotated, Section 71-6-124, is amended by deleting the language "§ 71-6-117 or § 39-15-502" wherever it appears and substituting instead the language "§ 39-15-502, § 39-15-507, § 39-15-508, § 39-15-509, § 39-15-510, or § 39-15-511".

SECTION 14. Tennessee Code Annotated, Sections 71-6-117 and 71-6-119, are deleted in their entireties.

SECTION 15: Tennessee Code Annotated, Section 71-6-118, is amended by deleting the section and substituting instead the following:

71-6-118.

(a) The identity of a person who reports abuse, neglect, financial exploitation, or sexual exploitation as required under this part or title 39, chapter 15 is confidential and may not be revealed except to the district attorney general upon return of a criminal indictment or presentment alleging abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult, or upon an order by a court with jurisdiction under this part for good cause shown.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part or title 39, chapter 15, to disclose, receive, make use of, authorize or knowingly permit, participate, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of abuse, neglect, financial exploitation, or sexual exploitation under this part, directly or indirectly derived from the records, papers, files, or communications of the department of human services or divisions thereof acquired in the course of the performance of official duties.

(c)

(1) When necessary to protect elderly or vulnerable adults in a healthcare facility licensed by any state agency, such information, reports, and investigations may be disclosed to any agency providing licensing or regulation for that facility; however, the information, reports, and investigations shall retain the protection of subsection (b) when disclosed to such agency and may not be disclosed to, or used by, any other person.

(2) Notwithstanding subsections (a) and (b), adult protective services shall:

(A) Report to law enforcement or public health authorities any information from its investigations or records regarding illness, disease, injuries, abuse, neglect, financial exploitation, or sexual exploitation obtained in the course of an investigation;

(B) Provide to the district attorney general a complete and unredacted copy of adult protective services' entire investigative file and records upon the commencement of a criminal prosecution for abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult; and

(C) Provide to the district attorney general the identity of the person reporting instances of abuse, neglect, financial exploitation, or sexual exploitation upon the return of a criminal indictment or presentment alleging abuse, neglect, financial exploitation, or sexual exploitation of an elderly or vulnerable adult.

(d) Nothing in this section shall preclude the district attorney general from complying with the continuing duty to disclose evidence under the rules of discovery in a criminal prosecution.

(e) A knowing violation of subsection (a) or (b) or subdivision (c)(1) is a Class B misdemeanor.

SECTION 16. For the purposes of promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, the public welfare requiring it.