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1 **VULNERABLE ADULT AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

6 **LONG TITLE**7 **General Description:**

8 This bill modifies provisions related to vulnerable adults.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ amends definitions applicable to abuse, neglect, or exploitation of a vulnerable
- 12 adult;
- 13 ▶ modifies penalties;
- 14 ▶ authorizes a court to order counseling; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **76-5-111**, as last amended by Laws of Utah 2011, Chapter 32023

*Be it enacted by the Legislature of the state of Utah:*24 Section 1. Section **76-5-111** is amended to read:25 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

28 (1) As used in this section:

29 (a) "Abandonment" means a knowing or intentional action or inaction, including

30 desertion, by a person ~~[or entity]~~ acting as a caretaker for a vulnerable adult that leaves the

31 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or

32 medical or other health care.

33 (b) "Abuse" means:

34 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally

35 or knowingly placing another in fear of imminent harm;

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

37 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation

38 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's

39 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the

40 health and safety of the adult; or

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

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

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

44 (c) "Business relationship" means a relationship between two or more individuals or

45 entities where there exists an oral or written agreement for the exchange of goods or services.

46 (d) (i) "Caretaker" means ~~[any]~~ a person~~[, entity, corporation]~~ or public institution

47 [that] who has a pattern of being:

48 (A) entrusted with or assuming ~~[assumes]~~ the responsibility to provide a vulnerable

49 adult with care, food, shelter, clothing, supervision, medical or other health care, or other

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

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

52 (ii) "Caretaker" includes a relative ~~[by blood or marriage]~~, a household member, an

53 attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a

54 court-appointed or voluntary guardian, or a person who contracts or is under court order to

55 provide care.

56 (e) "Deception" means:

57 (i) a misrepresentation or concealment:

58 (A) of a material fact relating to services rendered, disposition of property, or use of

59 property intended to benefit a vulnerable adult;

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

61 (C) relating to the existing or preexisting condition of any property involved in a

62 contract or agreement entered into with a vulnerable adult; or

63 (ii) the use or employment of any misrepresentation, false pretense, or false promise in

64 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

65 (f) (i) "Dependent adult" means any individual 18 years of age or older, who has a

66 physical or mental impairment that restricts the individual's ability to carry out normal

67 activities or to protect the individual's rights.

68 (ii) "Dependent adult" includes an individual who has physical or developmental

69 disabilities or whose physical or mental capacity has diminished because of age.

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

71 [g] (h) "Endeavor" means to attempt or try.

72 [h] (i) "Exploitation" means an offense described in Subsection (4) or Section

73 76-5b-202.

74 [f] (j) "Harm" means pain, mental anguish, emotional distress, hurt, physical or

75 psychological damage, physical injury, suffering, or distress inflicted knowingly or

76 intentionally.

77 [f] (k) "Informed consent" means:

78 (i) a written expression by the [person] individual or authorized by the [person]

79 individual, stating that the [person] individual fully understands the potential risks and benefits

80 of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or

81 other services necessary to maintain minimum physical or mental health, and that the [person]

82 individual desires that the services be withdrawn[A], except that a written expression is valid

83 only if the [person] individual is of sound mind when the consent is given, and the consent is

84 witnessed by at least two individuals who do not benefit from the withdrawal of services; or

85 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,

86 heating, or other services necessary to maintain minimum physical or mental health, as

87 permitted by court order.

88 [f] (l) "Intimidation" means communication conveyed through verbal or nonverbal

89 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social

90 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

91 [¶] (m) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult
92 from having contact with another person, unless the restriction of personal rights is authorized
93 by court order, by:

94 (A) preventing the vulnerable adult from communicating, visiting, or interacting with
95 others, including receiving visitors, mail, or telephone calls, contrary to the express wishes of
96 the vulnerable adult, [including] and communicating to a visitor that the vulnerable adult is not
97 present or does not want to meet with or talk to the visitor, knowing that communication to be
98 false;

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

101 (C) making false or misleading statements to the vulnerable adult in order to induce the
102 vulnerable adult to refuse to receive communication from visitors or other family members.

103 (ii) [The term "isolation"] "Isolation" does not include an act:

104 (A) intended to protect the physical or mental welfare of the vulnerable adult [or an
105 act]; or

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

108 [¶] (n) "Lacks capacity to consent" means an impairment by reason of mental illness,
109 developmental disability, organic brain disorder, physical illness or disability, chronic use of
110 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
111 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
112 concerning the adult's person or property.

113 [¶] (o) "Neglect" means:

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

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

119 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
120 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,

121 heating, or other services necessary to maintain the vulnerable adult's well being;

122 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that

123 results or could result in physical injury or physical harm; or

124 (v) abandonment by a caretaker.

125 [~~(e)~~] (p) (i) "Physical injury" includes damage to any bodily tissue caused by
126 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
127 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
128 the tissue cannot be restored to a sound and healthy condition.

129 (ii) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,
130 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
131 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
132 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
133 serious physical injury as defined in this section.

134 [~~(p)~~] (q) "Position of trust and confidence" means the position of a person who:

135 (i) is a parent, spouse, adult child, or other relative ~~[by blood or marriage]~~ of a
136 vulnerable adult;

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

138 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
139 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

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

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

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

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

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

146 (iv) creates a reasonable risk of death.

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

151 [~~(s)~~] (t) "Vulnerable adult" means an elder adult, or ~~[an adult 18 years of age or older]~~ a

152 dependent adult who has a mental or physical impairment which substantially affects that
153 [person's] individual's ability to:
154 (i) provide personal protection;
155 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
156 (iii) obtain services necessary for health, safety, or welfare;
157 (iv) carry out the activities of daily living;
158 (v) manage the adult's own resources; or
159 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
160 neglect, or exploitation.

161 (2) Under any circumstances likely to produce death or serious physical injury, [any] a
162 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
163 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
164 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the
165 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
166 vulnerable adult as follows:

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

170 (3) (a) Under circumstances other than those likely to produce death or serious physical
171 injury, except as provided in Subsection (3)(b), any person, including a caretaker, who causes a
172 vulnerable adult to suffer harm, abuse, or neglect[;], or, having the care or custody of a
173 vulnerable adult, causes or permits that adult's person or health to be injured, abused, or
174 neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's
175 person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as
176 follows:

177 [(a)] (i) if done intentionally or knowingly, the offense is a class A misdemeanor;
178 [(b)] (ii) if done recklessly, the offense is a class B misdemeanor; and
179 [(c)] (iii) if done with criminal negligence, the offense is a class C misdemeanor.

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

182 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the

183 person:

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

190 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and
191 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
192 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to
193 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of
194 ~~[his]~~ the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

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

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

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

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

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

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

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

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

209 (5) It does not constitute a defense to a prosecution for any violation of this section that
210 the accused did not know the age of the victim.

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

214 (7) If an individual, including a caretaker, violates this section by willfully isolating a
215 vulnerable adult, in addition to the penalties under Subsection (2) or (3), the court may require
216 that the individual:

217 (a) undergo appropriate counseling as a condition of the sentence; and

218 (b) pay for the costs of the ordered counseling.