

Senator Todd Weiler proposes the following substitute bill:

VULNERABLE ADULT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Craig Hall

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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



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

27 Section 1. Section **76-5-111** is amended to read:

28 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

29 (1) As used in this section:

30 (a) "Abandonment" means a knowing or intentional action or inaction, including
31 desertion, by a person [~~or entity~~] acting as a caretaker for a vulnerable adult that leaves the
32 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
33 medical or other health care.

34 (b) "Abuse" means:

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

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

38 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation
39 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
40 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
41 health and safety of the adult; or

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

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

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

45 (c) "Business relationship" means a relationship between two or more individuals or
46 entities where there exists an oral or written agreement for the exchange of goods or services.

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

49 (A) entrusted with or assuming [~~assumes~~] the responsibility to provide a vulnerable
50 adult with care, food, shelter, clothing, supervision, medical or other health care, or other
51 necessities[~~;~~] whether by pecuniary gain, by contract, or as a result of friendship; or

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

53 (ii) "Caretaker" includes a relative [~~by blood or marriage~~], a household member, an
54 attorney-in-fact, a neighbor, a person who is employed or who provides volunteer work, a
55 court-appointed or voluntary guardian, or a person who contracts or is under court order to
56 provide care.

57 (e) "Deception" means:

58 (i) a misrepresentation or concealment:

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

60 property intended to benefit a vulnerable adult;

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

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

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

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

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

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

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

68 activities or to protect the individual's rights.

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

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

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

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

73 [(h)] (i) "Exploitation" means an offense described in Subsection (4) or (5) or Section

74 76-5b-202.

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

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

77 intentionally.

78 [(j)] (k) "Informed consent" means:

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

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

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

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

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

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

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

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

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

88 permitted by court order.

89 ~~[(k)]~~ (l) "Intimidation" means communication conveyed through verbal or nonverbal
90 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
91 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

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

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

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

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

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

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

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

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

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

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

118 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and

119 with the degree of care that a reasonable person in a like position would exercise;

120 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
121 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
122 heating, or other services necessary to maintain the vulnerable adult's well being;

123 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that
124 results or could result in physical injury or physical harm; or

125 (v) abandonment by a caretaker.

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

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

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

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

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

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

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

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

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

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

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

147 (iv) creates a reasonable risk of death.

148 ~~[(r)]~~ (s) "Undue influence" occurs when a person uses influence to take advantage of a
149 vulnerable adult's mental or physical impairment or uses the person's role, relationship, or

150 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
151 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
152 deceptively over the decision making of the vulnerable adult.

153 ~~[(s)]~~ (t) "Vulnerable adult" means an elder adult, or ~~[an adult 18 years of age or older]~~ a
154 dependent adult who has a mental or physical impairment which substantially affects that
155 ~~[person's]~~ individual's ability to:

- 156 (i) provide personal protection;
157 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
158 (iii) obtain services necessary for health, safety, or welfare;
159 (iv) carry out the activities of daily living;
160 (v) manage the adult's own resources; or
161 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
162 neglect, or exploitation.

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

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

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

- 179 ~~[(a)]~~ (i) if done intentionally or knowingly, the offense is a class A misdemeanor;
180 ~~[(b)]~~ (ii) if done recklessly, the offense is a class B misdemeanor; and

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

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

184 (4) (a) A paid or volunteer caretaker of a vulnerable adult commits the offense of
185 personal dignity exploitation of the vulnerable adult if the caretaker intentionally, knowingly,
186 or recklessly:

187 (i) creates, transmits, or displays a photographic or electronic image or recording of the
188 vulnerable adult, whether the vulnerable adult is clothed or unclothed:

189 (A) that the caretaker knows or should know is highly offensive or embarrassing to a
190 reasonable person, including an image or recording of the vulnerable adult's breasts, buttocks,
191 anus, genitals, or pubic area; and

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

194 (ii) performs an act, or causes the vulnerable adult to participate in an act:

195 (A) that the caretaker knows or should know is highly offensive or embarrassing to a
196 reasonable person; and

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

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

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

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

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

206 (ii) if done recklessly, a class B misdemeanor.

207 ~~[(4)]~~ (5) (a) A person commits the offense of financial exploitation of a vulnerable
208 adult when the person:

209 (i) is in a position of trust and confidence, or has a business relationship, with the
210 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
211 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,

212 credit, assets, or other property with the intent to temporarily or permanently deprive the
213 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of
214 someone other than the vulnerable adult;

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

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

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

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

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

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

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

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

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

235 ~~[(5)]~~ (6) It does not constitute a defense to a prosecution for any violation of this
236 section that the accused did not know the age of the victim.

237 ~~[(6)]~~ (7) An adult is not considered abused, neglected, or a vulnerable adult for the
238 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
239 lieu of medical care.

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

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

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