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Adult Protective Services Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor:

2

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions regarding Adult Protective Services.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ amends definitions and defines terms;

9 ▶ allows Adult Protective Services to make a substantiated finding of abuse, neglect, or
10 exploitation of a vulnerable adult if the alleged perpetrator refuses to provide certain
11 documents;

12 ▶ amends provisions regarding the procedure by which an alleged perpetrator challenges a
13 supported finding of abuse, neglect, or exploitation of a vulnerable adult, and limitations
14 on those challenges; and

15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **26B-6-201**, as last amended by Laws of Utah 2024, Chapter 364

23 **26B-6-203**, as last amended by Laws of Utah 2023, Chapter 318 and renumbered and
24 amended by Laws of Utah 2023, Chapter 308

25 **26B-6-211**, as renumbered and amended by Laws of Utah 2023, Chapter 308

26

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

28 Section 1. Section **26B-6-201** is amended to read:

29 **26B-6-201 . Definitions.**

30 As used in this part:

- 31 (1) "Abandonment" means ~~[any]~~ a knowing or intentional action or ~~[failure to act]~~ inaction,
 32 including desertion, by a person acting as a caretaker for a vulnerable adult that leaves
 33 the vulnerable adult without the means or ability to obtain necessary food, clothing,
 34 shelter, or medical or other health care.
- 35 (2) "Abuse" means:
- 36 (a) knowingly~~[-or]~~ , intentionally, or recklessly:
- 37 (i) attempting to cause harm;
- 38 (ii) causing harm;~~[-or]~~
- 39 (iii) placing another in fear of imminent harm;
- 40 (iv) causing physical injury by acts or omissions; or
- 41 (v) engaging in a pattern of neglect;
- 42 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that,
 43 unless the physical restraint, medication, or isolation furthers the health and safety of
 44 the vulnerable adult:
- 45 (i) causes or is likely to cause harm to a vulnerable adult;
- 46 (ii) conflicts with a physician's orders; or
- 47 (iii) is used as an unauthorized substitute for treatment;
- 48 (c) emotional or psychological abuse;
- 49 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Individual;
 50 or
- 51 (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:
- 52 (i) as provided in Title 75A, Chapter 3, Health Care Decisions; or
- 53 (ii) when informed consent~~[-as defined in Section 76-5-111,]~~ has been obtained.
- 54 (3) "Adult" means an individual who is 18 years old or older.
- 55 (4) "Adult protection case file" means a record, stored in any format, contained in a case
 56 file maintained by Adult Protective Services.
- 57 (5) "Adult Protective Services" means the unit within the division responsible to investigate
 58 abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective
 59 services.
- 60 (6) "Capacity" means that an individual has sufficient understanding and memory to
 61 comprehend the individual's situation and the nature, purpose, and consequence of an act
 62 or transaction into which the individual enters or proposes to enter.
- 63 ~~[(6)]~~ (7) "Capacity to consent" means the ability of an individual to understand and
 64 communicate regarding the nature and consequences of decisions relating to the

65 individual, and relating to the individual's property and lifestyle, including a decision to
66 accept or refuse services.

67 [(7)] (8) "Caretaker" means a person or public institution that is entrusted with or assumes
68 the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
69 supervision, medical or other health care, resource management, or other necessities for
70 pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a position
71 of trust and confidence with a vulnerable adult, including a relative, a household
72 member, an attorney-in-fact, a neighbor, a person who is employed or who provides
73 volunteer work, a court-appointed or voluntary guardian, or a person who contracts or is
74 under court order to provide care.

75 [(8)] (9) "Counsel" means an attorney licensed to practice law in this state.

76 [(9)] (10) "Database" means the statewide database maintained by the division under
77 Section 26B-6-210.

78 (11) "Decision-making ability" means an individual's capacity to receive, process, and
79 understand information, to comprehend the individual's circumstances, and to
80 understand the likely consequences of the individual's decisions.

81 [(10)] (12)(a) "Dependent adult" means an individual 18 years old or older, who has a
82 physical or mental impairment that restricts the individual's ability to carry out
83 normal activities or to protect the individual's rights.

84 (b) "Dependent adult" includes an individual who has physical or developmental
85 disabilities or whose physical or mental capacity has substantially diminished
86 because of age.

87 [(11)] (13) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

88 [(12)] (14) "Elder adult" means an individual 65 years old or older.

89 [(13)] (15) "Emergency" means a circumstance in which a vulnerable adult is at an
90 immediate risk of death, serious physical injury, or serious physical, emotional, or
91 financial harm.

92 [(14)] (16) "Emergency protective services" means measures taken by Adult Protective
93 Services under time-limited, court-ordered authority for the purpose of remediating an
94 emergency.

95 [(15)] (17)(a) "Emotional or psychological abuse" means knowing or intentional verbal
96 or nonverbal conduct directed at a vulnerable adult that ~~[results in the vulnerable~~
97 ~~adult suffering]~~ would cause a reasonable individual to suffer mental anguish,
98 emotional distress, fear, humiliation, degradation, agitation, or confusion.

- 99 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,
100 coercing, or harassing.
- 101 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
102 by a vulnerable adult who lacks the capacity to intentionally or knowingly:
103 (i) engage in the conduct; or
104 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation,
105 agitation, or confusion.
- 106 (18) "Endangerment" means an offense described in Section 76-5-112 or 76-5-112.5.
- 107 ~~[(16)]~~ (19) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or
108 76-5b-202.
- 109 ~~[(17)]~~ (20) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
110 psychological damage, physical injury, serious physical injury, suffering, or distress
111 inflicted knowingly or, intentionally.
- 112 ~~[(18)]~~ (21) "Inconclusive" means a finding by the division that there is not a reasonable
113 basis to conclude that abuse, neglect, or exploitation occurred.
- 114 (22) "Informed consent" means:
- 115 (a) a written expression by the individual, or authorized by the individual, that:
116 (i) is given while the individual is of sound mind;
117 (ii) is witnessed by at least two individuals who do not benefit from the withdrawal of
118 services; and
119 (iii) states that:
120 (A) the individual fully understands the potential risks and benefits of the
121 withdrawal of food, water, medication, medical services, shelter, cooling,
122 heating, or other services necessary to maintain minimum physical or mental
123 health; and
124 (B) the individual desires that the services be withdrawn; or
125 (b) consent to withdraw food, water, medication, medical services, shelter, cooling,
126 heating, or other services necessary to maintain minimum physical or mental health,
127 as permitted by court order.
- 128 ~~[(19)]~~ (23) "Intimidation" means communication through verbal or nonverbal conduct which
129 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
130 supervision, health care, or companionship, or which threatens isolation or abuse.
- 131 ~~[(20)]~~ (24)(a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
132 from having contact with another person, unless the restriction of personal rights is

133 authorized by court order, by:

- 134 (i) preventing the vulnerable adult from communicating, visiting, interacting, or
 135 initiating interaction with others, including receiving or inviting visitors, mail, or
 136 telephone calls, contrary to the expressed wishes of the vulnerable adult, or
 137 communicating to a visitor that the vulnerable adult is not present or does not
 138 want to meet with or talk to the visitor, knowing that communication to be false;
 139 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
 140 from meeting with a visitor; or
 141 (iii) making false or misleading statements to the vulnerable adult in order to induce
 142 the vulnerable adult to refuse to receive communication from visitors or other
 143 family members.

144 (b) "Isolation" does not include an act:

- 145 (i) intended in good faith to protect the physical or mental welfare of the vulnerable
 146 adult; or
 147 (ii) performed pursuant to the treatment plan or instructions of a physician or other
 148 professional advisor of the vulnerable adult.

149 ~~[(21)]~~ (25) "Lacks capacity to consent" is as defined in Section 76-5-111.4.

150 ~~[(22)]~~ (26)~~[(a)]~~ "Neglect" means:

- 151 ~~[(i)]~~ (a)~~[(A)]~~ (i) failure of a caretaker to provide ~~[necessary care, including]~~ nutrition,
 152 clothing, shelter, supervision, personal care, or dental~~[-medical,]~~ or other health
 153 care~~[for a vulnerable adult, unless the vulnerable adult is able to provide or obtain~~
 154 ~~the necessary care without assistance]~~; or
 155 ~~[(B)]~~ (ii) failure of a caretaker to provide protection from health and safety hazards or
 156 maltreatment;
 157 ~~[(ii)]~~ (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner
 158 and with the degree of care that a reasonable person in a like position would exercise;
 159 ~~[(iii)]~~ (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed
 160 consent, resulting in deprivation of food, water, medication, health care, shelter,
 161 cooling, heating, or other services necessary to maintain the vulnerable adult's well
 162 being;
 163 ~~[(iv)]~~ (d) ~~[knowing or]~~ intentional failure by a caretaker to carry out a prescribed
 164 treatment plan that ~~[causes or is likely to cause]~~ results or could result in physical
 165 injury or physical harm to the vulnerable adult; or
 166 ~~[(v)]~~ self-neglect by the vulnerable adult; or]

- 167 ~~[(vi)]~~ (e) abandonment by a caretaker.
- 168 ~~[(b) "Neglect" does not include conduct, or failure to take action, that is permitted or~~
- 169 ~~excused under Title 75A, Chapter 3, Health Care Decisions.]~~
- 170 ~~[(23)]~~ (27) "Physical injury" includes the damage and conditions described in Section
- 171 76-5-111.
- 172 ~~[(28)]~~ "Position of trust and confidence" means the position of a person who:
- 173 (a) is a parent, spouse, adult child, or other relative of a vulnerable adult;
- 174 (b) is a joint tenant or tenant in common with a vulnerable adult;
- 175 (c) has a legal or fiduciary relationship with a vulnerable adult, including a
- 176 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or
- 177 conservator;
- 178 (d) is a caretaker of a vulnerable adult; or
- 179 (e) is a person whom a vulnerable adult has come to trust.
- 180 ~~[(24)]~~ (29) "Protected person" means a vulnerable adult for whom the court has ordered
- 181 protective services.
- 182 ~~[(25)]~~ (30) "Protective services" means services to protect a vulnerable adult from abuse,
- 183 neglect, or exploitation.
- 184 ~~[(26)]~~ (31) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food,
- 185 water, medication, health care, shelter, cooling, heating, safety, or other services
- 186 necessary to maintain the vulnerable adult's well being when that failure is the result of
- 187 the adult's mental or physical impairment. Choice of lifestyle or living arrangements
- 188 may not, by themselves, be evidence of self-neglect.
- 189 ~~[(27)]~~ (32) "Serious physical injury" is as defined in Section 76-5-111.
- 190 ~~[(28)]~~ (33) "Supported" means a finding by the division that there is a reasonable basis to
- 191 conclude that abuse, neglect, or exploitation occurred.
- 192 ~~[(29)]~~ (34) "Undue influence" occurs when a person:
- 193 (a) uses influence to take advantage of a vulnerable adult's mental or physical
- 194 impairment; or
- 195 (b) uses the person's role, relationship, ~~[or]~~ power, or trust:
- 196 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency,
- 197 or fear of a vulnerable adult; or
- 198 (ii) to gain control deceptively over the decision making of the vulnerable adult.
- 199 ~~[(30)]~~ (35) "Vulnerable adult" means an elder adult, or a dependent adult who has a mental
- 200 or physical impairment which substantially affects that person's ability to:

- 201 (a) provide personal protection;
- 202 (b) provide necessities such as food, shelter, clothing, or [~~mental~~] medical or other health
203 care;
- 204 (c) obtain services necessary for health, safety, or welfare;
- 205 (d) carry out the activities of daily living;
- 206 (e) manage the adult's own [~~financial~~]resources; or
- 207 (f) comprehend the nature and consequences of remaining in a situation of abuse,
208 neglect, or exploitation.

209 [(31)] (36) "Without merit" means a finding that abuse, neglect, or exploitation did not
210 occur.

211 Section 2. Section **26B-6-203** is amended to read:

212 **26B-6-203 . Powers and duties of Adult Protective Services.**

213 In addition to all other powers and duties that Adult Protective Services is given under
214 this part, Adult Protective Services:

- 215 (1) shall maintain an intake system for receiving and screening reports;
- 216 (2) shall investigate referrals that meet the intake criteria;
- 217 (3) shall conduct assessments of vulnerability and functional capacity as it relates to an
218 allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
- 219 (4) shall perform assessments based on protective needs and risks for a vulnerable adult
220 who is the subject of a report;
- 221 (5) may address any protective needs by making recommendations to and coordinating with
222 the vulnerable adult or by making referrals to community resources;
- 223 (6) may provide short-term, limited services to a vulnerable adult when family or
224 community resources are not available to provide for the protective needs of the
225 vulnerable adult;
- 226 (7) shall have access to facilities licensed by, or contracted with, the department for the
227 purpose of conducting investigations;
- 228 (8) shall be given access to, or provided with, written statements, documents, exhibits, and
229 other items related to an investigation, including private, controlled, or protected
230 medical or financial records of a vulnerable adult who is the subject of an investigation
231 if:
- 232 (a) for a vulnerable adult who has the capacity to consent, the vulnerable adult signs a
233 release of information; or
- 234 (b) an administrative subpoena is issued by Adult Protective Services:

- 235 (i) for a vulnerable adult who has limited capacity to consent;
- 236 (ii) for a vulnerable adult whose legal guardian refuses to consent;
- 237 (iii) to a custodian of records or other items for a vulnerable adult, if the custodian
- 238 refuses to allow access to the records or items without a subpoena; or
- 239 (iv) when the records or other items sought are reasonably necessary for Adult
- 240 Protective Services to:
- 241 (A) investigate the alleged abuse, neglect, or exploitation of a vulnerable adult; or
- 242 (B) protect the vulnerable adult who may be the victim of abuse, neglect, or
- 243 exploitation;
- 244 (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to
- 245 carry out the provisions of this chapter;
- 246 (10) may make a supported finding of abuse, neglect, or exploitation of a vulnerable adult
- 247 against an alleged perpetrator if documents subpoenaed or requested by Adult Protective
- 248 Services are not provided by the alleged perpetrator;
- 249 ~~[(10)]~~ (11) shall, subject to Section 26B-6-217, provide emergency protective services;
- 250 ~~[(11)]~~ (12) may require all persons, including family members of a vulnerable adult and any
- 251 caretaker, to cooperate with Adult Protective Services in carrying out its duties under
- 252 this chapter, including the provision of statements, documents, exhibits, and other items
- 253 that assist Adult Protective Services in conducting investigations and providing
- 254 protective services;
- 255 ~~[(12)]~~ (13) may require all officials, agencies, departments, and political subdivisions of the
- 256 state to assist and cooperate within their jurisdictional power with the court, the division,
- 257 and Adult Protective Services in furthering the purposes of this chapter;
- 258 ~~[(13)]~~ (14) may conduct studies and compile data regarding abuse, neglect, and exploitation;
- 259 and
- 260 ~~[(14)]~~ (15) may issue reports and recommendations.

261 Section 3. Section **26B-6-211** is amended to read:

262 **26B-6-211 . Notice of supported finding -- Procedure for challenging finding --**

263 **Limitations.**

- 264 (1)(a) Except as provided in Subsection (1)(b), within 15 days after the day on which the
- 265 division makes a supported finding that a person committed abuse, neglect, or
- 266 exploitation of a vulnerable adult, the division shall serve the person with a notice of
- 267 agency action, in accordance with Subsections (2) and (3).
- 268 (b) The division may serve the notice described in Subsection (1)(a) within a reasonable

- 269 time after the 15 day period described in Subsection (1)(a) if:
- 270 (i) the delay is necessary in order to:
- 271 (A) avoid impeding an ongoing criminal investigation or proceeding; or
- 272 (B) protect the safety of a person; and
- 273 (ii) the notice is provided before the supported finding is used as a basis to deny the
- 274 person a license or otherwise adversely impact the person.
- 275 (2) The division shall cause the notice described in Subsection (1)(a) to be served by
- 276 personal service or certified mail.
- 277 (3) The notice described in Subsection (1)(a) shall:
- 278 (a) indicate that the division has conducted an investigation regarding alleged abuse,
- 279 neglect, or exploitation of a vulnerable adult by the alleged perpetrator;
- 280 (b) indicate that, as a result of the investigation described in Subsection (3)(a), the
- 281 division made a supported finding that the alleged perpetrator committed abuse,
- 282 neglect, or exploitation of a vulnerable adult;
- 283 (c) include a summary of the facts that are the basis for the supported finding;
- 284 (d) indicate that the supported finding may result in disqualifying the person from:
- 285 (i) being licensed, certified, approved, or employed by a government agency;
- 286 (ii) being employed by a service provider, person, or other entity that contracts with,
- 287 or is licensed by, a government agency; or
- 288 (iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);
- 289 (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying
- 290 information is listed in the database;
- 291 (f) indicate that the alleged perpetrator may request a copy of the report of the alleged
- 292 abuse, neglect, or exploitation; and
- 293 (g) inform the alleged perpetrator of:
- 294 (i) the right described in Subsection (4)(a); and
- 295 (ii) the consequences of failing to exercise the right described in Subsection (4)(a) in
- 296 a timely manner.
- 297 (4)(a) The alleged perpetrator has the right, within 30 days after the day on which the
- 298 notice described in Subsection (1)(a) is served, to challenge the supported finding by
- 299 filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4,
- 300 Administrative Procedures Act.
- 301 (b) If the alleged perpetrator fails to file a request for an informal adjudicative
- 302 proceeding within the time described in Subsection (4)(a), the supported finding will

303 become final and will not be subject to challenge or appeal.

304 (5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by
305 a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect,
306 or exploitation of a vulnerable adult.

307 (6) At the hearing, if the division provides evidence sufficient to suggest, by a
308 preponderance of the evidence, that the alleged perpetrator likely committed abuse,
309 neglect, or exploitation of a vulnerable adult, the alleged perpetrator must present
310 credible evidence that the division's evidence does not establish by a preponderance of
311 the evidence that the alleged perpetrator committed the abuse, neglect, or exploitation of
312 a vulnerable adult, in order to successfully rebut the division's findings.

313 ~~[(6)]~~ (7) Notwithstanding any provision of this section, an alleged perpetrator described in
314 this section may not challenge a supported finding if:

315 (a) a court ~~[of competent]~~ with jurisdiction entered a finding in a proceeding to which the
316 alleged perpetrator was a party, that the alleged perpetrator committed the abuse,
317 neglect, or exploitation of a vulnerable adult, upon which the supported finding is
318 based~~[-]~~ ; or

319 (b) a court with jurisdiction accepted a plea deal from the alleged perpetrator concerning
320 the same set of facts upon which the supported finding is based.

321 ~~[(7)]~~ (8) A person who was listed in the database as a perpetrator before May 5, 2008, and
322 who did not have an opportunity to challenge the division's finding that resulted in the
323 listing, may at any time:

324 (a) request that the division reconsider the division's finding; or

325 (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4,
326 Administrative Procedures Act, to challenge the finding.

327 Section 4. **Effective Date.**

328 This bill takes effect on May 7, 2025.