

ADULT PROTECTIVE SERVICES AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill establishes the means and criteria for Adult Protective Services to obtain court authority to provide emergency protective services to a vulnerable adult in an emergency.

Highlighted Provisions:

This bill:

- defines "emergency protective services";
 - requires Adult Protective Services to provide emergency protective services, subject to court order;
 - allows the Division of Occupational and Professional Licensing access to the Adult Protective Services database;
 - clarifies that protective services are provided only on a voluntary basis and emergency protective services are provided under court order;
 - clarifies the venue for court proceedings for protective services and emergency protective services;
 - establishes requirements and the process for a court to order emergency protective services;
 - sets time limits for emergency protective services;
 - allows a court to authorize forcible entry by a peace officer into the premises where the vulnerable adult may be found;
 - repeals authority and procedures for court-ordered involuntary protective services;
- and

► makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-301, as last amended by Laws of Utah 2012, Chapter 149

62A-3-302, as last amended by Laws of Utah 2008, Chapter 91

62A-3-303, as last amended by Laws of Utah 2014, Chapter 245

62A-3-312, as last amended by Laws of Utah 2014, Chapter 245

62A-3-315, as enacted by Laws of Utah 2002, Chapter 108

62A-3-317, as enacted by Laws of Utah 2002, Chapter 108

62A-3-320, as last amended by Laws of Utah 2008, Chapter 91

62A-3-321, as enacted by Laws of Utah 2002, Chapter 108

REPEALS:

62A-3-318, as last amended by Laws of Utah 2008, Chapter 91

62A-3-319, as enacted by Laws of Utah 2002, Chapter 108

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

Section 1. Section **62A-3-301** is amended to read:

62A-3-301. Definitions.

As used in this part:

(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) "Abuse" means:

- 58 (a) knowingly or intentionally:
59 (i) attempting to cause harm;
60 (ii) causing harm; or
61 (iii) placing another in fear of harm;
62 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
63 causes or is likely to cause harm to a vulnerable adult;
64 (c) emotional or psychological abuse;
65 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;
66 or
67 (e) deprivation of life sustaining treatment, or medical or mental health treatment,
68 except:
69 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
70 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
71 (3) "Adult" means a person who is 18 years of age or older.
72 (4) "Adult protection case file" means a record, stored in any format, contained in a
73 case file maintained by Adult Protective Services.
74 (5) "Adult Protective Services" means the unit within the division responsible to
75 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
76 protective services.
77 (6) "Capacity to consent" means the ability of a person to understand and communicate
78 regarding the nature and consequences of decisions relating to the person, and relating to the
79 person's property and lifestyle, including a decision to accept or refuse services.
80 (7) "Caretaker" means each person, entity, corporation, or public institution that
81 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
82 supervision, medical or other health care, resource management, or other necessities.
83 (8) "Counsel" means an attorney licensed to practice law in this state.
84 (9) "Database" means the statewide database maintained by the division under Section
85 62A-3-311.1.

(10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

(11) "Elder adult" means a person 65 years of age or older.

(12) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.

(13) "Emergency protective services" means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.

~~[(13)]~~ (14) (a) "Emotional or psychological abuse" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

(b) "Emotional or psychological abuse" includes intimidating, threatening, isolating, coercing, or harassing.

(c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:

(i) engage in the conduct; or

(ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.

~~[(14)]~~ (15) "Exploitation" means an offense described in Subsection 76-5-111(4) or Section 76-5b-202.

~~[(15)]~~ (16) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.

~~[(16)]~~ (17) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

~~[(17)]~~ (18) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.

114 ~~[(18)]~~ (19) (a) "Isolation" means knowingly or intentionally preventing a vulnerable
115 adult from having contact with another person by:

116 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
117 contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor
118 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
119 knowing that communication to be false;

120 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
121 from meeting with a visitor; or

122 (iii) making false or misleading statements to the vulnerable adult in order to induce
123 the vulnerable adult to refuse to receive communication from visitors or other family members.

124 (b) The term "isolation" does not include an act intended to protect the physical or
125 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
126 instructions of a physician or other professional advisor of the vulnerable adult.

127 ~~[(19)]~~ (20) "Lacks capacity to consent" is as defined in Section [76-5-111](#).

128 ~~[(20)]~~ (21) (a) "Neglect" means:

129 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
130 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
131 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
132 assistance; or

133 (B) failure of a caretaker to provide protection from health and safety hazards or
134 maltreatment;

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

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

140 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
141 plan that causes or is likely to cause harm to the vulnerable adult;

(v) self-neglect by the vulnerable adult; or

(vi) abandonment by a caretaker.

(b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

~~[(21)]~~ (22) "Physical injury" includes the damage and conditions described in Section 76-5-111.

~~[(22)]~~ (23) "Protected person" means a vulnerable adult for whom the court has ordered protective services.

~~[(23)]~~ (24) "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

~~[(24)]~~ (25) "Self-neglect" means the failure of a vulnerable adult to provide or obtain food, water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.

~~[(25)]~~ (26) "Serious physical injury" is as defined in Section 76-5-111.

~~[(26)]~~ (27) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.

~~[(27)]~~ (28) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

~~[(28)]~~ (29) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own financial resources; or
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
[(29)] (30) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Section 2. Section **62A-3-302** is amended to read:

62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section [62A-3-106.5](#), Adult Protective Services:

(1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;

(2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult; ~~and~~

(3) shall, subject to Section [62A-3-320](#), provide emergency protective services; and

~~[(3)]~~ (4) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:

(a) reporting and investigating incidents of abuse, neglect, or exploitation; and

(b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Section 3. Section **62A-3-303** is amended to read:

62A-3-303. Powers and duties of Adult Protective Services.

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

(1) shall maintain an intake system for receiving and screening reports;

(2) shall investigate referrals that meet the intake criteria;

(3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;

(4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;

(5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;

(6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;

(7) shall have access to facilities licensed by, or contracted with, the department or the Department of Health for the purpose of conducting investigations;

(8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:

(a) for a vulnerable adult who ~~[does not lack]~~ has the capacity to consent, the vulnerable adult signs a release of information; or

(b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;

(9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;

(10) shall, subject to Section 62A-3-320, provide emergency protective services;

~~[(10)]~~ (11) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;

~~[(11)]~~ (12) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;

~~[(12)]~~ (13) may conduct studies and compile data regarding abuse, neglect, and exploitation; and

226 ~~[(13)]~~ (14) may issue reports and recommendations.

227 Section 4. Section **62A-3-312** is amended to read:

228 **62A-3-312. Access to information in database.**

229 The database and the adult protection case file:

230 (1) shall be made available to law enforcement agencies, the attorney general's office,
231 city attorneys, the Division of Occupational and Professional Licensing, and county or district
232 attorney's offices;

233 (2) shall be released as required under Subsection **63G-2-202**(4)(c); and

234 (3) may be made available, at the discretion of the division, to:

235 (a) subjects of a report as follows:

236 (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or
237 that adult's attorney or legal guardian; and

238 (ii) a person identified in a report as having abused, neglected, or exploited a
239 vulnerable adult, or that person's attorney; and

240 (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:

241 (i) an employee or contractor of the department who is responsible for the evaluation or
242 assessment of an adult protection case file;

243 (ii) a multidisciplinary team approved by the division to assist Adult Protective
244 Services in the evaluation, assessment, and disposition of a vulnerable adult case;

245 (iii) an authorized person or agency providing services to, or responsible for, the care,
246 treatment, assessment, or supervision of a vulnerable adult named in the report as a victim,
247 when in the opinion of the division, that information will assist in the protection of, or provide
248 other benefits to, the victim;

249 (iv) a licensing authority for a facility, program, or person providing care to a victim
250 named in a report; and

251 (v) legally authorized protection and advocacy agencies when they represent a victim
252 or have been requested by the division to assist on a case, including:

253 (A) the Office of Public Guardian, created in Section **62A-14-103**; and

(B) the Long-Term Care Ombudsman Program, created in Section [62A-3-203](#).

Section 5. Section **62A-3-315** is amended to read:

62A-3-315. Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who ~~[does not lack]~~ has the capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.

(3) ~~[The]~~ A court may order emergency protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to protective services in accordance with ~~[this part]~~ Section [62A-3-320](#).

Section 6. Section **62A-3-317** is amended to read:

62A-3-317. Venue for protective services proceedings.

Venue for all proceedings ~~[for]~~ related to protective services and emergency protective services under this chapter is in the county where the vulnerable adult resides or is present.

Section 7. Section **62A-3-320** is amended to read:

62A-3-320. Emergency protective services -- Forcible entry.

~~[(1) Upon the filing of a petition for an emergency order, the court may, without notice, order appropriate protective services, if the court finds that:]~~

(1) Adult Protective Services shall, immediately upon court order, provide emergency protective services to a court-designated vulnerable adult.

(2) A court may, without notice, order emergency protective services immediately upon

282 receipt of a petition for emergency protective services when a court finds that:

283 (a) the subject of the petition is a vulnerable adult;

284 (b) (i) the vulnerable adult ~~[has no]~~ does not have a court-appointed guardian or
285 conservator; or

286 (ii) the guardian or conservator is not effectively performing the guardian's or
287 conservator's duties;

288 (c) an emergency exists; and

289 (d) the welfare, safety, or best interests of the vulnerable adult ~~[require immediate~~
290 ~~action]~~ requires emergency protective services.

291 ~~[(2) The order described in Subsection (1)]~~

292 (3) An emergency protective services order shall specifically designate ~~[the protective~~
293 ~~services which are approved, together with supporting facts]~~ the services that are approved and
294 the facts that support the provision of those services.

295 ~~[(3) Protective services]~~

296 (4) Services authorized in an emergency protective services order may ~~[not]~~ include
297 hospitalization, nursing ~~[or]~~, custodial care, or a change in residence~~[- unless the court~~
298 ~~specifically finds that the action is necessary and authorizes the specific protective services in~~
299 ~~the order].~~

300 ~~[(4) (a) Protective services provided through an emergency order may not be provided~~
301 ~~longer than three business days, at which time the order shall expire unless a petition for~~
302 ~~guardianship, conservatorship, or other protective services is filed.]~~

303 (5) An emergency protective services order expires five business days after the day on
304 which the court issues the order unless an appropriate party petitions for temporary
305 guardianship pursuant to Section [75-5-310](#) or the division files a new petition for an emergency
306 services order.

307 ~~[(b)]~~ (6) If a petition for guardianship~~[- conservatorship, or other]~~ or an additional
308 emergency protective services petition is filed within ~~[the three-business-day period described~~
309 ~~in Subsection (4)(a), the emergency order may be continued for as long as 15 days from the day~~

on which the last petition was filed, to allow time for a hearing to determine whether the emergency order shall remain in effect] five business days after the day on which the court issues the original emergency protective services order, a court may extend the duration of the original order an additional 15 business days after the day on which the subsequent petition is filed to allow for a court hearing on the petition.

~~[(5) In the emergency order, the court may appoint a temporary guardian, in accordance with Section 75-5-310.]~~

~~[(6)]~~ (7) To implement an emergency protective services order, ~~[the]~~ a court may authorize forcible entry by a peace officer into the premises where the ~~[protected person is residing, only upon a showing that voluntary access into the premises is not possible and that forcible entry is required]~~ vulnerable adult may be found.

Section 8. Section **62A-3-321** is amended to read:

62A-3-321. Petition for injunctive relief when caretaker refuses to allow protective services.

(1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services ~~[or to order other appropriate relief]~~.

(3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

(4) The petition under Subsection (1) may be joined with a petition under ~~[Section 62A-3-318 or]~~ Section 62A-3-320.

Section 9. **Repealer.**

This bill repeals:

338 Section **62A-3-318**, Petition by division for protective services -- Notice -- Rights of
339 **adult.**
340 Section **62A-3-319**, Court order for protective services -- Review.