



State of Utah

ADULT PROTECTIVE SERVICES

Reference Manual



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Immediately report **all** suspicions of abuse, neglect, or exploitation of vulnerable adults:

801-538-3567
Salt Lake County

1-800-371-7897
Statewide

www.hsdaas.utah.gov/ap_referral.htm

Adult Protective Services

REFERENCE MANUAL



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Quick Reference

Division of Aging and Adult Services

Adult Protective Services

Quick Reference

1. What are protective services?

- A State program provided through the Utah State Department of Human Services - Division of Aging and Adult Services to protect vulnerable adults.
- Investigation of alleged abuse, emotional or psychological abuse, neglect or exploitation of vulnerable adults.
- Services may be provided either by voluntary agreement or as authorized by court order.

2. Who is responsible for providing protective services?

- Adult Protective Services is responsible for investigation of reports of abuse, neglect or exploitation.
- Adult Protective Services may work with a variety of resources and agencies to make sure the protective need of the vulnerable adult is met.

3. What is the legal basis?

- **Federal Law: Federal Law PL97-35- 42 USC 1297 Sec. 2001(3)** - Block Grant to States for Social Services – Title XX of of Social Security Act states”.... the service plan shall provide services...3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interest...”.
- **State Law: UCA 62A-3-301**

4. Who is eligible for Adult Protective Services?

- Any **Vulnerable Adult**. Vulnerable adult means
 - a. an elder adult, **65 years of age or older**,
 - b. or an **adult who has a mental or physical impairment** which substantially affects that person's ability to:
 - 1) Provide personal protection;
 - 2) Provide necessities such as food, shelter, clothing, mental or other health care;
 - 3) Obtain services necessary for health, safety, or welfare;
 - 4) Carry out the activities of daily living;
 - 5) Manage the adult's own financial resources; or
 - 6) Comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

5. Who should make an adult protective service referral?

The State of Utah has a **mandatory reporting law**. This law states;

§62A-3-305 (1) Any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.

6. What if I am aware of an adult protective service issue and choose not to report it?

The mandatory reporting act also includes a penalty clause. The clause simply states: "Any person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a Class B misdemeanor."

7. If I am aware of an adult protective service issue and I report it can I be liable in any way?

- The Law states that anyone who in good faith makes a report of suspected abuse, neglect or exploitation is immune from civil and criminal liability in connection with the report.

8. How do I decide if someone is being abused, neglected or exploited?

- It is not necessary to confirm abuse, neglect or exploitation in order to report it. It is the responsibility of Adult Protective Services to confirm allegations.

9. What happens after a referral is made?

- APS Intake determines whether the information received constitutes a referral and if that referral constitutes an emergency.
If it is an emergency, Adult Protective Services is required to initiate the investigation within one working day.
If it is not an emergency, the investigation is initiated within three working days.
- The case is then assigned to an investigator who initiates the investigation. The investigator gathers information regarding the allegations and determines if there is a need for the client to receive protective services.
- If there is not a protective need the case is closed. If a protective need is determined, the client is assisted in obtaining services or benefits as appropriate.

10. Can I make a referral on the Internet?

- Adult Protective Services has recently initiated a new online referral system. In order to submit a referral online:
Visit http://www.hsdaas.utah.gov/ap_referral.htm
 1. Select “make a referral” from the left hand menu
 - ♦ This page contains general information about what constitutes an Adult Protective Services referral.
 2. Select “complete online form” at the bottom of the page
 3. The form will provide the reader with “tips” as the mouse hovers over each general information area.

11. What services can the Adult Protective Services Division provide?

- Adult Protective Services will offer the least restrictive and least intrusive services available to satisfy the protective need.

12. What if an individual refuses services?

- Adults have the right to make personal choices and decisions. This self-determination gives them the right to make decisions that might not appear to be in their best interest. If services are provided by Adult Protective Services, the adult must knowingly and voluntarily accept them without any coercion. If the adult subsequently withdraws consent for those services, they will be discontinued. Involuntary protective services may only be provided when the court has determined that the adult lacks the capacity to consent.

Adult Protective Services has recently initiated a new online referral system. This system was designed to allow care providers and other community members to submit referrals to APS in a timely and confidential manner, 24-hours a day. The online system is meant to augment the already available statewide APS intake hotline (**1-800-371-7897**).

In order to submit a referral online:

1. Visit http://www.hsdaas.utah.gov/ap_referral.htm
2. Select “make a referral” from the left hand menu
 - This page contains general information about what constitutes an Adult Protective Services referral.
3. Select “complete online form” at the bottom of the page
4. The form will provide the reader with “tips” as the mouse hovers over each general information area.

The online referral system does not record any identifying information. Therefore, if the user chooses, he or she may remain anonymous. However, the inclusion of the user’s personal contact information may be helpful in consideration of the referral for case purposes. As always, all personal information is maintained strictly confidential.

Intake

Adult Protective Services Intake

Eligible referrals require an adult to be at risk due to an allegation of abuse, neglect or exploitation and contain one of the following elements:

1. A person **65 years of age or older**
2. A person who is **18 years of age or older** and has a mental or physical impairment which substantially affects that person's ability to:
 - provide personal protection;
 - provide necessities such as food, shelter, clothing, mental or other health care;
 - obtain services necessary for health, safety, or welfare;
 - carry out the activities of daily living;
 - manage the adult's own resources;
 - comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

Allegations include:

1. **Abuse**
 - Emotional Abuse/Harm
 - Psychological Abuse/Harm
 - Physical Injury/Harm
 - Unlawful Restraint
 - Sexual Offense
 - Deprivation of Life Sustaining Treatment
2. **Neglect**
 - Caretaker Neglect
 - Self Neglect
3. **Exploitation**
 - Financial Exploitation
 - Criminal Activity Exploitation
 - Power of Attorney/Guardianship Exploitation

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Due to the number of calls received, you may reach an answering machine. Please leave a message. The Intake person will return your call as soon as possible.

Intervention

What Can Adult Protective Services Do?

- Operate an intake system for receiving and screening reports of abuse, neglect or exploitation.
- Investigate reports of abuse, neglect, or exploitation.
- Perform needs assessments
- Coordinate with and refer clients to, community resources for services.
- Provide short-term limited services when family or community resources are not available to provide protection.

Protective services are provided to vulnerable adults to prevent or discontinue abuse, neglect, or exploitation.

What Adult Protective Services Can NOT Do?

- Enter the adult's home against his/her will without his/her permission.
- Remain in the home after the adult, a member of the family, or a person entitled to make such a request, has asked the investigator to leave the premises.
- Remove the adult against his/her will from his/her living quarters to another living environment.
- Take custody of an adult.
- Under APS authority, place an adult in a nursing home or other facility.
- Provide any service, including the investigation, without the voluntary consent of the alleged victim or their guardian or conservator unless court ordered to do so.

Utah

APS

Law

**Adult Protective Services
2008 Amendments
State of Utah**

§ 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:
 - (a) Knowingly or intentionally:
 - (i) attempting to cause harm;
 - (ii) causing harm; or
 - (iii) placing another in fear of harm;
 - (b) Unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;
 - (c) Emotional or psychological abuse;
 - (d) A sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or
 - (e) deprivation of life sustaining treatment, or medical or mental health treatment except:
 - (i) As provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
 - (ii) When informed consent, as defined in Section 76-5-111, has been obtained.
- (3) **“Adult”** means a person who is 18 years of age or older.
- (4) **“Adult protection case file”** means a record, stored in any format, contained in a case file maintained by Adult Protective Services.
- (5) **“Adult Protective Services”** means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.
- (6) **“Capacity to Consent”** means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person’s property and lifestyle, including a decision to accept or refuse services.
- (7) **“Caretaker”** means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management or other necessities.

- (8) "**Counsel**" means an attorney licensed to practice law in this state.
- (9) "**Database**" means the statewide database maintained by the division under **Section 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) (a) "**Emotional or psychological abuse**" means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results or could result in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
(b) "**Emotional or psychological abuse**" includes ridiculing, intimidating, yelling, swearing, threatening, isolating, coercing, or harassing.
- (14) "**Exploitation**" means the offense described in **Subsection 76-5-111(4)**.
- (15) "**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) "**Inconclusive**" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (17) "**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.
- (18) (a) "**Isolation**" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
(i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
(ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
(iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

- (b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (19) **"Lacks capacity to consent"** has the meaning as provided in **Section 76-5-111**.
- (20) (a) **"Neglect"** means:
- (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or
 - (B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
 - (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment 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.
- (8) **"Physical injury"** includes the damage and conditions described in **Section 76-5-111**.
- (9) **"Protected person"** means a vulnerable adult for whom the court has ordered protective services.
- (23) **"Protective services"** means services to protect a vulnerable adult from abuse, neglect, or exploitation.

- (24) **"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) **"Serious physical injury"** is as defined in **Section 76-5-111**.
- (26) **"Supported"** means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (27) **"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) **"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) **"Without merit"** means a finding that abuse, neglect, or exploitation did not occur.

§ 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) 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.

§ 62A-3-302.5. Repealed by Laws 1996, c.130, § 16, eff. April 29, 1996.

§ 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 reports;
- (3) shall perform protective needs assessments;
- (4) may coordinate with, or make referrals to, community resources;
- (5) may provide limited services to a vulnerable adult, on a temporary basis, when family or community resources are not available to provide for the protective needs of the vulnerable adult;
- (6) shall have access to facilities licensed by or contracting with, the department or the Department of Health for the purpose of conducting investigations;
- (7) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including 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 the capacity to consent, the vulnerable adult signs a release of information; or
 - (b) for a vulnerable adult who lacks the capacity to consent, an administrative subpoena is issued by Adult Protective Services;
- (8) may institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (9) 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 conducting investigations and providing protective services;
- (10) 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;
- (11) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (12) may issue reports and recommendations.

§ 62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

§ 62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

- (1) Any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.
- (2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
 - (b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.
- (3) Anyone who in good faith makes a report or otherwise notifies a law enforcement agency, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.
- (4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.
- (5) Under circumstances not amounting to a violation of **Section 76-8-508**, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

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

§ 62A-3-306. Repealed by Laws 2008, c.91, § 19, eff. May 5, 2008

§ 62A-3-307. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

- (1) consents to the taking of photographs, video tape recordings, or audio or video tape accounts; or
- (2) lacks the capacity to give the consent described in Subsection (1).

§ 62A-3-308. Peace officer's authority to transport - Notification.

- (1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:
- (2)
 - (a) the officer has probable cause to believe that:
 - (i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
 - (ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;
 - (b) the vulnerable adult refuses to consent or lacks the capacity to consent; and
 - (c) there is not time to notify interested parties or to apply for a warrant or other court order.
- (3) A peace officer described in Subsection (1) shall within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:
 - (a) notify Adult Protective Services intake; and
 - (b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

§ 62A-3-309. Enforcement by division -- Duty of county or district attorney.

- (1) It is the duty of the county or district attorney, as appropriate under **Sections 17-18-1, 17-18-1.5, and 17-18-1.7**, to:
 - (a) assist and represent the division;
 - (b) initiate legal proceedings to protect vulnerable adults; and
 - (c) take appropriate action to prosecute the alleged offenders.

- (2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:
 - (a) the division may request the attorney general to act; and
 - (b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

§ 62A-3-310. Repealed by Laws 2001, c.43, § 3, eff. April 30, 2001

§ 62A-3-311. Requests for records.

- (1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.
- (2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

§ 62A-3-311.1. Statewide data base -- Restricted use and access.

- (1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.
- (2) The data base shall include:
 - (a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;
 - (b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:
 - (i) supported;
 - (ii) inconclusive;
 - (iii) without merit; or
 - (iv) for reports for which the finding is made before May 5, 2008;
 - (A) substantiated; or
 - (B) unsubstantiated; and
 - (C) any other information that may be helpful in furthering the purposes of this part, as determined by the division.
- (3) Information obtained from the database may be used only:
 - (a) for statistical summaries compiled by the department that do not include names or other identifying data;
 - (b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:

- (i) the department;
 - (ii) the Division of Occupational and Professional Licensing;
 - (iii) the Bureau of Licensing, within the Department of Health;
 - (iv) any government agency specifically authorized by statute to access or use the information in the database; or
 - (v) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or
- (c) as otherwise specifically provided by law.

§ 62A-3-311.5 Notice of supported finding – Procedure for challenging finding – Limitations.

- (1) (a) Except as provided in **Subsection (1) (b)**, within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with **Subsections (2) and (3)**.
- (b) The division may serve the notice described in **Subsection (1)(a)** within a reasonable time after the 15 day period described in **Subsection (1)(a)** if:
- (i) the delay is necessary in order to:
 - (A) avoid impeding an ongoing criminal investigation or proceeding; or
 - (B) protect the safety of a person; and
 - (ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.
- (2) The division shall cause the notice described in **Subsection (1)(a)** to be served by personal service or certified mail.
- (3) The notice described in **Subsection (1)(a)** shall:
- (a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;
 - (b) indicate that, as a result of the investigation described in **Subsection (3)(a)**, the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;
 - (c) include a summary of the facts that are the basis for the supported finding;
 - (d) indicate that the supported finding may result in disqualifying the person from:
 - (i) being licensed, certified, approved, or employed by a government agency;

- (ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or
 - (iii) qualifying as a volunteer for an entity described in **Subsection (3)(d)(i) or (ii)**;
- (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;
- (f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and
- (g) inform the alleged perpetrator of:
 - (i) the right described in **Subsection (4)(a)**; and
 - (ii) the consequences of failing to exercise the right described in **Subsection (4)(a)** in a timely manner.
- (4) (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in **Subsection (1)(a)** is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.
- (b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in **Subsection (4)(a)**, the supported finding will become final and will not be subject to challenge or appeal.
- (5) At the hearing described in **Subsection (4)(a)**, the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect or exploitation of a vulnerable adult.
- (6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based
- (7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:
 - (a) request that the division reconsider the division's finding; or
 - (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

§ 62A-3-312. Access to information in database.

The database and the adult protection case file:

- (1) shall be made available to law enforcement agencies, the attorney general's office, and county or district attorney's offices;
- (2) shall be released as required under **Subsection 63G-2-202(4)(c)**; and
- (3) may be made available at the discretion of the division, to:
 - (a) subjects of a report as follows:
 - (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and
 - (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and
 - (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
 - (i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;
 - (ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;
 - (iii) an authorized person or agency providing services to or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to the victim;
 - (iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and
 - (v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:
 - (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**.

§ 62A-3-313. Repealed by Laws 2008, c. 91, § 19, eff. May 5, 2008

§ 62A-3-314. Private right of action - Estate asset – Attorney fees.

- (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

- (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.
- (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.
- (4) If the defendant prevails in a an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

§ 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 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 court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with this part.

§ 62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

- (1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in **Section 62A-3-315**;
- (2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
- (3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

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

Venue for all proceedings for protective services under this chapter is in the county where the vulnerable adult resides or is present.

§ 62A-3-318. Petition by division for protective services. – Notice – Rights of Adult.

- (1) If the division determines that a vulnerable adult is in need of protective services but lacks the capacity to consent to protective services, the division may petition the district court for an order authorizing the division to provide protective services. The petition shall include:
 - (a) the name, address, and age of the adult who is the subject of the petition;
 - (b) the reasonably ascertainable names and addresses of the spouse, parents, adult children, and caretaker of the adult who is the subject of the petition;
 - (c) the name and address of any court-appointed guardian or conservator for the adult;
 - (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult in need of protective services; and
 - (e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.
- (2) Upon the filing of a petition, the court shall set a date for hearing on the petition. At least ten days' notice of the petition and the hearing shall be given to the adult who is the subject of the petition and to each other person identified in Subsection (1)(b) or (c).
- (3) The notice shall be in plain language and in at least a 14-point font. The notice shall indicate the time and place of the hearing, the possible adverse consequences to the adult, and a list of rights as set forth in **Subsections (4), (6), and (7)**. The petition and notice shall be served personally upon the adult who is the subject of the petition and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice to the spouse, caretaker, and parents, if they cannot be found within the state, and to other persons shall be given by first-class mail, postage prepaid.
- (4) The adult who is the subject of the petition shall have the right to be present at the hearing, unless the adult has knowingly and voluntarily waived the right to be present, or unless a licensed physician has certified that the adult is physically unable to attend. Waiver shall not be presumed by nonappearance of the adult, but shall be determined by the court on the basis of evidence provided to the court.

- (5) The adult who is the subject of the petition may be examined by a licensed physician appointed by the court, who shall submit a written report to the court. The adult may be interviewed by a visitor, as defined in **Section 75-5-308**, appointed by the court, who shall submit a written report to the court. The visitor may also interview knowledgeable persons at the division and others who have knowledge of the adult who is the subject of the petition.
- (6) The adult who is the subject of the petition has the right to be represented by counsel at all proceedings before the court. Unless the adult has retained counsel, the court shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the subject of the petition unless the adult is indigent in which case the division will pay the adult's reasonable attorneys fees.
- (7) The adult who is the subject of the petition is entitled to present evidence and to cross-examine witnesses, including any court-appointed physician and visitor. The issues may be determined at a closed hearing if the adult who is the subject of the petition so requests.
- (8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate Code.

§ 62A-3-319. Court order for protective services -- Review.

- (1) Only upon court order may involuntary protective services be provided to a vulnerable adult who lacks capacity to consent to services.
- (2) The court may order protective services if it is satisfied that the adult who is the subject of the petition under **Section 62A-3-318** lacks the capacity to consent to services and is in need of protective services. The court shall specifically state the purpose, extent, and limitations of the protective services, including specific findings of fact and conclusions of law. The court shall fashion any order so as to place the least possible restrictions on the rights of the vulnerable adult, consistent with the welfare, safety, and best interests of the adult.
- (3) Any party to the proceedings may petition the court for modification or dissolution of the order at any time upon a showing of a material change in circumstances. Any protected person has the right to petition the court for a rehearing within ten days after the date the order was entered.

§ 62A-3-320. Petition for emergency order – Protective services – Temporary guardian – 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:
 - (a) the subject of the petition is a vulnerable adult;

- (b) the adult has no court-appointed guardian or conservator or the guardian or conservator is not effectively performing the guardian's or conservator's duties;
 - (c) an emergency exists; and
 - (d) the welfare, safety, or best interests of the adult require immediate action.
- (2) The order described in **Subsection (1)** shall specifically designate the protective services which are approved, together with supporting facts.
 - (3) Protective services authorized in an emergency order may not include hospitalization, nursing or custodial care, or a change in residence, unless the court specifically finds that the action is necessary and authorizes the specific protective services in the order.
 - (4)
 - (a) Protective services provided through an emergency order may not be provided longer than three business days at which time the order shall expire unless a petition for guardianship, conservatorship, or other protective services is filed.
 - (b) If a petition for guardianship, conservatorship, or other protective services is filed with the three-business-day period described 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.
 - (5) In the emergency order, the court may appoint a temporary guardian, in accordance with **Section 75-5-310**.
 - (6) To implement an emergency order, the 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.

§ 62A-3-321. Petition for injunctive relief when caretaker refuses to allow 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**.

Utah

CRIMINAL

CODE

Utah Criminal Code
Abuse Neglect or Exploitation of Vulnerable Adults
Revised 2002

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

(1) As used in this section:

- (a) **"Abandonment"** means a knowing or intentional action or inaction, 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.
- (b) **"Abuse" means:**
 - (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;
 - (ii) causing physical injury by knowing or intentional acts or omissions;
 - (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or
 - (iv) deprivation of life-sustaining treatment, except:
 - (A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or
 - (B) when informed consent, as defined in this section, has been obtained.
- (c) **"Business relationship"** means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.
- (d) **"Caretaker"** means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.
- (e) **"Deception"** means:
 - (i) a misrepresentation or concealment:
 - (A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;

- (B) of the terms of a contract or agreement entered into with a vulnerable adult; or
 - (C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or
 - (ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.
- (f) **"Elder adult"** means a person 65 years of age or older.
- (g) **"Endeavor"** means to attempt or try.
- (h) **"Exploitation"** means the offense described in Subsection (4).
- (i) **"Harm"** means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.
- (j) **"Informed consent"** means:
- (i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or
 - (ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.
- (k) **"Intimidation"** means communication conveyed 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 harm.
- (l) (i) **"Isolation"** means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
- (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

- (C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
 - (ii) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (m) **"Lacks capacity to consent"** means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.
- (n) **"Neglect" means:**
 - (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
 - (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm;
or
 - (v) abandonment by a caretaker.
- (o) **"Physical injury"** includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

- (p) **"Position of trust and confidence"** means the position of a person who:
- (i) is a parent, spouse, adult child, or other relative by blood or marriage of vulnerable adult;
 - (ii) is a joint tenant or tenant in common with a vulnerable adult;
 - (iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
 - (iv) is a caretaker of a vulnerable adult.
- (q) **"Serious physical injury"** means any physical injury or set of physical injuries that:
- (i) seriously impairs a vulnerable adult's health;
 - (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;
 - (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or
 - (iv) creates a reasonable risk of death.
- (r) **"Sexual exploitation"** means the production, distribution, possession, or possession with the intent to distribute material or a live performance depicting a nude or partially nude vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any person.
- (s) **"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.
- (t) **"Vulnerable adult"** means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:
- (i) provide personal protection;
 - (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
 - (iii) obtain services necessary for health, safety, or welfare;
 - (iv) carry out the activities of daily living;
 - (v) manage the adult's own resources; or
 - (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

- (2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:
- (a) if done intentionally or knowingly, the offense is a second degree felony;
 - (b) if done recklessly, the offense is third degree felony; and
 - (c) if done with criminal negligence, the offense is a class A misdemeanor.
- (3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:
- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
 - (b) if done recklessly, the offense is a class B misdemeanor; and
 - (c) if done with criminal negligence, the offense is a class C misdemeanor.
- (4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:
- (i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;
 - (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

- (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;
 - (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult;
 - (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or
 - (vi) commits sexual exploitation of a vulnerable adult.
- (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:
- (i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;
 - (ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;
 - (iii) if done recklessly, the offense is a class A misdemeanor; or
 - (iv) if done with criminal negligence, the offense is a class B misdemeanor.
- (5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.
- (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.