

HOUSE BILL NO. HB0300

Adult protective services.

Sponsored by: Representative(s) Simpson, Harvey, Millin
and Warren and Senator(s) Job and Schiffer

A BILL

for

1 AN ACT relating to adult protective services; modifying
2 definitions relating to the abuse and exploitation of
3 vulnerable adults; adding definitions; conforming existing
4 statutes; providing for additional positions in the
5 department of family services; providing an appropriation;
6 and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 6-2-507(a) and (b),
11 35-20-102(a)(ii)(B), (C), by creating a new subparagraph
12 (D), (iv)(D), (E), by creating a new subparagraph (F),
13 (ix), (xi), (xii), (xviii), (xix), by creating a new
14 paragraph (xx) and by renumbering (xx) as (xxi),
15 35-20-103(a) and (c) through (f), 35-20-104(a) by creating
16 new paragraphs (iv) through (vi), 35-20-105(b) and

1 (c)(intro), 35-20-106 by creating a new subsection (d),
2 35-20-107(a) and (c), 35-20-110, 35-20-111, 35-20-112(a),
3 (b)(i), (c)(iv) and (d)(intro) and 35-20-115(b)(i), (d) and
4 (e) are amended to read:

5

6 **6-2-507. Abuse, neglect, abandonment, intimidation or**
7 **exploitation of a vulnerable adult; penalties.**

8

9 (a) Except under circumstances constituting a
10 violation of W.S. 6-2-502, a caregiver is guilty of abuse,
11 neglect, abandonment or exploitation of a vulnerable adult
12 if the caregiver intentionally or recklessly abuses,
13 neglects, abandons, intimidates or exploits a vulnerable
14 adult.

15

16 (b) Reckless abuse, neglect, ~~or~~ abandonment or
17 reckless or intentional intimidation of a vulnerable adult
18 is a misdemeanor, punishable by not more than one (1) year
19 in jail, a fine of one thousand dollars (\$1,000.00), or
20 both, and registration of the offender's name on the
21 central registry.

22

23 **35-20-102. Definitions.**

24

1 (a) As used in this act:

2

3 (ii) "Abuse" means the intentional or reckless
4 infliction, by the vulnerable adult's caregiver, family
5 member or other individual of:

6

7 (B) Unreasonable confinement which
8 threatens the welfare and well being of a vulnerable adult;

9 ~~or~~

10

11 (C) ~~Intimidation or~~ Cruel punishment with
12 resulting physical or emotional harm or pain to a
13 vulnerable adult; ~~;~~ or

14

15 (D) Photographing vulnerable adults for
16 immoral or illegal purposes.

17

18 (iv) "Caregiver" means any person or agency
19 responsible for the care of a vulnerable adult because of:

20

21 (D) Rendering services in an adult workshop
22 or adult residential program; ~~or~~

23

1 (E) Rendering services in an institution or
2 in a community-based program; or

3

4 (F) Acceptance of a legal obligation or
5 responsibility to the vulnerable adult through a power of
6 attorney, advanced health care directive or other legal
7 designation.

8

9 (ix) "Exploitation" means the reckless or
10 intentional act taken by any person, or any use of the
11 power of attorney, conservatorship or guardianship of a
12 vulnerable adult, to:

13

14 (A) Obtain control through deception,
15 harassment, intimidation or undue influence over the
16 vulnerable adult's money, assets or property with the
17 intention of permanently or temporarily depriving the
18 vulnerable adult of the ownership, use, benefit or
19 possession of his money, assets or property;

20

21 (B) Engage in an unauthorized use of money,
22 assets or property entrusted to the person or agent by the
23 vulnerable adult or for the benefit of the vulnerable adult

1 and the unauthorized use results or is likely to result in
2 a detriment to the vulnerable adult; or

3
4 (C) In the absence of legal authority:

5
6 (I) Employ the services of a third
7 party for the profit or advantage of the person or another
8 person to the detriment of a vulnerable adult;

9
10 (II) Force, compel, coerce or entice a
11 vulnerable adult to perform services for the profit of
12 another against the will of the vulnerable adult.

13
14 (xi) "Neglect" means the deprivation of, or
15 failure to provide, the minimum food, shelter, clothing,
16 supervision, prescribed medication, physical and mental
17 health care, and other care necessary to maintain a
18 vulnerable adult's life or health, or which may result in a
19 life-threatening situation. The withholding of health care
20 from a vulnerable adult is not neglect if:

21
22 (A) Treatment is given in good faith by
23 spiritual means alone, through prayer, by a duly accredited

1 practitioner in accordance with the tenets and practices of
2 a recognized church or religious denomination;~~or~~

3

4 (B) The withholding of health care is in
5 accordance with a declaration executed pursuant to W.S.
6 35-22-401 through 35-22-416;~~or~~ or

7

8 (C) Care is provided by a hospice licensed
9 in accordance with and pursuant to W.S. 35-2-901 through
10 35-2-910.

11

12 (xii) "Protective services" means those
13 emergency services provided by the department to assist
14 vulnerable adults to prevent or terminate abuse, neglect,
15 exploitation, intimidation or abandonment until the
16 vulnerable adult no longer needs those services. These
17 services may include social casework, case management, home
18 care, day care, social services, health care, psychiatric
19 or health evaluations and other emergency services
20 consistent with this act;

21

22 (xviii) "Vulnerable adult" means any person
23 eighteen (18) years of age or older who is unable to manage
24 and take care of himself or his money, assets or property

1 without assistance as a result of advanced age or physical
2 or mental disability;

3
4 (xix) "Substantiated report" means any report of
5 abandonment, abuse, exploitation, intimidation or neglect
6 pursuant to this act that is determined upon investigation
7 to establish that credible evidence of the alleged
8 abandonment, abuse, exploitation, intimidation or neglect
9 exists;

10
11 (xx) "Intimidation" means the communication by
12 word or act to a vulnerable adult, his family or friends
13 that the vulnerable adult, his family, friends or pets will
14 be deprived of food, shelter, clothing, supervision,
15 prescribed medication, physical or mental health care and
16 other medical care necessary to maintain a vulnerable
17 adult's health, financial support or will suffer physical
18 violence;

19
20 ~~(xx)~~ (xxi) "This act" means W.S. 35-20-101
21 through 35-20-116.

22

1 **35-20-103. Reports of abuse, neglect, exploitation,**
2 **intimidation or abandonment of vulnerable adult; reports**
3 **maintained in central registry.**

4
5 (a) Any person or agency who knows or has reasonable
6 cause to believe that a vulnerable adult is being or has
7 been abused, neglected, exploited, intimidated or abandoned
8 or is committing self neglect shall report the information
9 immediately to a law enforcement agency or the department.
10 Anyone who in good faith makes a report pursuant to this
11 section is immune from civil liability for making the
12 report.

13
14 (c) After receipt of a report that a vulnerable adult
15 is suspected of being or has been abused, neglected,
16 exploited, intimidated or abandoned or is committing self
17 neglect, the department shall notify law enforcement and
18 may request assistance from appropriate health or mental
19 health agencies.

20
21 (d) If a law enforcement officer determines that a
22 vulnerable adult is abused, neglected, exploited, intimidated
23 intimidated or abandoned, or is committing self neglect, he

1 shall notify the department concerning the potential need
2 of the vulnerable adult for protective services.

3

4 (e) Any report or notification to the department that
5 a vulnerable adult is, or is suspected of being, abused,
6 neglected, exploited, intimidated or abandoned, or is
7 committing self neglect, shall be investigated, a
8 determination shall be made whether protective services are
9 necessary and, whether an individual instruction exists
10 under W.S. 35-22-401 through 35-22-416. If determined
11 necessary, protective services shall be furnished by the
12 department within three (3) days from the time the report
13 or notice is received by the department. The investigation
14 may include a visit to the facility in which the vulnerable
15 adult resides and an interview with the vulnerable adult.

16

17 (f) Each substantiated report of abuse, neglect,
18 exploitation, intimidation or abandonment of a vulnerable
19 adult pursuant to this act shall be entered and maintained
20 within the central registry of vulnerable adult protection
21 cases under W.S. 35-20-115.

22

23 **35-20-104. Department to coordinate services; rules**
24 **and regulations.**

1

2 (a) The department shall:

3

4 (iv) Provide appropriate training to all
5 investigative agency personnel;

6

7 (v) Assign designated workers for adult
8 protective services within the department to carry out the
9 activities of this chapter;

10

11 (vi) Develop, facilitate and participate in
12 local multidisciplinary community-based adult protection
13 teams that discuss adult protection issues.

14

15 **35-20-105. Protective services; no services without**
16 **consent; responsibility for costs.**

17

18 (b) Except under conditions provided for in W.S.
19 35-20-106 no vulnerable adult shall be required to accept
20 protective services without his consent or, if he lacks the
21 capacity to consent, the consent of his caregiver,
22 ~~conservator, guardian, guardian ad litem~~ or agent, or a
23 family member.

24

1 (c) Costs incurred to furnish protective services,
2 including but not limited to fees for the services of a
3 guardian ad litem, guardian or conservator, shall be paid
4 by the department unless:
5

6 **35-20-106. Petition by department when agent, spouse**
7 **or caregiver refuses to allow services; injunction.**
8

9 (d) After the petition has been filed, the court may
10 appoint a guardian ad litem to represent the vulnerable
11 adult if the court finds the interests of the vulnerable
12 adult will not be represented adequately by the petitioner
13 or another party to the action. If the court appoints a
14 guardian ad litem it shall approve a fee for services.
15 Costs for the guardian ad litem shall be paid in accordance
16 with W.S. 35-20-105(c).
17

18 **35-20-107. Emergency services.**
19

20 (a) If an emergency exists and the department has
21 reasonable cause to believe that a vulnerable adult is
22 suffering from abuse, neglect, self neglect, exploitation,
23 intimidation or abandonment and lacks the capacity to
24 consent to the provision of protective services, the

1 department, through the attorney general or the district
2 attorney, may petition the court for an order for emergency
3 protective services.

4
5 (c) The allegations of the petition shall be proved
6 by a preponderance of the evidence. If the court finds
7 that the vulnerable adult has been or is being abused,
8 neglected, exploited, intimidated or abandoned, or is
9 committing self neglect, that an emergency exists and that
10 the vulnerable adult lacks the capacity to consent to the
11 provision of services, the court may order the department
12 to provide protective services on an emergency basis. The
13 court shall order only those services necessary to remove
14 the conditions creating the emergency and shall
15 specifically designate the authorized services. The order
16 for emergency protective services shall remain in effect
17 for a period not to exceed seventy-two (72) hours. The
18 order may be extended for an additional seventy-two (72)
19 hour period if the court finds that the extension is
20 necessary to remove the emergency. The vulnerable adult,
21 his agent, his court appointed representative or the
22 department, through the attorney general or the district
23 attorney, may petition the court to set aside or modify the
24 order at any time.

1

2 **35-20-110. When access to vulnerable adult denied;**
3 **injunction.**

4

5 If access to the vulnerable adult is denied to law
6 enforcement or the department seeking to investigate a
7 report of abuse, neglect, exploitation, intimidation,
8 abandonment or self neglect of a vulnerable adult, the
9 investigator may seek an injunction to prevent interference
10 with the investigation. The court may issue the injunction
11 if it finds that the person whose duty it is to investigate
12 the report is acting within the scope of his duty and has
13 been unreasonably denied access to the vulnerable adult.

14

15 **35-20-111. Duty to report.**

16

17 (a) The duty to report imposed by W.S. 35-20-103
18 applies without exception to a person or agency who knows,
19 or has sufficient knowledge which a prudent and cautious
20 man in similar circumstances would have to believe, that a
21 vulnerable adult has been or is being abused, neglected,
22 exploited, intimidated or abandoned, or is committing self
23 neglect.

24

1 (b) Any person or agency who knows or has sufficient
2 knowledge which a prudent and cautious man in similar
3 circumstances would have to believe that a vulnerable adult
4 is being or has been abused, neglected, exploited,
5 intimidated or abandoned, or is committing self neglect,
6 and knowingly fails to report in accordance with this act
7 is guilty of a misdemeanor punishable by imprisonment for
8 not more than one (1) year, a fine of not more than one
9 thousand dollars (\$1,000.00), or both.

10
11 **35-20-112. Confidentiality of records; penalties;**
12 **access to information.**

13
14 (a) All records concerning reports and investigations
15 of vulnerable adult abuse, neglect, exploitation,
16 intimidation, abandonment or self neglect are confidential
17 except as provided by W.S. 35-20-116. Any person who
18 intentionally violates this subsection is guilty of a
19 misdemeanor punishable by imprisonment for not more than
20 six (6) months, a fine of not more than seven hundred fifty
21 dollars (\$750.00), or both.

22
23 (b) The following records are confidential and not
24 subject to disclosure under W.S. 16-4-201 through 16-4-205:

1

2 (i) A report of abuse, neglect, exploitation,
3 intimidation, abandonment or self neglect under this act;

4

5 (c) Upon application made in the manner and form
6 prescribed by the department, the department may give
7 access to records otherwise confidential under this section
8 to any of the following persons or agencies for purposes
9 directly related with the administration of this act:

10

11 (iv) Court personnel who are investigating
12 reported incidents of adult abuse, neglect, exploitation,
13 intimidation or abandonment.

14

15 (d) Motions for access to records concerning
16 vulnerable adult abuse, neglect, exploitation,
17 intimidation, abandonment or self neglect held by the state
18 agency or local protective agency shall be made with the
19 district court in the county where the vulnerable adult
20 resides. A court may order disclosure of confidential
21 records only if:

22

23 **35-20-115. Central registry of adult protection**
24 **cases; establishment; operation; amendment, expungement or**

1 **removal of records; classification and expungement of**
2 **reports; statement of person accused.**

3
4 (b) Through the recording of substantiated reports,
5 the central registry shall be operated to assist the
6 department to:

7
8 (i) Immediately identify and locate prior
9 reports of cases of abuse, neglect, exploitation,
10 intimidation or abandonment of a vulnerable adult to assist
11 in the diagnosis of suspicious circumstances and the
12 assessment of the needs of the vulnerable adult and his
13 caregiver;

14
15 (d) Any person named as a perpetrator of abuse,
16 neglect, exploitation, intimidation or abandonment of any
17 vulnerable adult in any substantiated report maintained in
18 the central registry shall have the right to have included
19 in the report a statement concerning the incident giving
20 rise to the report. Any person seeking to include a
21 statement pursuant to this subsection shall provide the
22 department with the statement. The department shall provide
23 notice to any person identified as a perpetrator of this

1 right to submit a statement in any substantiated report
2 maintained in the central registry.

3

4 (e) Any person convicted of, or having pled guilty or
5 no contest to, a crime which includes the abuse, neglect,
6 exploitation, intimidation or abandonment of any vulnerable
7 adult shall have that conviction reported to the department
8 by the court and the report shall be maintained in the
9 central registry.

10

11 **Section 2.** There is authorized five (5) additional
12 full-time positions to the department of family services.
13 For the purposes of this act there is appropriated from the
14 general fund six hundred thousand dollars (\$600,000.00) to
15 the department of family services for the fiscal period
16 beginning July 1, 2007 and ending June 30, 2008.

17

18 **Section 3.** This act is effective July 1, 2007.

19

20 (END)