

REFERENCE TITLE: mandatory reporting; vulnerable adults; penalties

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HB 2666

Introduced by

Representatives Longdon: Andrade, Blackman, Blanc, Bowers, Butler, Cano, Chávez, Engel, Epstein, Espinoza, Fernandez, Hernandez A, Hernandez D, Jermaine, Lieberman, Meza, Osborne, Pawlik, Rodriguez, Salman, Shah, Sierra, Teller, Terán, Toma, Tsosie, Udall, Senators Alston, Brophy McGee, Carter, Gonzales

AN ACT

AMENDING SECTIONS 46-451 AND 46-454, ARIZONA REVISED STATUTES; RELATING TO VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 46-451, Arizona Revised Statutes, is amended to
3 read:
4 46-451. Definitions; program goals
5 A. In this chapter, unless the context otherwise requires:
6 1. "Abuse" means:
7 (a) Intentional infliction of physical harm.
8 (b) Injury caused by negligent acts or omissions.
9 (c) Unreasonable confinement.
10 (d) Sexual abuse or sexual assault.
11 2. "De facto conservator" means any person who takes possession of
12 the estate of a vulnerable adult, without right or lawful authority. A
13 de facto conservator is subject to all of the responsibilities that attach
14 to a legally appointed conservator or trustee.
15 3. "De facto guardian" means any person who takes possession of the
16 person of a vulnerable adult, without right or lawful authority. A
17 de facto guardian is subject to all of the responsibilities that attach to
18 a legally appointed guardian.
19 4. "Exploitation" means the illegal or improper use of a vulnerable
20 adult or ~~his~~ THE VULNERABLE ADULT'S resources for another's profit or
21 advantage.
22 5. "HEALTH PROFESSIONAL" HAS THE SAME MEANING PRESCRIBED IN SECTION
23 32-3201.
24 ~~5.~~ 6. "Informed consent" means any of the following:
25 (a) A written expression by the person that the person fully
26 understands the potential risks and benefits of the withdrawal of food,
27 water, medication, medical services, shelter, cooling, heating or other
28 services necessary to maintain minimum physical or mental health and that
29 the person desires that the services be withdrawn. A written expression
30 is valid only if the person is of sound mind and if the consent is
31 witnessed by at least two individuals who do not benefit by the withdrawal
32 of services.
33 (b) Consent to withdraw food, water, medication, medical services,
34 shelter, cooling, heating or other services necessary to maintain minimum
35 physical or mental health as permitted by an order of a court of competent
36 jurisdiction.
37 (c) A declaration made pursuant to title 36, chapter 32.
38 (d) Consent by another person under a durable power of attorney
39 relating to health care services to withdraw food, water, medication,
40 medical services, shelter, cooling, heating or other services necessary to
41 maintain minimum physical or mental health.
42 ~~6.~~ 7. "Neglect" means a pattern of conduct without the person's
43 informed consent resulting in deprivation of food, water, medication,
44 medical services, shelter, cooling, heating or other services necessary to
45 maintain minimum physical or mental health.

1 ~~7.~~ 8. "Protective services" means a program of identifiable and
2 specialized social services that may offer social services appropriate to
3 resolve problems of abuse, exploitation or neglect of a vulnerable adult.

4 ~~8.~~ 9. "Protective services worker" means a person who has been
5 selected by and trained under the requirements prescribed by the
6 department to provide protective services.

7 ~~9.~~ 10. "Vulnerable adult" means an individual who is eighteen
8 years of age or older and who is unable to protect himself from abuse,
9 neglect or exploitation by others because of a physical or mental
10 impairment. Vulnerable adult includes an incapacitated person as defined
11 in section 14-5101.

12 B. Protective services programs shall seek to maintain the adult in
13 ~~his~~ THE ADULT'S familiar environment by strengthening ~~his~~ THE ADULT'S
14 capacity for self-maintenance or by providing supportive services.

15 C. ~~Nothing in~~ This section ~~shall be construed to mean~~ DOES NOT MEAN
16 that an adult is abused, neglected or in need of protective services for
17 the sole reason that ~~he~~ THE ADULT relies on treatment from a recognized
18 religious method of healing in lieu of medical treatment.

19 D. For the purposes of this section, a person is not exploited by a
20 transfer of assets if the transfer is to obtain or maintain eligibility
21 for benefits under title 36, chapter 29 or benefits for supplemental
22 security income, medicare or veterans' administration programs and the
23 transfer of assets is between the person and any of the following:

- 24 1. The person's spouse.
25 2. The person's child with a disability.
26 3. A trust for the benefit of the person's spouse or child with a
27 disability.

28 E. A transfer of assets for the purpose of obtaining or maintaining
29 eligibility for benefits under title 36, chapter 29 shall comply with
30 42 United States Code section 1396p and sections 36-2934 and 36-2934.01.

31 Sec. 2. Section 46-454, Arizona Revised Statutes, is amended to
32 read:

33 46-454. Duty to report abuse, neglect and exploitation of
34 vulnerable adults; duty to make medical records
35 available; violation; classification

36 A. A ~~physician, registered nurse practitioner~~ HEALTH PROFESSIONAL,
37 hospital intern or resident, ~~surgeon, dentist, psychologist, social~~
38 ~~worker~~, peace officer or other person who has responsibility for the care
39 of a vulnerable adult and who has a reasonable basis to believe that abuse
40 or neglect of the adult has occurred or that exploitation of the adult's
41 property has occurred shall immediately report or cause reports to be made
42 of such reasonable basis to a peace officer or to a protective services
43 worker. The guardian or conservator of a vulnerable adult shall
44 immediately report or cause reports to be made of such reasonable basis to
45 the superior court. All of the above reports shall be made ~~immediately in~~

1 ~~person or~~ by telephone ~~and shall be followed by a written report mailed or~~
2 ~~delivered within forty-eight hours or on the next working day if the~~
3 ~~forty-eight hours expire on a weekend or holiday~~ OR ONLINE.

4 B. An attorney, accountant, trustee, guardian, conservator or other
5 person who has responsibility for preparing the tax records of a
6 vulnerable adult or a person who has responsibility for any other action
7 concerning the use or preservation of the vulnerable adult's property and
8 who, in the course of fulfilling that responsibility, discovers a
9 reasonable basis to believe that exploitation of the adult's property has
10 occurred or that abuse or neglect of the adult has occurred shall
11 immediately report or cause reports to be made of such reasonable basis to
12 a peace officer, to a protective services worker or to the public
13 fiduciary of the county in which the vulnerable adult resides. If the
14 public fiduciary is unable to investigate the contents of a report, the
15 public fiduciary shall immediately forward the report to a protective
16 services worker. If a public fiduciary investigates a report and
17 determines that the matter is outside the scope of action of a public
18 fiduciary, then the report shall be immediately forwarded to a protective
19 services worker. All of the above reports shall be made immediately ~~in~~
20 ~~person or~~ by telephone ~~and shall be followed by a written report mailed or~~
21 ~~delivered within forty-eight hours or on the next working day if the~~
22 ~~forty-eight hours expire on a weekend or holiday~~ OR ONLINE.

23 C. Reports pursuant to subsections A and B OF THIS SECTION shall
24 contain:

25 1. The names and addresses of the adult and any persons having
26 control or custody of the adult, if known.

27 2. The adult's age and the nature and extent of the adult's
28 vulnerability.

29 3. The nature and extent of the adult's injuries or physical
30 neglect or of the exploitation of the adult's property.

31 4. Any other information that the person reporting believes might
32 be helpful in establishing the cause of the adult's injuries or physical
33 neglect or of the exploitation of the adult's property.

34 D. Any person other than one required to report or cause reports to
35 be made in subsection A OF THIS SECTION who has a reasonable basis to
36 believe that abuse or neglect of a vulnerable adult has occurred may
37 report the information to a peace officer or to a protective services
38 worker.

39 E. A person having custody or control of medical or financial
40 records of a vulnerable adult for whom a report is required or authorized
41 under this section shall make ~~such~~ THOSE records, or a copy of ~~such~~ THOSE
42 records, available to a peace officer or adult protective services worker
43 investigating the vulnerable adult's ABUSE, neglect, ~~OR~~ exploitation ~~or~~
44 ~~abuse~~ on written request for the records signed by the peace officer or
45 adult protective services worker. Records disclosed pursuant to this

1 subsection are confidential and may be used only in a judicial or
2 administrative proceeding or investigation resulting from a report
3 required or authorized under this section.

4 F. If reports pursuant to this section are received by a peace
5 officer, the peace officer shall notify the adult protective services of
6 the department of economic security as soon as possible and make ~~such~~ THAT
7 information available to them.

8 G. A person required to receive reports pursuant to subsection A, B
9 or D OF THIS SECTION may take or cause to be taken photographs of the
10 abused adult and the vicinity involved. Medical examinations including
11 radiological examinations of the involved adult may be performed.
12 Accounts, inventories or audits of the exploited adult's property may be
13 performed. The person, department, agency or court that initiates ~~such~~
14 THE photographs, examinations, accounts, inventories or audits shall pay
15 the associated costs in accordance with existing statutes and rules. If
16 any person is found to be responsible for the abuse, neglect or
17 exploitation of a vulnerable adult in a criminal or civil action, the
18 court may order the person to make restitution as the court deems
19 appropriate.

20 H. If psychiatric records are requested pursuant to subsection E OF
21 THIS SECTION, the custodian of the records shall notify the attending
22 psychiatrist, who may excise from the records, before they are made
23 available:

- 24 1. Personal information about individuals other than the patient.
- 25 2. Information regarding specific diagnosis or treatment of a
26 psychiatric condition, if the attending psychiatrist certifies in writing
27 that release of the information would be detrimental to the patient's
28 health or treatment.

29 I. If any portion of a psychiatric record is excised pursuant to
30 subsection H OF THIS SECTION, a court, ~~upon~~ ON application of a peace
31 officer or adult protective services worker, may order that the entire
32 record or any portion of ~~such~~ THE record containing information relevant
33 to the reported abuse or neglect be made available to the peace officer or
34 adult protective services worker investigating the abuse or neglect.

35 J. A licensing agency shall not find that a reported incidence of
36 abuse at a care facility by itself is sufficient grounds to ~~permit~~ ALLOW
37 the agency to close the facility or to find that all residents are in
38 imminent danger.

39 K. A person who violates ~~any provision of~~ this section is guilty of
40 a class 1 misdemeanor, EXCEPT IF THE FAILURE TO REPORT INVOLVES AN OFFENSE
41 LISTED IN TITLE 13, CHAPTER 14, THE PERSON IS GUILTY OF A CLASS 6 FELONY.

42 Sec. 3. Emergency

43 This act is an emergency measure that is necessary to preserve the
44 public peace, health or safety and is operative immediately as provided by
45 law.