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**H. 5039**

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Summary: Vulnerable Adult and Senior Citizen Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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4/3/2014 House Referred to Committee on **Judiciary** ([House Journal‑page 8](file:///H:\HJ%20Archive\2014\04-03-14.docx))

**VERSIONS OF THIS BILL**

[4/3/2014](file:///p:\pprever\2013-14\5039_20140403.docx)

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 35, TITLE 43, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROTECTION OF VULNERABLE ADULTS FROM ABUSE, NEGLECT, OR EXPLOITATION, SO AS TO DEFINE A SENIOR CITIZEN AS A PERSON SIXTY YEARS OF AGE OR OLDER AND TO EXTEND APPLICATION OF THE PROTECTIONS OF THE ARTICLE TO SENIOR CITIZENS; TO ADD HUMAN TRAFFICKING AS A CRIME SUBJECT TO FINES AND IMPRISONMENT; TO CHANGE EXISTING CRIMINAL PENALTIES; TO CREATE DUTIES RELATED TO DISCHARGING VULNERABLE ADULTS AND SENIOR CITIZENS FROM CERTAIN SETTINGS; TO CREATE AN AFFIRMATIVE DEFENSE TO COMMITTING OFFENSES PROVIDED FOR IN THE ARTICLE; AND FOR OTHER PURPOSES.

Whereas, South Carolina’s senior citizens are valued members of our community who deserve to live with respect and dignity; and

Whereas, the population of the State’s citizens age sixty and older has increased from nearly 915,000 in 2010 to a projected 1,200,000 in 2020, an increase of approximately thirty percent; and

Whereas, it is widely recognized that, in general, senior citizens are at a greater risk of harm from abuse, neglect, and exploitation, than are younger adults; and

Whereas, while the Omnibus Adult Protection Act of 2006 protects senior citizens who live in long‑term care facilities or who are disabled from abuse, neglect, and exploitation, the statute does not protect the many seniors who are able to live independently; and

Whereas, in addition to abuse, neglect, and exploitation, human trafficking of senior citizens is a growing problem, whether through deprivation of food and medication by a caregiver or placement in or transfer to a facility with unsafe and unsanitary conditions; and

Whereas, the abuse, neglect, exploitation, and human trafficking of senior citizens can occur in long‑term care facilities, in the privacy of a senior’s home, and elsewhere in the community. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 35, Title 43 of the 1976 Code is amended to read:

“Article 1

Duties and Procedures of Investigative Entities

Section 43‑35‑5. This chapter may be cited as the ~~Omnibus~~ Vulnerable Adult and Senior Citizen Protection Act.

Section 43‑35‑10. As used in this chapter:

(1) ‘Abuse’ means physical abuse or psychological abuse.

(2) ‘Adult Protective Services Program’ means the Adult Protective Services Program of the Department of Social Services.

(3) ‘Caregiver’ means a person who provides care to a vulnerable adult or senior citizen, with or without compensation, on a temporary, ~~or~~ permanent, ~~or~~ full or part‑time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

(4) ‘Contracted facility’ means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

(5) ‘Deception’ means taking or failing to take an action pursuant to which a person knowingly:

(a) creates or confirms a false impression;

(b) fails to correct a false impression created or confirmed pursuant to subitem (a);

(c) fails to correct a false impression created by another person when under a duty to correct the false impression;

(d) prevents another person from acquiring information pertinent to the disposition of property;

(e) sells or otherwise transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property interest sold or transferred, whether or not the impediment is valid or is a matter of official record; or

(f) promises performance when the person does not intend to perform the promise or knows that the promise will not be performed.

~~(3)~~(6) ‘Exploitation’ means:

(a) ~~causing or requiring~~ to cause or require a vulnerable adult or senior citizen to engage in activity or labor ~~which~~ that is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult or senior citizen,~~. Exploitation does not include requiring a vulnerable adult to participate in~~ which does not include an activity or labor ~~which~~ that is a part of a written plan of care or ~~which is~~ prescribed or authorized by a licensed physician attending the patient;

(b) the use of deception, intimidation, undue influence, force, or threat of force to obtain or exert an improper, unlawful, or unauthorized control over or use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult or senior citizen by a person, including a person who stands in a position of trust or confidence to the vulnerable adult or senior citizen, ~~for the profit or advantage of that person or another person; or~~ with the intent to deprive the vulnerable adult or senior citizen of those funds, assets, or property;

(c) the breach of a fiduciary duty owed to a vulnerable adult or senior citizen by a guardian, conservator, or agent pursuant to a power of attorney for the profit or advantage of the person or another person or which results in an unauthorized appropriation, sale, or transfer of the vulnerable adult’s or senior citizen’s property;

~~(c)~~(d) ~~causing~~ to cause a vulnerable adult or senior citizen to purchase goods or services for the profit or advantage of the seller or another person through:

(i) undue influence~~,~~;

(ii) harassment~~,~~;

(iii) duress~~,~~;

(iv) force~~,~~;

(v) coercion~~,~~; or

(vi) swindling by overreaching, cheating, or defrauding the vulnerable adult or senior citizen through cunning arts or devices that delude the vulnerable adult or senior citizen and cause him to lose money or other property.

(7) ‘Extortion’ means to obtain unlawfully money, property, or any other thing of value, either tangible or intangible, through the use or threat of force, misuse of authority, threat of criminal prosecution, threat of destruction of reputation or social standing, or through other coercive means.

~~(4)~~(8) ‘Facility’ means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.

(9) ‘Great bodily injury’ means bodily injury that creates a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(10) ‘Human trafficking’ means knowingly transporting, soliciting, extorting, recruiting, harboring, providing, enticing, maintaining, housing, or obtaining a vulnerable adult or senior citizen for the purpose of exploitation of that person.

(11) ‘Intimidation’ means a threat to a vulnerable adult or senior citizen of physical or psychological harm or of deprivation of food, nutrition, prescribed medication, shelter, property, or medical care or treatment.

~~(5)~~(12) ‘Investigative entity’ means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.

(13) ‘Long Term Care Ombudsman Program’ means the Long Term Care Ombudsman Program of the Office on Aging.

~~(6)~~(14) ‘Neglect’ means the failure ~~or omission~~ of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult or senior citizen including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure ~~or omission~~ has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult or senior citizen. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult or senior citizen, in the absence of a caretaker, to provide for his ~~or her~~ own health or safety ~~which~~ that produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

~~(7)~~(15) ‘Occupational licensing board’ means a health professional licensing board ~~which~~ that is a state agency that licenses and regulates health care providers, and includes, but is not limited to, the Board of Long Term Health Care Administrators, State Board of Nursing for South Carolina, State Board of Medical Examiners, State Board of Social Work Examiners, and the State Board of Dentistry.

(16) ‘Operated facility’ means a facility directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(17) ‘Person’ means a human being, except as otherwise defined pursuant to this chapter.

~~(8)~~(18) ‘Physical abuse’: ~~means intentionally inflicting or allowing to be inflicted~~

(a) means acting or failing to act in an intentional and wilful manner in order to cause physical injury ~~on~~ to a vulnerable adult or senior citizen ~~by an act or failure to act. Physical abuse includes, but is not limited to,~~ or acting in a reckless manner that results in physical injury to a vulnerable adult or senior citizen, including by:

(i) slapping, hitting, kicking, biting, choking, pinching, burning~~,~~;

(ii) actual or attempted sexual battery as defined ~~in~~ pursuant to Section 16‑3‑651~~,~~;

(iii) use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior~~, and~~;

(iv) unreasonable confinement~~. Physical abuse also includes the~~; or

(v) use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment, ~~except that a therapeutic~~ unless the procedure is a therapeutic procedure prescribed by a licensed physician or other qualified professional or that is part of a written plan of care by a licensed physician or other qualified professional ~~is not considered physical abuse. Physical abuse~~; and

(b) does not ~~include~~ mean altercations or acts of assault between vulnerable adults.

(19) ‘Position of trust and confidence’ means, with respect to a vulnerable adult or senior citizen, a person who:

(a) is a parent, spouse, adult child, or other relative by blood or marriage of the vulnerable adult or senior citizen;

(b) is a joint tenant or tenant in common with respect to property of the vulnerable adult or senior citizen;

(c) owes a legal or fiduciary duty to the vulnerable adult or senior citizen including, but not limited to, a court‑appointed or voluntary guardian, trustee, attorney, or conservator;

(d) is a caregiver of the vulnerable adult or senior citizen; or

(e) is another person who has been entrusted with or has assumed responsibility for the use or management of a vulnerable adult’s or senior citizen’s funds, assets, or property.

~~(9)~~(20) ‘Protective services’ means those services whose objective is to protect a vulnerable adult or senior citizen from harm caused by the vulnerable adult or senior citizen or by another person~~. These services include~~ including, but ~~are~~ not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

~~(10)~~(21) ‘Psychological abuse’ means deliberately subjecting a vulnerable adult or senior citizen to threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

(22) ‘Senior citizen’ means a person sixty years of age or older who is not a vulnerable adult as defined pursuant to this article.

(23) ‘Undue influence’ means domination, coercion, manipulation, or another act of a person that prevents a vulnerable adult or senior citizen from exercising free judgment and choice.

~~(11)~~(24) ‘Vulnerable adult’ means:

(a) a person eighteen years of age or older who has a physical or mental condition ~~which~~ that substantially impairs the person from adequately providing for his ~~or her~~ own care or protection,~~. This includes~~ which includes a person who is impaired in the ability to adequately provide for ~~the person’s~~ his own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction~~.~~; or

(b) ~~A~~ a resident of a facility ~~is a vulnerable adult~~.

(25) ‘Vulnerable Adults Investigations Unit’ means the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division.

~~(12)~~ ~~“Operated facility” means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.~~

~~(13) "Contracted facility" means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.~~

Section 43‑35‑13. No vulnerable adult or senior citizen may be considered to be abused or neglected for the sole reason that, in lieu of medical treatment, the vulnerable adult or senior citizen is being furnished nonmedical remedial treatment by spiritual means through prayer alone which the vulnerable adult has practiced freely in accordance with his religion.

Section 43‑35‑15. (A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, ~~or~~ exploitation or human trafficking of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty‑four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for ~~in~~ pursuant to Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, ~~or~~ exploitation, or human trafficking of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and ~~memorandum~~ memoranda of agreement with other agencies to be used in fulfilling the requirements of this article~~. However, the South Carolina Law Enforcement Division must~~ but may not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, ~~and~~ exploitation, and human trafficking to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.

(B) Except as otherwise provided in subsection (D), the Long Term Care Ombudsman Program of the Office on Aging shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, ~~and~~ exploitation, and human trafficking of vulnerable adults occurring in facilities. The Long Term Care Ombudsman Program may develop policies, procedures, and memoranda of agreement to be used in reporting these incidents and in furthering its investigations. The Long Term Care Ombudsman Program must not delegate its responsibility to investigate noncriminal reports of alleged abuse, neglect, ~~and~~ exploitation, and human trafficking to the facilities or to the entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements. The Long Term Care Ombudsman Program shall refer reports of abuse, neglect, ~~and~~ exploitation, and human trafficking to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ if there is reasonable suspicion of criminal conduct.

(C) The Adult Protective Services Program in the Department of Social Services shall investigate or cause to be investigated noncriminal reports of alleged abuse, neglect, ~~and~~ exploitation, and human trafficking of senior citizens and of vulnerable adults occurring in all settings other than those facilities for which the Long Term Care Ombudsman Program is responsible for ~~the investigation~~ investigating pursuant to this section. The Adult Protective Services Program may promulgate regulations and develop policies, procedures, and memoranda of agreement to be used in reporting these incidents, in furthering its investigations, and in providing protective services. The Adult Protective Services Program shall refer reports of abuse, neglect, ~~and~~ exploitation, and human trafficking to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ if there is reasonable suspicion of criminal conduct.

(D) Notwithstanding another provision of law, the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ shall refer reports of abuse, neglect, ~~and~~ exploitation, and human trafficking involving residents committed to the Department of Mental Health pursuant to Chapter 48, Title 44 in which there is no reasonable suspicion of criminal conduct to the Department of Mental Health Client Advocacy Program for investigation.

Section 43‑35‑20. In addition to all other powers and duties ~~that~~ provided to an investigative entity ~~is given in~~ pursuant to this article, the investigative entity may:

(1) have access to facilities or other locations at which the vulnerable adult or senior citizen resides or at which the alleged abuse, neglect, exploitation, or human trafficking occurred, for the purpose of conducting investigations, as otherwise permitted by law;

(2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult ~~which~~ or senior citizen that the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;

(3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;

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

(5) require all persons, including family members or other caregivers of a vulnerable adult or senior citizen and facility staff members, to cooperate with the investigative entity in carrying out its duties ~~under~~ pursuant to this chapter including, but not limited to, conducting investigations and providing protective services;

(6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;

(7) conduct studies and compile data regarding abuse, neglect, ~~and~~ exploitation, and human trafficking; and

(8) issue reports and recommendations.

Section 43‑35‑25. (A) A physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer ~~having~~ who, in good faith, has reason to believe that a vulnerable adult or senior citizen has been or is likely to be abused, neglected, ~~or~~ exploited, or a victim of human trafficking shall report the incident in accordance with this section. Any other person who has actual knowledge that a vulnerable adult or senior citizen has been abused, neglected, ~~or~~ exploited, or a victim of human trafficking shall report the incident ~~in accordance with~~ pursuant to this section.

(B) Except as provided in subsection (A), any other person who, in good faith, has reason to believe that a vulnerable adult or senior citizen has been or may be abused, neglected, ~~or~~ exploited, or a victim of human trafficking may report the incident.

(C) A person required to report pursuant to this section is personally responsible for making the report; however, a state agency may make a report on behalf of an agency employee if the procedure the agency uses for reporting has been approved in writing by the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ or the investigative entity to which the report is to be made.

(D) A person required to report ~~under~~ pursuant to this section ~~must~~ shall report the incident within twenty‑four hours or the next working day. A report must be made in writing or orally by telephone or otherwise to:

(1) the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ for incidents occurring in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs;

(2) the Long Term Care Ombudsman Program for incidents occurring in facilities, except those facilities provided for in item (1); and

(3) the Adult Protective Services Program for incidents occurring in all other settings.

(E) If the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ or an investigative entity receives a report that is not within its investigative jurisdiction, the unit or investigative entity shall forward the report to the appropriate unit or investigative entity not later than the next working day.

(F) No facility may develop policies or procedures that interfere with the reporting requirements of this section.

(G) Provided the mandatory reporting requirements of this section are met, nothing in this section precludes a person also from reporting directly to law enforcement, and in cases of an emergency, serious injury, or suspected sexual assault law enforcement must be contacted immediately.

Section 43‑35‑30. A person required to report pursuant to this article or a person investigating a report may take or cause to be taken color photographs of the trauma visible on the vulnerable adult or senior citizen who is the subject of a report. A person required to report ~~under~~ pursuant to this ~~chapter~~ article as a member of the staff of a medical facility, public or private institution, school, facility, or agency immediately shall notify the person in charge or the designated agent of the person in charge who shall take or cause to be taken color photographs of visible trauma. The investigative entity or law enforcement, if indicated, may cause to be performed a radiological examination or medical examination of the vulnerable adult or senior citizen without consent. All photographs, x‑rays, and results of medical examinations and tests must be provided to law enforcement or to the investigative entity upon request.

Section 43‑35‑35. (A) A person required to report or investigate cases ~~under~~ pursuant to this ~~chapter~~ article who has reasonable suspicion to believe that a vulnerable adult or senior citizen died as a result of abuse or neglect shall report the death and suspected cause of death to the coroner or medical examiner. The coroner or medical examiner shall conduct an investigation and may conduct or order an autopsy. The coroner or medical examiner ~~must~~ shall report the investigative findings to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~.

(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~ for investigation pursuant to Section 43‑35‑520.

Section 43‑35‑40. Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services Program promptly shall:

(1) initiate an investigation; or

(2) review the report within two working days for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division (SLED)~~. A report to local law enforcement or ~~SLED~~ the Vulnerable Adults Investigations Unit must be made within one working day of completing the review.

Section 43‑35‑45. (A) In investigating a report, if the investigative entity is unable to obtain consent ~~cannot be obtained~~ for access to the vulnerable adult or senior citizen or the premises, the investigative entity may seek a warrant from the family court to enter and inspect and photograph the premises and the condition of the vulnerable adult or senior citizen. The court shall issue a warrant upon a showing of probable cause that the vulnerable adult or senior citizen has been abused, neglected, ~~or~~ exploited, or is a victim of human trafficking or is at risk of abuse, neglect, ~~or~~ exploitation, or human trafficking.

(B) At any time during or subsequent to an investigation ~~where~~ when a vulnerable adult or senior citizen is at substantial risk to be or has been abused, neglected, ~~or~~ exploited, or a victim of human trafficking and the investigative entity is unable to obtain consent to provide services ~~cannot be obtained~~, the Adult Protective Services Program may petition the family court for an order to provide protective services. In those cases requiring emergency protective services or emergency removal of the vulnerable adult or senior citizen from the place the vulnerable adult or senior citizen is located or residing, the Adult Protective Services Program may seek ex parte relief. The court may expedite the ex parte proceeding to any extent necessary to protect the vulnerable adult or senior citizen. The family court may order ex parte that the vulnerable adult or senior citizen be taken into emergency protective custody without the consent of the vulnerable adult or senior citizen or of the guardian or others exercising temporary or permanent control over the vulnerable adult or senior citizen, if the court determines there is probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the vulnerable ~~adult~~ adult’s or senior citizen’s life or physical safety. The court also may order emergency services or other relief as necessary to protect the vulnerable adult or senior citizen.

(C) Within ten days ~~following the~~ after filing ~~of~~ a petition pursuant to this section, the court ~~must~~ shall appoint a guardian ad litem and an attorney for the vulnerable adult~~; and~~ or senior citizen. Within forty days ~~of~~ after filing the petition ~~being filed~~, the court shall hold a hearing on the merits.

(D)(1) Before the hearing on the merits the Adult Protective Services Program ~~must~~ shall conduct a comprehensive evaluation of the vulnerable adult or senior citizen. The evaluation must include, but is not limited to:

~~(1)~~(a) the vulnerable ~~adult~~ adult’s or senior citizen’s current address and with whom the vulnerable adult or senior citizen is residing;

~~(2)~~(b) a list of all persons or agencies currently providing services to the vulnerable adult or senior citizen and the nature of these services;

~~(3)~~(c) a summary of services, if any, provided to the vulnerable adult or senior citizen by the Adult Protective Services Program;

~~(4)~~(d) if needed, a medical, psychological, social, vocational, or educational evaluation; and

~~(5)~~(e) recommendations for protective services ~~which~~ that would serve the best interests of the vulnerable adult or senior citizen; however, when ~~these~~ services are to be provided by another state agency, ~~these~~ the Adult Protective Services Program shall develop the related recommendations ~~must be developed~~ in consultation with the other agency.

(2) A copy of the evaluation must be provided to the court, the guardian ad litem, and the attorney at least five working days before the hearing on the merits. Reasonable expenses incurred for evaluations required ~~by~~ pursuant to this subsection must be paid by the Adult Protective Services Program, which ~~must~~ shall seek reimbursement for these evaluations, where possible.

(E) At the hearing on the merits, the court may order the Adult Protective Services Program to provide protective services if ~~it~~ the court finds that:

(1) the vulnerable adult or senior citizen is at substantial risk of being or has been abused, neglected, ~~or~~ exploited, or a victim of human trafficking, and the vulnerable adult or senior citizen is unable to protect ~~herself or~~ himself; and

(2) protective services are necessary to protect the vulnerable adult or senior citizen from the substantial risk of or from abuse, neglect, ~~or~~ exploitation, or human trafficking.

(F) Protective services ordered pursuant to this section must be provided in the least restrictive setting available and appropriate for the vulnerable adult or senior citizen and noninstitutional placement must be used whenever possible. Subsequently, if commitment to a treatment facility is required, the Adult Protective Services Program may initiate commitment proceedings.

(G) ~~Any~~ An interested person, on behalf of the vulnerable adult or senior citizen, may file a motion for review of the court order issued pursuant to this section.

(H) Following a court order from the merits hearing to provide protective services to a vulnerable adult or senior citizen, the Adult Protective Services Program, at least every six months, ~~must~~ shall evaluate the vulnerable adult or senior citizen and submit a written report to the court, and to any other parties as required by the court, regarding the vulnerable ~~adult~~ adult’s or senior citizen’s need for continued protective services ~~as defined in~~ pursuant to this chapter.

(I) If the court determines that the vulnerable adult or senior citizen is financially capable of paying for services ordered pursuant to this section, ~~then~~ the court may order payment by or from the financial resources of the vulnerable adult or senior citizen ~~may be ordered~~.

(J) In an action for exploitation or in which payment for protective services is in issue, upon its own motion or a motion of any party, the court may order that the vulnerable ~~adult~~ adult’s or senior citizen’s financial records be made available on a certain day and time for inspection by the parties.

(K) Expenses incurred by the Adult Protective Services Program on behalf of a vulnerable adult or senior citizen that have not been reimbursed ~~at the time of~~ before the vulnerable adult’s or senior citizen’s death become a claim against the estate of the vulnerable adult or senior citizen.

(L) Payments for which a vulnerable adult is responsible or for which the Adult Protective Services Program is to be reimbursed only include payments to third parties and do not include personnel or operating expenses of the Adult Protective Services Program.

Section 43‑35‑50. The privileged quality of communication between husband and wife or between a professional person and the person’s patient or client, except that between attorney and client or priest and penitent, are abrogated and do not constitute grounds for failing to report or for the exclusion of evidence in any civil or criminal proceeding resulting from a report made pursuant to this chapter.

Section 43‑45‑55. (A) A law enforcement officer may take a vulnerable adult or senior citizen in a life‑threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, ~~or~~ exploitation, or human trafficking there exists an imminent danger to the vulnerable ~~adult~~ adult’s or senior citizen’s life or physical safety;

(2) the vulnerable adult or senior citizen, or the vulnerable adult’s or senior citizen’s caregiver, does not consent to protective custody; and

(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult or senior citizen, the officer ~~must~~ shall transport the vulnerable adult or senior citizen to a place of safety ~~which~~ that must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult or senior citizen pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult or senior citizen who is taken into protective custody by a law enforcement officer~~,~~ may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult or senior citizen ~~under~~ pursuant to this section, the law enforcement officer ~~must~~ immediately shall notify the Adult Protective Services Program and the Department of Social Services office in the county ~~where~~ in which the vulnerable adult or senior citizen was situated at the time of being taken into protective custody. This notification must be made in writing or orally by telephone or otherwise and must include the following information:

(1) the name of the vulnerable adult or senior citizen, if known, or a physical description of the vulnerable adult or senior citizen, if the name is unknown;

(2) the address of the place from which the vulnerable adult or senior citizen was removed by the officer;

(3) the name and the address, if known, of any person who was exercising temporary or permanent custody of or control over or who was the caregiver of the vulnerable adult or senior citizen at the time the vulnerable adult or senior citizen was taken into protective custody;

(4) the address of the place to which the vulnerable adult or senior citizen was transported by the officer; and

(5) a description of the facts and circumstances resulting in the officer taking the vulnerable adult or senior citizen into protective custody.

(E) The Department of Social Services is responsible for filing a petition for protective custody within one business day of receiving the notification required ~~by~~ pursuant to subsection (D).

(F) The family court shall hold a hearing to determine whether there is probable cause for the protective custody within seventy‑two hours of the Department of Social Services filing the petition, excluding Saturdays, Sundays, and legal holidays.

(G) Upon receiving notification that a vulnerable adult or senior citizen has been taken into protective custody the Adult Protective Services Program shall commence an investigation. After the hearing required ~~by~~ pursuant to subsection (F), the Adult Protective Services Program may initiate or cause to be initiated a petition for services pursuant to Section 43‑35‑45.

Section 43‑35‑60. Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made ~~under~~ pursuant to this chapter. Information in these investigative records must not be disclosed publicly.

Section 43‑35‑65. A facility, as defined in Section 43‑35‑10, shall prominently display notices stating the duties of its personnel ~~under~~ pursuant to this chapter and contact information, the text of which must be provided by the Long Term Care Ombudsman Program in consultation with the Vulnerable Adults Investigations Unit ~~of the South Carolina Law Enforcement Division~~.

Section 43‑35‑70. The investigative entity shall report an alleged incident of abuse, neglect, ~~or~~ exploitation, or human trafficking against a health care professional to the occupational licensing board by whom that person is licensed.

Section 43‑35‑75. (A) A person who acting in good faith reports pursuant to this chapter or who participates in an investigation or judicial proceeding resulting from a report is immune from civil and criminal liability ~~which~~ that may otherwise result by reason of ~~this action~~ the report or participation in the investigation or judicial proceeding, unless the person acts recklessly, with a malicious purpose or otherwise in bad faith. In a civil or criminal proceeding good faith is a rebuttable presumption.

(B) It is against the public policy of ~~South Carolina~~ the State to change an employee’s status solely because the employee reports or cooperates with an investigation or action taken ~~under~~ pursuant to this chapter.

Section 43‑35‑80. (A) Notwithstanding any regulatory or administrative penalty that may be assessed and in addition to a private civil cause of action that may be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect, ~~or~~ exploitation, or human trafficking ~~under~~ pursuant to this chapter, the Attorney General, upon referral from the Long Term Care Ombudsman Program or the Vulnerable Adults Investigations Unit, may bring an action against a person ~~who~~ or facility that fails through pattern or practice to exercise reasonable care in hiring, training, or supervising facility personnel or in staffing or operating a facility, and this failure results in the commission of abuse, neglect, exploitation, human trafficking, or any other crime against a vulnerable adult in a facility. There is a rebuttable presumption that a person or facility ~~which verifies~~ has acted reasonably in hiring an employee upon verifying that the person or facility is in good standing ~~of the employee~~ with the appropriate licensure ~~or~~ and accrediting ~~entity is rebuttably presumed to have acted reasonably regarding the hiring~~ entities, as applicable.

(B) In granting relief ~~under~~ pursuant to this section, the court may assess a civil fine of not more than thirty thousand dollars or order injunctive relief, or both, and may order other relief as the court considers appropriate.

(C) Nothing in this section may be construed to create a private cause of action against ~~one who~~ a person or facility that fails through pattern or practice to exercise reasonable care ~~as provided for in~~ pursuant to subsection (A).

(D) For the purposes of this section ‘person’ means any natural person, corporation, joint venture, partnership, unincorporated association, or other business entity.

(E) To the extent fines collected pursuant to this section exceed the cost of litigation, these fines must be credited to the Adult Protective Services Emergency Fund and may be carried forward from one fiscal year to the next.

Section 43‑35‑85. (A) A person required to report ~~under~~ pursuant to this chapter who knowingly and wilfully fails to report abuse, neglect, ~~or~~ exploitation, or human trafficking is guilty of a misdemeanor and, upon conviction, must be fined not more than ~~twenty‑five~~ two thousand five hundred dollars or imprisoned not more than ~~one year~~ three years.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult or senior citizen is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult or senior citizen is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D)(1) A person who knowingly and wilfully exploits property of a vulnerable adult or senior citizen in an amount exceeding five hundred dollars is guilty of a felony and, upon conviction, must be fined:

(a) not more than five thousand dollars or imprisoned not more than ~~five~~ twenty‑five years, or both, if the value of the property exploited exceeds two thousand five hundred dollars, and may be required by the court to make restitution; or

(b) not more than five thousand dollars or imprisoned not more than twenty years, or both, if the value of the property exploited exceeds five hundred dollars but is not more than two thousand five hundred dollars, and may be required by the court to make restitution.

(2) A person who knowingly and wilfully exploits property of a vulnerable adult or senior citizen in an amount not more than five hundred dollars is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years, or both, and may be required by the court to make restitution.

(E)(1) A person who knowingly and wilfully abuses or neglects a vulnerable adult or senior citizen resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

~~(F)~~(2) A person who knowingly and wilfully abuses or neglects a vulnerable adult or senior citizen resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(3) A person who abuses or neglects a vulnerable adult or senior citizen by acting recklessly and the abuse or neglect results in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(4) A person who abuses or neglects a vulnerable adult or senior citizen by acting recklessly and the abuse or neglect results in death is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

(F) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult or senior citizen who is the subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a ~~misdemeanor~~ felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

~~(H)~~(G) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter~~, upon conviction,~~ is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who knowingly and wilfully subjects a vulnerable adult or senior citizen to human trafficking is guilty of a felony and, upon conviction, must be imprisoned not more than twenty‑five years.

(I) ~~As used in this section, “great bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.~~  State prosecutors and law enforcement officers shall receive training regarding human trafficking of vulnerable adults and senior citizens as part of curricula approved by the South Carolina Supreme Court and the South Carolina Law Enforcement Division.

Section 43‑35‑87. (A) A person responsible for the final discharge of a vulnerable adult or senior citizen from a hospital, emergency room, or outpatient hospital clinic including, but not limited to, a discharge worker or social worker, shall ask for and document the address to which the vulnerable adult or senior citizen is going along with the name and relationship of any person transporting or accompanying the vulnerable adult or senior citizen to that address.

(B) If a person transporting or accompanying the vulnerable adult or senior citizen refuses to disclose his name, address, and relationship status pursuant to subsection (A), the person who discharges the vulnerable adult or senior citizen shall notify law enforcement and request a welfare check to the address on record for the vulnerable adult or senior citizen.

(C) If the person who discharges the vulnerable adult or senior citizen determines that the individual who has transported or accompanied the vulnerable adult or senior citizen at the time of discharge pursuant to this section is not the vulnerable adult’s or senior citizen’s spouse or relative, the person shall notify law enforcement and request a welfare check to the address on record for the vulnerable adult or senior citizen.

(D) If law enforcement determines after conducting the home visit pursuant to subsection (B) or (C) that the address is incorrect, law enforcement shall issue an endangered vulnerable adult advisory pursuant to criteria developed by the South Carolina Law Enforcement Division.

Section 43‑35‑90. This article is not intended to affect ~~in any way~~ the authority of any agency to act ~~under~~ pursuant to state or federal law.

Section 43‑35‑95. (A) A person prosecuted for committing an offense pursuant to this article has an affirmative defense if, at the time of committing the offense, the person acted in good faith and lacked the ability to act pursuant to the requirements of this article due to physical, psychological, or resource limitations.

(B) A person prosecuted pursuant to subsection (A) has the burden of proving the affirmative defense by a preponderance of the evidence.

Section 43‑25‑100. Nothing in this chapter limits the remedies available to a vulnerable adult or senior citizen pursuant to other statutes including, but not limited to, domestic violence statutes.”

SECTION 2. This act takes effect upon approval by the Governor.

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