

HB2858



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2858

Introduced 2/16/2023, by Rep. Katie Stuart

SYNOPSIS AS INTRODUCED:

320 ILCS 20/2

from Ch. 23, par. 6602

Amends the Adult Protective Services Act. Excludes from the definition of "mandated reporter" the State Long Term Care Ombudsman and the Ombudsman's representatives or volunteers when such persons are prohibited from making a report under a federal regulation.

LRB103 26814 KTG 53178 b

A BILL FOR

1 AN ACT concerning aging.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Adult Protective Services Act is amended by
5 changing Section 2 as follows:

6 (320 ILCS 20/2) (from Ch. 23, par. 6602)

7 Sec. 2. Definitions. As used in this Act, unless the
8 context requires otherwise:

9 (a) "Abandonment" means the desertion or willful forsaking
10 of an eligible adult by an individual responsible for the care
11 and custody of that eligible adult under circumstances in
12 which a reasonable person would continue to provide care and
13 custody. Nothing in this Act shall be construed to mean that an
14 eligible adult is a victim of abandonment because of health
15 care services provided or not provided by licensed health care
16 professionals.

17 (a-1) "Abuse" means causing any physical, mental or sexual
18 injury to an eligible adult, including exploitation of such
19 adult's financial resources, and abandonment.

20 Nothing in this Act shall be construed to mean that an
21 eligible adult is a victim of abuse, abandonment, neglect, or
22 self-neglect for the sole reason that he or she is being
23 furnished with or relies upon treatment by spiritual means

1 through prayer alone, in accordance with the tenets and
2 practices of a recognized church or religious denomination.

3 Nothing in this Act shall be construed to mean that an
4 eligible adult is a victim of abuse because of health care
5 services provided or not provided by licensed health care
6 professionals.

7 (a-5) "Abuser" means a person who abuses, abandons,
8 neglects, or financially exploits an eligible adult.

9 (a-6) "Adult with disabilities" means a person aged 18
10 through 59 who resides in a domestic living situation and
11 whose disability as defined in subsection (c-5) impairs his or
12 her ability to seek or obtain protection from abuse,
13 abandonment, neglect, or exploitation.

14 (a-7) "Caregiver" means a person who either as a result of
15 a family relationship, voluntarily, or in exchange for
16 compensation has assumed responsibility for all or a portion
17 of the care of an eligible adult who needs assistance with
18 activities of daily living or instrumental activities of daily
19 living.

20 (b) "Department" means the Department on Aging of the
21 State of Illinois.

22 (c) "Director" means the Director of the Department.

23 (c-5) "Disability" means a physical or mental disability,
24 including, but not limited to, a developmental disability, an
25 intellectual disability, a mental illness as defined under the
26 Mental Health and Developmental Disabilities Code, or dementia

1 as defined under the Alzheimer's Disease Assistance Act.

2 (d) "Domestic living situation" means a residence where
3 the eligible adult at the time of the report lives alone or
4 with his or her family or a caregiver, or others, or other
5 community-based unlicensed facility, but is not:

6 (1) A licensed facility as defined in Section 1-113 of
7 the Nursing Home Care Act;

8 (1.5) A facility licensed under the ID/DD Community
9 Care Act;

10 (1.6) A facility licensed under the MC/DD Act;

11 (1.7) A facility licensed under the Specialized Mental
12 Health Rehabilitation Act of 2013;

13 (2) A "life care facility" as defined in the Life Care
14 Facilities Act;

15 (3) A home, institution, or other place operated by
16 the federal government or agency thereof or by the State
17 of Illinois;

18 (4) A hospital, sanitarium, or other institution, the
19 principal activity or business of which is the diagnosis,
20 care, and treatment of human illness through the
21 maintenance and operation of organized facilities
22 therefor, which is required to be licensed under the
23 Hospital Licensing Act;

24 (5) A "community living facility" as defined in the
25 Community Living Facilities Licensing Act;

26 (6) (Blank);

1 (7) A "community-integrated living arrangement" as
2 defined in the Community-Integrated Living Arrangements
3 Licensure and Certification Act or a "community
4 residential alternative" as licensed under that Act;

5 (8) An assisted living or shared housing establishment
6 as defined in the Assisted Living and Shared Housing Act;
7 or

8 (9) A supportive living facility as described in
9 Section 5-5.01a of the Illinois Public Aid Code.

10 (e) "Eligible adult" means either an adult with
11 disabilities aged 18 through 59 or a person aged 60 or older
12 who resides in a domestic living situation and is, or is
13 alleged to be, abused, abandoned, neglected, or financially
14 exploited by another individual or who neglects himself or
15 herself. "Eligible adult" also includes an adult who resides
16 in any of the facilities that are excluded from the definition
17 of "domestic living situation" under paragraphs (1) through
18 (9) of subsection (d), if either: (i) the alleged abuse,
19 abandonment, or neglect occurs outside of the facility and not
20 under facility supervision and the alleged abuser is a family
21 member, caregiver, or another person who has a continuing
22 relationship with the adult; or (ii) the alleged financial
23 exploitation is perpetrated by a family member, caregiver, or
24 another person who has a continuing relationship with the
25 adult, but who is not an employee of the facility where the
26 adult resides.

1 (f) "Emergency" means a situation in which an eligible
2 adult is living in conditions presenting a risk of death or
3 physical, mental or sexual injury and the provider agency has
4 reason to believe the eligible adult is unable to consent to
5 services which would alleviate that risk.

6 (f-1) "Financial exploitation" means the use of an
7 eligible adult's resources by another to the disadvantage of
8 that adult or the profit or advantage of a person other than
9 that adult.

10 (f-5) "Mandated reporter" means any of the following
11 persons while engaged in carrying out their professional
12 duties:

13 (1) a professional or professional's delegate while
14 engaged in: (i) social services, (ii) law enforcement,
15 (iii) education, (iv) the care of an eligible adult or
16 eligible adults, or (v) any of the occupations required to
17 be licensed under the Behavior Analyst Licensing Act, the
18 Clinical Psychologist Licensing Act, the Clinical Social
19 Work and Social Work Practice Act, the Illinois Dental
20 Practice Act, the Dietitian Nutritionist Practice Act, the
21 Marriage and Family Therapy Licensing Act, the Medical
22 Practice Act of 1987, the Naprapathic Practice Act, the
23 Nurse Practice Act, the Nursing Home Administrators
24 Licensing and Disciplinary Act, the Illinois Occupational
25 Therapy Practice Act, the Illinois Optometric Practice Act
26 of 1987, the Pharmacy Practice Act, the Illinois Physical

1 Therapy Act, the Physician Assistant Practice Act of 1987,
2 the Podiatric Medical Practice Act of 1987, the
3 Respiratory Care Practice Act, the Professional Counselor
4 and Clinical Professional Counselor Licensing and Practice
5 Act, the Illinois Speech-Language Pathology and Audiology
6 Practice Act, the Veterinary Medicine and Surgery Practice
7 Act of 2004, and the Illinois Public Accounting Act;

8 (1.5) an employee of an entity providing developmental
9 disabilities services or service coordination funded by
10 the Department of Human Services;

11 (2) an employee of a vocational rehabilitation
12 facility prescribed or supervised by the Department of
13 Human Services;

14 (3) an administrator, employee, or person providing
15 services in or through an unlicensed community based
16 facility;

17 (4) any religious practitioner who provides treatment
18 by prayer or spiritual means alone in accordance with the
19 tenets and practices of a recognized church or religious
20 denomination, except as to information received in any
21 confession or sacred communication enjoined by the
22 discipline of the religious denomination to be held
23 confidential;

24 (5) field personnel of the Department of Healthcare
25 and Family Services, Department of Public Health, and
26 Department of Human Services, and any county or municipal

1 health department;

2 (6) personnel of the Department of Human Services, the
3 Guardianship and Advocacy Commission, the State Fire
4 Marshal, local fire departments, the Department on Aging
5 and its subsidiary Area Agencies on Aging and provider
6 agencies, except the State Long Term Care Ombudsman and
7 any of his or her representatives or volunteers where
8 prohibited from making such a report pursuant to 45 CFR
9 1324.11(e)(3)(iv); and the Office of State Long Term Care
10 Ombudsman;

11 (7) any employee of the State of Illinois not
12 otherwise specified herein who is involved in providing
13 services to eligible adults, including professionals
14 providing medical or rehabilitation services and all other
15 persons having direct contact with eligible adults;

16 (8) a person who performs the duties of a coroner or
17 medical examiner; or

18 (9) a person who performs the duties of a paramedic or
19 an emergency medical technician.

20 (g) "Neglect" means another individual's failure to
21 provide an eligible adult with or willful withholding from an
22 eligible adult the necessities of life including, but not
23 limited to, food, clothing, shelter or health care. This
24 subsection does not create any new affirmative duty to provide
25 support to eligible adults. Nothing in this Act shall be
26 construed to mean that an eligible adult is a victim of neglect

1 because of health care services provided or not provided by
2 licensed health care professionals.

3 (h) "Provider agency" means any public or nonprofit agency
4 in a planning and service area that is selected by the
5 Department or appointed by the regional administrative agency
6 with prior approval by the Department on Aging to receive and
7 assess reports of alleged or suspected abuse, abandonment,
8 neglect, or financial exploitation. A provider agency is also
9 referenced as a "designated agency" in this Act.

10 (i) "Regional administrative agency" means any public or
11 nonprofit agency in a planning and service area that provides
12 regional oversight and performs functions as set forth in
13 subsection (b) of Section 3 of this Act. The Department shall
14 designate an Area Agency on Aging as the regional
15 administrative agency or, in the event the Area Agency on
16 Aging in that planning and service area is deemed by the
17 Department to be unwilling or unable to provide those
18 functions, the Department may serve as the regional
19 administrative agency or designate another qualified entity to
20 serve as the regional administrative agency; any such
21 designation shall be subject to terms set forth by the
22 Department.

23 (i-5) "Self-neglect" means a condition that is the result
24 of an eligible adult's inability, due to physical or mental
25 impairments, or both, or a diminished capacity, to perform
26 essential self-care tasks that substantially threaten his or

1 her own health, including: providing essential food, clothing,
2 shelter, and health care; and obtaining goods and services
3 necessary to maintain physical health, mental health,
4 emotional well-being, and general safety. The term includes
5 compulsive hoarding, which is characterized by the acquisition
6 and retention of large quantities of items and materials that
7 produce an extensively cluttered living space, which
8 significantly impairs the performance of essential self-care
9 tasks or otherwise substantially threatens life or safety.

10 (j) "Substantiated case" means a reported case of alleged
11 or suspected abuse, abandonment, neglect, financial
12 exploitation, or self-neglect in which a provider agency,
13 after assessment, determines that there is reason to believe
14 abuse, abandonment, neglect, or financial exploitation has
15 occurred.

16 (k) "Verified" means a determination that there is "clear
17 and convincing evidence" that the specific injury or harm
18 alleged was the result of abuse, abandonment, neglect, or
19 financial exploitation.

20 (Source: P.A. 102-244, eff. 1-1-22; 102-953, eff. 5-27-22.)