

**CHAPTER 1130**  
**DEPENDENT ADULT ABUSE**  
**S.F. 2381**

**AN ACT** relating to dependent adult abuse and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 235B.1, Code 1995, is amended to read as follows:  
235B.1 DEPENDENT ADULT ABUSE SERVICES.

The department shall establish and operate a dependent adult abuse services program. The program shall emphasize the reporting and evaluation of cases of abuse of a dependent adult who is unable to protect the adult's own interests or unable to perform ~~or obtain~~ activities necessary to meet essential services human needs. The program shall include but is not limited to:

1. The establishment of local or regional multidisciplinary teams to ~~provide leadership at the local and district levels in the delivery of~~ assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to victims of dependent adult abuse. The membership of a team shall include individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of dependent adult abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, law, law enforcement, or other disciplines relative to dependent adults. Members of a team shall include, but are not limited to, persons representing the area agencies on aging, county attorneys, health care providers, and other persons involved in advocating or providing services to dependent adults.

2. Provisions for information sharing and case consultation among service providers, care providers, and victims of dependent adult abuse.

3. Procedures for referral of cases among service providers, including the referral of victims of dependent adult abuse residing in licensed health care facilities.

4. a. The establishment of a dependent adult protective advisory council. The advisory council shall do all of the following:

(1) Advise the director of human services and the administrator of the division of child and family services of the department of human services regarding dependent adult abuse.

(2) Evaluate state law and rules and make recommendations to the general assembly and to executive branch departments regarding laws and rules concerning dependent adults.

(3) Receive and review recommendations and complaints from the public concerning the dependent adult abuse services program.

b. (1) The advisory council shall consist of ten members. Six members shall be appointed by and serve at the pleasure of the governor. Four of the members appointed shall be appointed on the basis of knowledge and skill related to expertise in the area of dependent adult abuse including professionals practicing in the disciplines of medicine, public health, mental health, long-term care, social work, law, and law enforcement. Two of the members appointed shall be members of the general public with an interest in the area of dependent adult abuse. In addition, the membership of the council shall include the director or the director's designee of the department of human services, the department of elder affairs, the Iowa department of public health, and the department of inspections and appeals.

(2) The members of the advisory council shall be appointed to terms of four years beginning May 1. Appointments shall comply with sections 69.16 and 69.16A. Vacancies shall be filled in the same manner as the original appointment.

(3) Members shall receive actual expenses incurred while serving in their official capacity.

(4) The advisory council shall select a chairperson, annually, from its membership.

Sec. 2. Section 235B.2, Code Supplement 1995, is amended to read as follows:

## 235B.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Caretaker" means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

2. "Court" means the district court.

3. "Department" means the department of human services.

4. "Dependent adult" means a person eighteen years of age or older who is unable to protect the person's own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another, or as defined by departmental rule.

5. a. "Dependent adult abuse" means:

a. (1) Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

(1) (a) Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

(2) (b) The commission of a sexual offense under chapter 709 or section 726.2 with or against a dependent adult.

(3) (c) Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

(4) (d) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

b. (2) The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

~~Dependent adult abuse does not include depriving a dependent adult of medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment. However, this provision does not preclude a court from ordering that medical service be provided to the dependent adult if the dependent adult's health requires it.~~

~~Dependent adult abuse does not include the withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.~~

e. (3) Sexual exploitation of a dependent adult who is a resident of a health care facility, as defined in section 135C.1, by a caretaker providing services to or employed by the health care facility, whether within the health care facility or at a location outside of the health care facility.

"Sexual exploitation" means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17. Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

b. "Dependent adult abuse" does not include any of the following:

(1) Circumstances in which the dependent adult declines medical treatment if the

dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(2) Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

(3) The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian pursuant to the applicable procedures under chapter 125, 222, 229, or 633.

5A. "Emergency shelter services" means and includes, but is not limited to, secure crisis shelters or housing for victims of dependent adult abuse.

5B. "Family or household member" means a spouse, a person cohabiting with the dependent adult, a parent, or a person related to the dependent adult by consanguinity or affinity, but does not include children of the dependent adult who are less than eighteen years of age.

5C. "Immediate danger to health or safety" means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

6. "Individual employed as an outreach person" means a natural person who, in the course of employment, makes regular contacts with dependent adults regarding available community resources.

6A. "Legal holiday" means a legal public holiday as defined in section 1C.1.

7. "Person" means person as defined in section 4.1.

8. "Recklessly" means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

9. "Serious injury" means a disabling mental illness, or a 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.

10. "Support services" includes but is not limited to community-based services including area agency on aging assistance, mental health services, fiscal management, home health services, housing-related services, counseling services, transportation services, adult day care services, respite services, legal services, and advocacy services.

Sec. 3. Section 235B.3, subsection 5, Code Supplement 1995, is amended to read as follows:

5. Following the reporting of suspected dependent adult abuse, the department of human services shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

Sec. 4. Section 235B.3, subsection 7, unnumbered paragraph 1, Code Supplement 1995, is amended to read as follows:

The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, or a social services

agency in the state shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

Sec. 5. Section 235B.3, subsection 7, paragraph a, Code Supplement 1995, is amended to read as follows:

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

Sec. 6. NEW SECTION. 235B.3A PREVENTION OF ADDITIONAL ABUSE – NOTIFICATION OF RIGHTS – ARREST – LIABILITY.

1. If a peace officer has reason to believe that dependent adult abuse, which is criminal in nature, has occurred, the officer shall use all reasonable means to prevent further abuse, including but not limited to any of the following:

a. If requested, remaining on the scene as long as there is a danger to the dependent adult's physical safety without the presence of a peace officer, including but not limited to staying in the dwelling unit, or if unable to remain at the scene, assisting the dependent adult in leaving the residence and securing support services or emergency shelter services.

b. Assisting the dependent adult in obtaining medical treatment necessitated by the dependent adult abuse, including providing assistance to the dependent adult in obtaining transportation to the emergency room of the nearest hospital.

c. Providing a dependent adult with immediate and adequate notice of the dependent adult's rights. The notice shall consist of handing the dependent adult a copy of the following written statement, requesting the dependent adult to read the card and asking the dependent adult whether the dependent adult understands the rights:

“(1) You have the right to ask the court for the following help on a temporary basis:

(a) Keeping the alleged perpetrator away from you, your home, and your place of work.

(b) The right to stay at your home without interference from the alleged perpetrator.

(c) Professional counseling for you, your family, or household members, and the alleged perpetrator of the dependent adult abuse.

(2) If you are in need of medical treatment, you have the right to request that the peace officer present assist you in obtaining transportation to the nearest hospital or otherwise assist you.

(3) If you believe that police protection is needed for your physical safety, you have the right to request that the peace officer present remain at the scene until you and other affected parties can leave or safety is otherwise ensured.”

The notice shall also contain the telephone number of the local emergency shelter services, support services, or crisis lines operating in the area.

Sec. 7. NEW SECTION. 235B.17 PROVISION OF PROTECTIVE SERVICES WITH THE CONSENT OF DEPENDENT ADULT – CARETAKER REFUSAL.

If a caretaker of a dependent adult, who consents to the receipt of protective services, refuses to allow provision of the services, the department may petition the court for an order enjoining the caretaker from interfering with the provision of services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and consents to the provision of services and that the caretaker refuses

to allow provision of the services. If the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and consents to the services and that the caretaker refuses to allow the services, the judge may issue an order enjoining the caretaker from interfering with the provision of the protective services.

**Sec. 8. NEW SECTION. 235B.18 PROVISION OF SERVICES TO DEPENDENT ADULT WHO LACKS CAPACITY TO CONSENT – HEARING – FINDINGS.**

1. If the department reasonably determines that a dependent adult is a victim of dependent adult abuse and lacks capacity to consent to the receipt of protective services, the department may petition the court for an order authorizing the provision of protective services. The petition shall allege specific facts sufficient to demonstrate that the dependent adult is in need of protective services and lacks capacity to consent to the receipt of services.

2. The court shall set the case for hearing within fourteen days of the filing of the petition. The dependent adult shall receive at least five days' notice of the hearing. The dependent adult has the right to be present and represented by counsel at the hearing. If the dependent adult, in the determination of the judge, lacks the capacity to waive the right of counsel, the court may appoint a guardian ad litem for the dependent adult.

3. If, at the hearing, the judge finds by clear and convincing evidence that the dependent adult is in need of protective services and lacks the capacity to consent to the receipt of protective services, the judge may issue an order authorizing the provision of protective services. The order may include the designation of a person to be responsible for performing or obtaining protective services on behalf of the dependent adult or otherwise consenting to the receipt of protective services on behalf of the dependent adult. Within sixty days of the appointment of such a person the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552 for good cause shown. The court may extend the sixty-day period for an additional sixty days, at the end of which the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552. A dependent adult shall not be committed to a mental health facility under this section.

4. A determination by the court that a dependent adult lacks the capacity to consent to the receipt of protective services under this chapter shall not affect incompetency proceedings under sections 633.552 through 633.556 or any other proceedings, and incompetency proceedings under sections 633.552 through 633.556 shall not have a conclusive effect on the question of capacity to consent to the receipt of protective services under this chapter.

5. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

**Sec. 9. NEW SECTION. 235B.19 EMERGENCY ORDER FOR PROTECTIVE SERVICES.**

1. If the department determines that a dependent adult is suffering from dependent adult abuse which presents an immediate danger to the health or safety of the dependent adult, that the dependent adult lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an emergency order authorizing protective services.

2. The petition shall be verified and shall include all of the following:

a. The name, date of birth, and address of the dependent adult who needs protective services.

b. The nature of the dependent adult abuse.

c. The services required.

3. Upon finding that there is probable cause to believe that the dependent adult abuse

presents an immediate threat to the health or safety of the dependent adult and that the dependent adult lacks capacity to consent to the receipt of services, the court may do any of the following:

a. Order removal of the dependent adult to safer surroundings.

b. Order the provision of medical services.

c. Order the provision of other available services necessary to remove conditions creating the danger to health or safety, including the services of peace officers or emergency services personnel.

4. The emergency order expires at the end of seventy-two hours from the time of the order unless the seventy-two-hour period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to four p.m. on the first succeeding business day. An order may be renewed for not more than fourteen additional days. A renewal order that ends on a Saturday, Sunday, or legal holiday is automatically extended to four p.m. on the first succeeding business day. The court may modify or terminate the emergency order on the petition of the department, the dependent adult, or any person interested in the dependent adult's welfare.

5. If the department cannot obtain an emergency order under this section due to inaccessibility of the court, the department may contact law enforcement to remove the dependent adult to safer surroundings, authorize the provision of medical treatment, and order the provision of or provide other available services necessary to remove conditions creating the immediate danger to the health or safety of the dependent adult. The department shall obtain an emergency order under this section not later than four p.m. on the first succeeding business day after the date on which protective or other services are provided. If the department does not obtain an emergency order within the prescribed time period, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place. A person, agency, or institution acting in good faith in removing a dependent adult or in providing services under this subsection, and an employer of or person under the direction of such a person, agency, or institution, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the removal or provision of services.

6. The court may also enter orders as may be appropriate to third persons enjoining them from specific conduct. The orders may include temporary restraining orders which impose criminal sanctions if violated. The court may enjoin third persons from any of the following:

a. Removing the dependent adult from the care or custody of another.

b. Committing dependent adult abuse on the dependent adult.

c. Living at the dependent adult's residence.

d. Contacting the dependent adult in person or by telephone.

e. Selling, removing, or otherwise disposing of the dependent adult's personal property.

f. Withdrawing funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest.

g. Negotiating any instruments payable to the dependent adult.

h. Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property.

i. Exercising any powers on behalf of the dependent adult through representatives of the department, any court-appointed guardian or guardian ad litem, or any official acting on the dependent adult's behalf.

j. Engaging in any other specified act which, based upon the facts alleged, would constitute harm or a threat of imminent harm to the dependent adult or would cause damage to or the loss of the dependent adult's property.

7. This section shall not be construed and is not intended as and shall not imply a grant of entitlement for services to persons who are not otherwise eligible for the services or for utilization of services which do not currently exist or are not otherwise available.

Sec. 10. NEW SECTION. 235B.20 DEPENDENT ADULT ABUSE – INITIATION OF CHARGES – PENALTY.

1. Charges of dependent adult abuse may be initiated upon complaint of private individuals or as a result of investigations by social service agencies or on the direct initiative of a county attorney or law enforcement agency.

2. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “C” felony if the intentional dependent adult abuse results in serious injury.

3. A caretaker who recklessly commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “D” felony if the reckless dependent adult abuse results in serious injury.

4. A caretaker who intentionally commits dependent adult abuse on a dependent adult in violation of this chapter is guilty of a class “C” felony if the intentional dependent adult abuse results in physical injury.

5. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a class “D” felony if the value of the property, assets, or resources exceeds one hundred dollars.

6. A caretaker who recklessly commits dependent adult abuse on a person in violation of this chapter is guilty of an aggravated misdemeanor if the reckless dependent adult abuse results in physical injury.

7. A caretaker who commits dependent adult abuse by exploiting a dependent adult in violation of this chapter is guilty of a simple misdemeanor if the value of the property, assets, or resources is one hundred dollars or less.

8. A caretaker alleged to have committed a violation of this chapter shall be charged with the respective offense cited, unless a charge may be brought based upon a more serious offense, in which case the charge of the more serious offense shall supersede the less serious charge.

Approved April 17, 1996

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## CHAPTER 1131

### DOMESTIC ABUSE

S.F. 2269

**AN ACT** enhancing the penalties for a third or subsequent offense of domestic abuse assault, requiring county attorneys to prosecute certain domestic abuse misdemeanors, giving district associate judges jurisdiction to enter orders of protection in certain domestic abuse matters, and establishing a pilot program for domestic abuse.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 331.756, subsection 4, Code Supplement 1995, is amended to read as follows:

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

Sec. 2. Section 602.6306, subsection 2, Code 1995, is amended to read as follows: