

Senate Study Bill 3095 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSPECTIONS, APPEALS, AND
LICENSING BILL)

A BILL FOR

1 An Act relating to certain powers and duties of the department
2 of inspections, appeals, and licensing including
3 confidentiality of information and records, and dependent
4 adult abuse, and making penalties applicable.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 10A.105, subsection 5, Code 2024, is
2 amended to read as follows:

3 5. If information in the possession of the department
4 indicates that a criminal or regulatory offense may have been
5 committed, the information may be reported to the appropriate
6 criminal justice or regulatory agency.

7 Sec. 2. Section 235E.1, subsection 5, paragraph a,
8 subparagraphs (2) and (3), Code 2024, are amended to read as
9 follows:

10 (2) Sexual exploitation of a dependent adult by a caretaker
11 whether within a facility or program or at a location outside
12 of a facility or program. "*Sexual exploitation*" means any
13 consensual or nonconsensual sexual conduct with a dependent
14 adult which includes but is not limited to kissing; touching
15 of the clothed or unclothed breast, groin, buttock, anus,
16 pubes, or genitals; or a sex act, as defined in [section 702.17](#).
17 "*Sexual exploitation*" includes the transmission, display,
18 taking of electronic images of the unclothed breast, groin,
19 buttock, anus, pubes, or genitals of a dependent adult by a
20 caretaker for a purpose not related to treatment or diagnosis
21 or as part of an ongoing evaluation or investigation. "*Sexual*
22 *exploitation*" does not include touching which is part of a
23 necessary examination, treatment, or care by a caretaker
24 acting within the scope of the practice or employment of the
25 caretaker; the exchange of a brief touch or hug between the
26 dependent adult and a caretaker for the purpose of reassurance,
27 comfort, or casual friendship; or touching between spouses or
28 domestic partners in an intimate relationship.

29 (3) Personal degradation of a dependent adult. "*Personal*
30 *degradation*" means a willful act or statement by a caretaker
31 intended to shame, degrade, humiliate, or otherwise harm the
32 personal dignity of a dependent adult, or where the caretaker
33 knew or reasonably should have known the act or statement would
34 cause shame, degradation, humiliation, or harm to the personal
35 dignity of a reasonable person. "*Personal degradation*" includes

1 the taking, transmission, or display of an electronic image of
2 a dependent adult by a caretaker, where the caretaker's actions
3 constitute a willful act or statement intended to shame,
4 degrade, humiliate, or otherwise harm the personal dignity of
5 the dependent adult, or where the caretaker knew or reasonably
6 should have known the act would cause shame, degradation,
7 humiliation, or harm to the personal dignity of a reasonable
8 person. "*Personal degradation*" does not include the taking,
9 transmission, or display of an electronic image of a dependent
10 adult for the purpose of reporting dependent adult abuse to law
11 enforcement, the department, or other regulatory agency that
12 oversees caretakers or enforces abuse or neglect provisions,
13 or for the purpose of treatment or diagnosis or as part of an
14 ongoing evaluation or investigation. "*Personal degradation*"
15 also does not include the taking, transmission, or display
16 of an electronic image by a caretaker in accordance with the
17 facility's or program's confidentiality policy and release of
18 information or consent policies.

19 Sec. 3. Section 235E.2, subsection 3, paragraph a, Code
20 2024, is amended to read as follows:

21 a. If a staff member or employee is required to make a
22 report pursuant to [this section](#), the staff member or employee
23 shall immediately notify the person in charge or the person's
24 designated agent who shall then notify the department within
25 twenty-four hours of such notification. If the person in
26 charge is the alleged perpetrator of dependent adult abuser
27 abuse, the staff member shall directly report the abuse to the
28 department within twenty-four hours.

29 Sec. 4. Section 235E.2, subsection 5, Code 2024, is amended
30 to read as follows:

31 5. Any other person who believes that a dependent adult
32 has suffered dependent adult abuse may report the suspected
33 dependent adult abuse to the department of ~~inspections,~~
34 ~~appeals, and licensing~~. The department of ~~inspections,~~
35 ~~appeals, and licensing~~ shall transfer any reports received

1 of dependent adult abuse in the community to the department
2 of health and human services. The department of health and
3 human services shall transfer any reports received of dependent
4 adult abuse in facilities or programs to the department of
5 ~~inspections, appeals, and licensing.~~

6 Sec. 5. Section 235E.2, subsection 6, unnumbered paragraph
7 1, Code 2024, is amended to read as follows:

8 The department shall inform the appropriate county ~~attorneys~~
9 attorney of any ~~reports~~ report of dependent adult abuse. The
10 department may provide the county attorney, other appropriate
11 law enforcement agencies, and appropriate licensing boards with
12 the department's evaluation materials and findings related to a
13 report of dependent adult abuse. The department may request
14 information from any person believed to have knowledge of a
15 case of dependent adult abuse. The person, including but not
16 limited to a county attorney, a law enforcement agency, a
17 multidisciplinary team, a social services agency in the state,
18 or any person who is required pursuant to [subsection 2](#) to
19 report dependent adult abuse, whether or not the person made
20 the specific dependent adult abuse report, shall cooperate and
21 assist in the evaluation upon the request of the department.
22 If the department's assessment reveals that dependent adult
23 abuse exists which might constitute a criminal offense, a
24 report shall be made to the appropriate law enforcement agency.
25 County attorneys and appropriate law enforcement agencies shall
26 also take any other lawful action necessary or advisable for
27 the protection of the dependent adult.

28 Sec. 6. Section 235E.2, subsection 6, paragraphs a and b,
29 Code 2024, are amended to read as follows:

30 a. If, upon completion of an investigation of a report
31 of dependent adult abuse, the department determines that the
32 best interests of the dependent adult require court action,
33 the department shall notify the department of health and human
34 services of the potential need for a guardian or conservator or
35 for admission or commitment to an appropriate institution or

1 facility pursuant to the applicable procedures under chapter
2 125, 222, 229, or 633, or shall pursue other remedies provided
3 by law. The appropriate county attorney shall assist the
4 department of health and human services in the preparation of
5 the necessary papers to initiate the action and shall appear
6 and represent the department of health and human services at
7 all district court proceedings.

8 ~~Investigators~~ Inspectors within the department shall be
9 specially trained to investigate cases of dependent adult abuse
10 including but not limited to cases involving gerontological,
11 dementia, and wound care issues.

12 Sec. 7. Section 235E.2, subsections 7, 8, 10, 11, 12, and
13 13, Code 2024, are amended to read as follows:

14 7. A person participating in good faith in reporting or
15 cooperating with or assisting the department in evaluating
16 a report or investigating a case of dependent adult abuse
17 has immunity from liability, civil or criminal, which might
18 otherwise be incurred or imposed based upon the act of making
19 the report or giving the assistance. The person has the same
20 immunity with respect to participating in good faith in a
21 judicial proceeding resulting from the report, cooperation, or
22 assistance or relating to the subject matter of the report,
23 cooperation, or assistance.

24 8. It shall be unlawful for any person or employer to
25 discharge, suspend, or otherwise discipline a person required
26 to report or voluntarily reporting an instance of suspected
27 dependent adult abuse pursuant to subsection 2 or 5, or
28 cooperating with, or assisting the department in evaluating a
29 report or investigating a case of dependent adult abuse, or
30 participating in judicial proceedings relating to the reporting
31 or cooperation or assistance based solely upon the person's
32 reporting or assistance relative to the instance of dependent
33 adult abuse. A person or employer found in violation of this
34 subsection is guilty of a simple misdemeanor.

35 10. a. The department shall adopt rules which require

1 facilities and programs to separate an alleged perpetrator of
2 dependent adult ~~abuser~~ abuse from a victim following the report
3 of an allegation of perpetration of dependent adult abuse and
4 prior to the completion of an investigation of the allegation
5 report by the department.

6 b. Independent of the department's investigation of of
7 the report, the facility or program employing the alleged
8 perpetrator of dependent adult ~~abuser~~ abuse shall conduct
9 an investigation of the alleged dependent adult abuse and
10 determine what, if any, employment action should be taken
11 including but not limited to placing the alleged perpetrator
12 of dependent adult ~~abuser~~ abuse on administrative leave or
13 reassigning or terminating the alleged perpetrator of dependent
14 adult ~~abuser~~ abuse as a result of the investigation by the
15 facility or program.

16 c. If the facility or program terminates the alleged
17 perpetrator of dependent adult ~~abuser~~ abuse as a result of
18 the investigation by the facility or program ~~or the alleged~~
19 ~~dependent adult abuser resigns~~, the alleged perpetrator of
20 dependent adult ~~abuser~~ abuse shall disclose such termination or
21 investigation to any prospective facility or program employer.
22 An alleged perpetrator of dependent adult ~~abuser~~ abuse who
23 fails to disclose such termination or investigation is guilty
24 of a simple misdemeanor.

25 11. Upon receiving notice from a credible source, the
26 department ~~shall~~ may notify a facility or program that
27 subsequently employs a perpetrator of founded dependent adult
28 ~~abuser~~ abuse when the notice of investigative findings has been
29 issued. ~~Such notification shall occur prior to the completion~~
30 ~~of an investigation that is founded for dependent adult abuse.~~

31 12. a. An inspector of the department may enter any
32 facility or program without a warrant and may examine all
33 records pertaining to residents, employees, former employees,
34 and the alleged perpetrator of dependent adult ~~abuser~~ abuse.

35 b. If upon entry, the inspector has knowledge of or learns

1 during the course of an investigation of a report that alleged
2 dependent adult abuse is suspected or is being investigated
3 by the facility or program, the inspector shall inform the
4 facility or program that the inspector is investigating a
5 report of an alleged case of dependent adult abuse.

6 c. An inspector of the department may contact or interview
7 any resident, employee, former employee, or any other person
8 who ~~might~~ may have knowledge about the alleged dependent
9 adult abuse. Prior to the interview, the department shall
10 provide written notification to the ~~person under investigation~~
11 ~~for alleged perpetrator of dependent adult abuse that.~~ The
12 notification shall include all of the following information:

13 (1) That the person is ~~under investigation for dependent~~
14 ~~adult abuse,~~ the subject of a report of dependent adult abuse
15 being investigated by the department.

16 (2) The nature of the abuse being investigated, ~~the.~~

17 (3) The possible civil administrative consequences of
18 founded abuse, ~~the.~~

19 (4) The requirement that the department forward a report
20 to law enforcement if the department's investigation reveals a
21 potential criminal offense, ~~that.~~

22 (5) That the person has the right to retain legal counsel
23 at the person's expense and may choose to have legal counsel,
24 union representation, or any other desired representative
25 employed by the facility present during the interview, ~~and the~~
26 ~~fact that.~~

27 (6) That the person has the right to decline to be
28 interviewed or to terminate an interview at any time.

29 d. The person ~~under investigation~~ who is the subject of
30 the report shall inform the department of the representatives
31 ~~desired~~ the person wants to be have present during the
32 interview and not delay the interview by more than five working
33 days to make arrangements for the person's representatives to
34 be present at the interview.

35 e. Any employer representative shall be informed of the

1 requirement to maintain strict confidentiality and of the
2 prohibition against dissemination of such information
3 pursuant to [chapter 235B](#). ~~At~~

4 f. During the interview, the department shall request and
5 the alleged perpetrator of dependent adult abuser abuse shall
6 provide the alleged ~~dependent adult abuser's~~ perpetrator's most
7 current contact information to facilitate provision of the
8 findings of the investigation to the alleged ~~dependent adult~~
9 ~~abuser~~ perpetrator.

10 g. An inspector may take or cause to be taken photographs
11 of the dependent adult abuse victim and the vicinity involved.
12 The department shall obtain consent from the dependent adult
13 abuse victim or guardian or other person with a power of
14 attorney over the dependent adult abuse victim prior to taking
15 photographs of the dependent adult abuse victim.

16 13. a. Notwithstanding [section 235B.6](#) and [chapter 22](#),
17 an employee organization or union representative may observe
18 an ~~investigative~~ interview conducted by the department of an
19 alleged perpetrator of dependent adult abuser abuse if all of
20 the following conditions are met:

21 (1) The alleged perpetrator of dependent adult abuser abuse
22 is part of a bargaining unit that is party to a collective
23 bargaining agreement under [chapter 20](#) or any other applicable
24 state or federal law.

25 (2) The alleged perpetrator of dependent adult abuser abuse
26 requests the presence of an employee organization or union
27 representative.

28 (3) The employee organization or union representative
29 maintains the confidentiality of all information from the
30 interview subject to the penalties provided in [section 235B.12](#)
31 if such confidentiality is breached.

32 b. [This subsection](#) shall only apply to interviews conducted
33 pursuant to [this chapter](#). [This subsection](#) does not apply to
34 interviews conducted pursuant to the regulatory activities of
35 [chapter 135B](#), [135C](#), [231B](#), [231C](#), or [231D](#), or any other state or

1 federal law.

2 Sec. 8. Section 726.26, subsection 1, Code 2024, is amended
3 to read as follows:

4 1. For the purposes of **this section**, “*caretaker*”, “*dependent*
5 *adult*”, and “*dependent adult abuse*” mean the same as defined in
6 section 235B.2 or section 235E.1, as applicable.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with
9 the explanation’s substance by the members of the general assembly.

10 This bill relates to certain powers and duties of the
11 department of inspections, appeals, and licensing (DIAL)
12 including confidentiality of information and records, and
13 dependent adult abuse.

14 The bill amends Code section 10A.105(5), relating to
15 confidentiality of information produced, collected, maintained,
16 or in the possession of DIAL. Code section 10A.105(5) provides
17 that if information in the possession of DIAL indicates that a
18 criminal offense may have been committed, the information may
19 be reported to the appropriate criminal justice or regulatory
20 agency. The bill amends this provision by including that if
21 the information alternatively indicates that a regulatory
22 offense may have been committed, the information may be
23 reported to the appropriate criminal justice or regulatory
24 agency.

25 Code section 235E.2(6) (unnumbered paragraph 1) is amended
26 to provide that DIAL may provide the county attorney, other
27 appropriate law enforcement agencies, and appropriate licensing
28 boards with the department’s evaluation materials and findings
29 related to a report of dependent adult abuse.

30 Code section 235E.2(11) provides that DIAL, upon receiving
31 notice from a credible source, shall notify a facility or
32 program that subsequently employs a dependent adult abuser
33 when notice of investigative findings has been issued and
34 that such notification shall occur prior to the completion of
35 an investigation that is founded for dependent adult abuse.

1 The bill amends the Code subsection to provide that upon
2 receiving notice from a credible source, DIAL may notify a
3 facility or program that subsequently employs a perpetrator of
4 founded dependent adult abuse when the notice of investigative
5 findings has been issued, and eliminates the requirement that
6 the notification shall occur prior to the completion of the
7 investigation that is founded for dependent adult abuse.

8 Prior to 2022, Code section 235B.20, relating to criminal
9 penalties for dependent adult abuse was located in Code
10 chapter 235B (dependent adult abuse services — information
11 registry). In 2022, this Code section was relocated to
12 the criminal law and procedure title of the Code in Code
13 section 726.26, in proximity to other penalties for crimes
14 against dependent adults, older individuals, and residents
15 of health care facilities. Code section 726.26(1) defines
16 "caretaker", "dependent adult", and "dependent adult abuse"
17 to be the same as defined in Code section 235B.2. Because
18 Code section 726.26(1) applies to both Code chapter 235B,
19 relating to dependent adult abuse outside of facilities and
20 programs, and Code chapter 235E, relating to dependent adult
21 abuse in facilities and programs, and because the three terms
22 are defined differently under each respective Code chapter,
23 the bill amends Code section 726.26(1) to provide that the
24 terms are as defined in Code section 235B.2 or in Code section
25 235E.1, as applicable.

26 The bill also makes conforming changes throughout Code
27 chapter 235E including by changing the term "alleged dependent
28 adult abuser" to "alleged perpetrator of dependent adult
29 abuse".