
HOUSE BILL 1788

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61st Legislature

2009 Regular Session

By Representatives O'Brien, Bailey, Smith, Blake, Herrera, Warnick, Sells, Hope, Morrell, and McCune; by request of Attorney General

Read first time 01/29/09. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to vulnerable adults; amending RCW 30.22.210,
2 74.34.020, 74.34.035, 74.34.050, 74.34.063, 74.34.067, 74.34.080, and
3 74.34.095; reenacting and amending RCW 9.94A.533; adding new sections
4 to chapter 74.34 RCW; creating a new section; repealing RCW 74.34.021
5 and 74.34.068; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature recognizes that: (1) Crimes
8 against vulnerable adults are a serious crime against society; and (2)
9 adult victims of crime deserve the maximum protection which the law and
10 those who enforce the law can provide. All too often, adults are
11 targeted because of their vulnerability. The ability of vulnerable
12 adults to protect themselves may be compromised because of issues
13 surrounding their health, lack of mobility, memory loss, or their
14 inability to communicate.

15
16 **Sec. 2.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are
17 each reenacted and amended to read as follows:

1 (1) The provisions of this section apply to the standard sentence
2 ranges determined by RCW 9.94A.510 or 9.94A.517.

3 (2) For persons convicted of the anticipatory offenses of criminal
4 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
5 standard sentence range is determined by locating the sentencing grid
6 sentence range defined by the appropriate offender score and the
7 seriousness level of the completed crime, and multiplying the range by
8 seventy-five percent.

9 (3) The following additional times shall be added to the standard
10 sentence range for felony crimes committed after July 23, 1995, if the
11 offender or an accomplice was armed with a firearm as defined in RCW
12 9.41.010 and the offender is being sentenced for one of the crimes
13 listed in this subsection as eligible for any firearm enhancements
14 based on the classification of the completed felony crime. If the
15 offender is being sentenced for more than one offense, the firearm
16 enhancement or enhancements must be added to the total period of
17 confinement for all offenses, regardless of which underlying offense is
18 subject to a firearm enhancement. If the offender or an accomplice was
19 armed with a firearm as defined in RCW 9.41.010 and the offender is
20 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
21 commit one of the crimes listed in this subsection as eligible for any
22 firearm enhancements, the following additional times shall be added to
23 the standard sentence range determined under subsection (2) of this
24 section based on the felony crime of conviction as classified under RCW
25 9A.28.020:

26 (a) Five years for any felony defined under any law as a class A
27 felony or with a statutory maximum sentence of at least twenty years,
28 or both, and not covered under (f) of this subsection;

29 (b) Three years for any felony defined under any law as a class B
30 felony or with a statutory maximum sentence of ten years, or both, and
31 not covered under (f) of this subsection;

32 (c) Eighteen months for any felony defined under any law as a class
33 C felony or with a statutory maximum sentence of five years, or both,
34 and not covered under (f) of this subsection;

35 (d) If the offender is being sentenced for any firearm enhancements
36 under (a), (b), and/or (c) of this subsection and the offender has
37 previously been sentenced for any deadly weapon enhancements after July
38 23, 1995, under (a), (b), and/or (c) of this subsection or subsection

1 (4)(a), (b), and/or (c) of this section, or both, all firearm
2 enhancements under this subsection shall be twice the amount of the
3 enhancement listed;

4 (e) Notwithstanding any other provision of law, all firearm
5 enhancements under this section are mandatory, shall be served in total
6 confinement, and shall run consecutively to all other sentencing
7 provisions, including other firearm or deadly weapon enhancements, for
8 all offenses sentenced under this chapter. However, whether or not a
9 mandatory minimum term has expired, an offender serving a sentence
10 under this subsection may be granted an extraordinary medical placement
11 when authorized under RCW 9.94A.728(4);

12 (f) The firearm enhancements in this section shall apply to all
13 felony crimes except the following: Possession of a machine gun,
14 possessing a stolen firearm, drive-by shooting, theft of a firearm,
15 unlawful possession of a firearm in the first and second degree, and
16 use of a machine gun in a felony;

17 (g) If the standard sentence range under this section exceeds the
18 statutory maximum sentence for the offense, the statutory maximum
19 sentence shall be the presumptive sentence unless the offender is a
20 persistent offender. If the addition of a firearm enhancement
21 increases the sentence so that it would exceed the statutory maximum
22 for the offense, the portion of the sentence representing the
23 enhancement may not be reduced.

24 (4) The following additional times shall be added to the standard
25 sentence range for felony crimes committed after July 23, 1995, if the
26 offender or an accomplice was armed with a deadly weapon other than a
27 firearm as defined in RCW 9.41.010 and the offender is being sentenced
28 for one of the crimes listed in this subsection as eligible for any
29 deadly weapon enhancements based on the classification of the completed
30 felony crime. If the offender is being sentenced for more than one
31 offense, the deadly weapon enhancement or enhancements must be added to
32 the total period of confinement for all offenses, regardless of which
33 underlying offense is subject to a deadly weapon enhancement. If the
34 offender or an accomplice was armed with a deadly weapon other than a
35 firearm as defined in RCW 9.41.010 and the offender is being sentenced
36 for an anticipatory offense under chapter 9A.28 RCW to commit one of
37 the crimes listed in this subsection as eligible for any deadly weapon
38 enhancements, the following additional times shall be added to the

1 standard sentence range determined under subsection (2) of this section
2 based on the felony crime of conviction as classified under RCW
3 9A.28.020:

4 (a) Two years for any felony defined under any law as a class A
5 felony or with a statutory maximum sentence of at least twenty years,
6 or both, and not covered under (f) of this subsection;

7 (b) One year for any felony defined under any law as a class B
8 felony or with a statutory maximum sentence of ten years, or both, and
9 not covered under (f) of this subsection;

10 (c) Six months for any felony defined under any law as a class C
11 felony or with a statutory maximum sentence of five years, or both, and
12 not covered under (f) of this subsection;

13 (d) If the offender is being sentenced under (a), (b), and/or (c)
14 of this subsection for any deadly weapon enhancements and the offender
15 has previously been sentenced for any deadly weapon enhancements after
16 July 23, 1995, under (a), (b), and/or (c) of this subsection or
17 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
18 weapon enhancements under this subsection shall be twice the amount of
19 the enhancement listed;

20 (e) Notwithstanding any other provision of law, all deadly weapon
21 enhancements under this section are mandatory, shall be served in total
22 confinement, and shall run consecutively to all other sentencing
23 provisions, including other firearm or deadly weapon enhancements, for
24 all offenses sentenced under this chapter. However, whether or not a
25 mandatory minimum term has expired, an offender serving a sentence
26 under this subsection may be granted an extraordinary medical placement
27 when authorized under RCW 9.94A.728(4);

28 (f) The deadly weapon enhancements in this section shall apply to
29 all felony crimes except the following: Possession of a machine gun,
30 possessing a stolen firearm, drive-by shooting, theft of a firearm,
31 unlawful possession of a firearm in the first and second degree, and
32 use of a machine gun in a felony;

33 (g) If the standard sentence range under this section exceeds the
34 statutory maximum sentence for the offense, the statutory maximum
35 sentence shall be the presumptive sentence unless the offender is a
36 persistent offender. If the addition of a deadly weapon enhancement
37 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the
2 enhancement may not be reduced.

3 (5) The following additional times shall be added to the standard
4 sentence range if the offender or an accomplice committed the offense
5 while in a county jail or state correctional facility and the offender
6 is being sentenced for one of the crimes listed in this subsection. If
7 the offender or an accomplice committed one of the crimes listed in
8 this subsection while in a county jail or state correctional facility,
9 and the offender is being sentenced for an anticipatory offense under
10 chapter 9A.28 RCW to commit one of the crimes listed in this
11 subsection, the following additional times shall be added to the
12 standard sentence range determined under subsection (2) of this
13 section:

14 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
15 (a) or (b) or 69.50.410;

16 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
17 (c), (d), or (e);

18 (c) Twelve months for offenses committed under RCW 69.50.4013.

19 For the purposes of this subsection, all of the real property of a
20 state correctional facility or county jail shall be deemed to be part
21 of that facility or county jail.

22 (6) An additional twenty-four months shall be added to the standard
23 sentence range for any ranked offense involving a violation of chapter
24 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
25 9.94A.605. All enhancements under this subsection shall run
26 consecutively to all other sentencing provisions, for all offenses
27 sentenced under this chapter.

28 (7) An additional two years shall be added to the standard sentence
29 range for vehicular homicide committed while under the influence of
30 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
31 prior offense as defined in RCW 46.61.5055.

32 (8)(a) The following additional times shall be added to the
33 standard sentence range for felony crimes committed on or after July 1,
34 2006, if the offense was committed with sexual motivation, as that term
35 is defined in RCW 9.94A.030. If the offender is being sentenced for
36 more than one offense, the sexual motivation enhancement must be added
37 to the total period of total confinement for all offenses, regardless
38 of which underlying offense is subject to a sexual motivation

1 enhancement. If the offender committed the offense with sexual
2 motivation and the offender is being sentenced for an anticipatory
3 offense under chapter 9A.28 RCW, the following additional times shall
4 be added to the standard sentence range determined under subsection (2)
5 of this section based on the felony crime of conviction as classified
6 under RCW 9A.28.020:

7 (i) Two years for any felony defined under the law as a class A
8 felony or with a statutory maximum sentence of at least twenty years,
9 or both;

10 (ii) Eighteen months for any felony defined under any law as a
11 class B felony or with a statutory maximum sentence of ten years, or
12 both;

13 (iii) One year for any felony defined under any law as a class C
14 felony or with a statutory maximum sentence of five years, or both;

15 (iv) If the offender is being sentenced for any sexual motivation
16 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
17 the offender has previously been sentenced for any sexual motivation
18 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii)
19 of this subsection, all sexual motivation enhancements under this
20 subsection shall be twice the amount of the enhancement listed;

21 (b) Notwithstanding any other provision of law, all sexual
22 motivation enhancements under this subsection are mandatory, shall be
23 served in total confinement, and shall run consecutively to all other
24 sentencing provisions, including other sexual motivation enhancements,
25 for all offenses sentenced under this chapter. However, whether or not
26 a mandatory minimum term has expired, an offender serving a sentence
27 under this subsection may be granted an extraordinary medical placement
28 when authorized under RCW 9.94A.728(4);

29 (c) The sexual motivation enhancements in this subsection apply to
30 all felony crimes;

31 (d) If the standard sentence range under this subsection exceeds
32 the statutory maximum sentence for the offense, the statutory maximum
33 sentence shall be the presumptive sentence unless the offender is a
34 persistent offender. If the addition of a sexual motivation
35 enhancement increases the sentence so that it would exceed the
36 statutory maximum for the offense, the portion of the sentence
37 representing the enhancement may not be reduced;

1 (e) The portion of the total confinement sentence which the
2 offender must serve under this subsection shall be calculated before
3 any earned early release time is credited to the offender;

4 (f) Nothing in this subsection prevents a sentencing court from
5 imposing a sentence outside the standard sentence range pursuant to RCW
6 9.94A.535.

7 (9) An additional one-year enhancement shall be added to the
8 standard sentence range for the felony crimes of RCW 9A.44.073,
9 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
10 or after July 22, 2007, if the offender engaged, agreed, or offered to
11 engage the victim in the sexual conduct in return for a fee. If the
12 offender is being sentenced for more than one offense, the one-year
13 enhancement must be added to the total period of total confinement for
14 all offenses, regardless of which underlying offense is subject to the
15 enhancement. If the offender is being sentenced for an anticipatory
16 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
17 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
18 solicited another, or conspired to engage, agree, or offer to engage
19 the victim in the sexual conduct in return for a fee, an additional
20 one-year enhancement shall be added to the standard sentence range
21 determined under subsection (2) of this section. For purposes of this
22 subsection, "sexual conduct" means sexual intercourse or sexual
23 contact, both as defined in chapter 9A.44 RCW.

24 (10)(a) For a person age eighteen or older convicted of any
25 criminal street gang-related felony offense for which the person
26 compensated, threatened, or solicited a minor in order to involve the
27 minor in the commission of the felony offense, the standard sentence
28 range is determined by locating the sentencing grid sentence range
29 defined by the appropriate offender score and the seriousness level of
30 the completed crime, and multiplying the range by one hundred twenty-
31 five percent. If the standard sentence range under this subsection
32 exceeds the statutory maximum sentence for the offense, the statutory
33 maximum sentence is the presumptive sentence unless the offender is a
34 persistent offender.

35 (b) This subsection does not apply to any criminal street gang-
36 related felony offense for which involving a minor in the commission of
37 the felony offense is an element of the offense.

1 (c) The increased penalty specified in (a) of this subsection is
2 unavailable in the event that the prosecution gives notice that it will
3 seek an exceptional sentence based on an aggravating factor under RCW
4 9.94A.535.

5 (11) An additional twelve months and one day shall be added to the
6 standard sentence range for a conviction of attempting to elude a
7 police vehicle as defined by RCW 46.61.024, if the conviction included
8 a finding by special allegation of endangering one or more persons
9 under RCW 9.94A.834.

10 (12) The following additional times shall be added to the standard
11 sentence range for felony crimes committed after July 1, 2009, if the
12 victim was a vulnerable adult as defined in RCW 74.34.020, at the time
13 of the offense. If the offender is being sentenced for more than one
14 offense, the enhancement or enhancements must be added to the total
15 period of confinement for all offenses, regardless of which underlying
16 offense is subject to an enhancement. If the offender is being
17 sentenced for an anticipatory offense under chapter 9A.28 RCW, the
18 following additional times shall be added to the standard sentence
19 range determined under subsection (2) of this section based on the
20 felony crime of conviction as classified under RCW 9A.28.020:

21 (a) Five years for any felony defined under any law as a class A
22 felony or with a statutory maximum sentence of at least twenty years,
23 or both;

24 (b) Three years for any felony defined under any law as a class B
25 felony or with a statutory maximum sentence of ten years, or both;

26 (c) Eighteen months for any felony defined under any law as a class
27 C felony or with a statutory maximum sentence of five years, or both;

28 (d) All vulnerable adult enhancements under this subsection are
29 mandatory, shall be served in total confinement, and shall run
30 consecutively to all other sentencing provisions, including other
31 firearm or deadly weapon enhancements, for all offenses sentenced under
32 this chapter. However, whether or not a mandatory minimum term has
33 expired, an offender serving a sentence under this subsection may be
34 granted an extraordinary medical placement when authorized under RCW
35 9.94A.728(4);

36 (e) If the standard sentence range under this subsection exceeds
37 the statutory maximum sentence for the offense, the statutory maximum
38 sentence shall be the presumptive sentence unless the offender is a

1 persistent offender. If the addition of a firearm enhancement
2 increases the sentence so that it would exceed the statutory maximum
3 for the offense, the portion of the sentence representing the
4 enhancement may not be reduced.

5 **Sec. 3.** RCW 30.22.210 and 1981 c 192 s 21 are each amended to read
6 as follows:

7 (1) Nothing contained in this chapter shall be deemed to require
8 any financial institution to make any payment from an account to a
9 depositor, or any trust or P.O.D. account beneficiary, or any other
10 person claiming an interest in any funds deposited in the account, if
11 the financial institution has actual knowledge of the existence of a
12 dispute between the depositors, beneficiaries, or other persons
13 concerning their respective rights of ownerships to the funds contained
14 in, or proposed to be withdrawn, or previously withdrawn from the
15 account, or in the event the financial institution is otherwise
16 uncertain as to who is entitled to the funds pursuant to the contract
17 of deposit. In any such case, the financial institution may, without
18 liability, notify, in writing, all depositors, beneficiaries, or other
19 persons claiming an interest in the account of either its uncertainty
20 as to who is entitled to the distributions or the existence of any
21 dispute, and may also, without liability, refuse to disburse any funds
22 contained in the account to any depositor, and/or trust or P.O.D.
23 account beneficiary thereof, and/or other persons claiming an interest
24 therein, until such time as either:

25 ((+1)) (a) All such depositors and/or beneficiaries have
26 consented, in writing, to the requested payment; or

27 ((+2)) (b) The payment is authorized or directed by a court of
28 proper jurisdiction.

29 (2) If a financial institution reasonably believes that financial
30 exploitation of a vulnerable adult, as defined in RCW 74.34.020, has
31 occurred, has been attempted, or is being attempted, the financial
32 institution may, without liability, refuse to disburse any funds
33 contained in the account of a vulnerable adult, an account on which the
34 vulnerable adult is a beneficiary, including a trust or guardianship
35 account, or an account of a person suspected of perpetrating financial
36 exploitation of a vulnerable adult pending an investigation by the
37 financial institution, the department of social and health services, or

1 law enforcement. A financial institution may refuse to disburse funds
2 under this subsection if the department of social and health services,
3 law enforcement, or the prosecuting attorney's office provides
4 information to the financial institution demonstrating that it is
5 reasonable to believe that exploitation of a vulnerable adult, as
6 defined in RCW 74.34.020, has occurred, has been attempted, or is being
7 attempted.

8 **Sec. 4.** RCW 74.34.020 and 2007 c 312 s 1 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Abandonment" means action or inaction by a person or entity
13 with a duty of care for a vulnerable adult that leaves the vulnerable
14 person without the ~~((means or ability to obtain necessary food,~~
15 ~~clothing, shelter, or health care))~~ basic necessities of life.

16 (2) "Abuse" means ~~((the willful action or inaction that inflicts~~
17 ~~injury, unreasonable confinement, intimidation, or punishment on a~~
18 ~~vulnerable adult))~~ sexual abuse, mental abuse, physical abuse, and
19 exploitation of a vulnerable adult. In instances of abuse of a
20 vulnerable adult who is unable to express or demonstrate physical harm,
21 pain, or mental anguish, the abuse is presumed to cause physical harm,
22 pain, or mental anguish. ~~((Abuse includes sexual abuse, mental abuse,~~
23 ~~physical abuse, and exploitation of a vulnerable adult, which have the~~
24 ~~following meanings:~~

25 ~~(a))~~ (3) "Sexual abuse" means any willful act subjecting or
26 seeking to subject a vulnerable adult to any form of nonconsensual,
27 unwanted, or inappropriate sexual contact or conduct, including ~~((but~~
28 ~~not limited to unwanted or))~~ inappropriate touching, rape, sodomy,
29 sexual coercion, sexually explicit photographing, and sexual
30 harassment. Sexual abuse includes any sexual contact between: (a) A
31 staff person~~((, who is not also a resident or client,))~~ of a facility
32 ~~((or))~~ and a resident of the facility, whether or not it is consensual;
33 (b) a staff person of a program authorized under chapter 71A.12
34 RCW~~((,))~~ and a vulnerable adult ~~((living in that facility or))~~
35 receiving services ~~((from a program authorized))~~ under that chapter
36 ~~((71A.12 RCW, whether or not it is consensual)),~~ whether or not it is
37 consensual; (c) an individual providing transportation services and a

1 vulnerable adult receiving such services, whether or not it is
2 consensual; or (d) an individual providing in-home services under
3 chapter 74.38 or 74.39A RCW and a vulnerable adult receiving such
4 services, unless the vulnerable adult has capacity to and does consent
5 to the sexual contact or conduct.

6 ~~((b))~~ (4) "Physical abuse" means ~~(the willful action of~~
7 ~~inflicting)~~ a willful act that causes bodily injury ~~((or)), pain, or~~
8 physical mistreatment that is not related to medical treatment,
9 therapy, or that is not essential for the reasonable protection of the
10 health or safety of the vulnerable adult or others. Physical abuse
11 includes~~((, but is not limited to,))~~ striking with or without an
12 object, slapping, pinching, choking, strangling, kicking, shoving,
13 prodding, or the use of chemical restraints or physical restraints
14 unless the restraints are consistent with licensing requirements~~((, and~~
15 ~~includes restraints that are otherwise being used inappropriately))~~.

16 ~~((c))~~ (5) "Mental abuse" means any willful action or inaction of
17 mental or verbal abuse. Mental abuse includes, but is not limited to,
18 coercion, harassment, inappropriately isolating a vulnerable adult from
19 family, friends, or regular activity, confinement, and verbal assault
20 that includes ridiculing, intimidating, yelling, or swearing.

21 ~~((d))~~ (6) "Exploitation" means ~~((a))~~ any willful act of forcing,
22 compelling, or exerting undue influence over a vulnerable adult causing
23 the vulnerable adult to act against his or her will, causing the
24 vulnerable adult to act in a way that is inconsistent with relevant
25 past behavior, or causing the vulnerable adult to perform services for
26 the benefit of another.

27 ~~((3))~~ (7) "Basic necessities of life" means food, water, shelter,
28 clothing, and medically necessary health care including, but not
29 limited to, health-related treatment or activities, hygiene, oxygen,
30 and medication.

31 (8) "Consent," for purposes of financial exploitation or
32 exploitation, means express written consent granted after the
33 vulnerable adult or his or her legal representative has been fully
34 informed of the nature of the services to be offered and that the
35 receipt of services is voluntary. "Consent," for purposes of sexual
36 abuse, means that at the time of the act of sexual contact or conduct,
37 the vulnerable adult through actual words or conduct expresses an
38 agreement to have sexual contact or conduct. However, sexual contact

1 with or sexual conduct directed at a vulnerable adult is presumed to be
2 nonconsensual if the: (a) Vulnerable adult lacks mental capacity to
3 consent; (b) consent was coerced by undue influence or duress; or (c)
4 sexual contact or sexual conduct was between a vulnerable adult and a
5 paid or unpaid caregiver or service provider to vulnerable adults, with
6 the exception of sexual conduct or sexual contact between a vulnerable
7 adult and an individual care provider under chapter 74.38 or 74.39A
8 RCW, in the case where the vulnerable adult has capacity to and
9 consents to the sexual contact or sexual conduct.

10 ~~((+4))~~ (9) "Department" means the department of social and health
11 services.

12 ~~((+5))~~ (10) "Facility" means a residence licensed or required to
13 be licensed by the department, including boarding homes under chapter
14 18.20 RCW(~~(, boarding homes)~~); nursing homes under chapter 18.51 RCW(~~(,~~
15 ~~nursing homes)~~); adult family homes under chapter 70.128 RCW(~~(,~~
16 ~~adult family homes)~~); soldiers' homes under chapter 72.36 RCW(~~(,~~
17 ~~soldiers'~~
18 ~~homes)~~; ~~((or))~~ residential habilitation centers under chapter 71A.20
19 RCW(~~(, residential habilitation centers)~~); or any (~~other facility~~
20 ~~licensed by the department)~~ residence certified under Title XVIII or
21 XIX of the federal social security act to provide nursing services or
22 to provide intermediate care services for individuals with mental
23 retardation.

24 ~~((+6))~~ (11) "Financial exploitation" means ((the)) illegal,
25 wrongful, or improper use, control over, benefit from, transfer,
26 withholding, or possession of the property, interest in property,
27 income, ((resources)) credit, or ((trust funds)) other resources of
28 ((the)) a vulnerable adult by ((any)) a person ((for any person's
29 profit or advantage other than for the vulnerable adult's profit or
30 advantage)) or entity.

31 (a) Financial exploitation includes:

32 (i) The use of deception, intimidation, or undue influence by a
33 person or entity in a position of trust and confidence with a
34 vulnerable adult to improperly obtain or use the property, income,
35 resources, or trust funds of the vulnerable adult;

36 (ii) The breach of a fiduciary duty, including the misuse of a
37 power of attorney, trust, or guardianship appointment;

38 (iii) Improperly obtaining or use of a vulnerable adults' property,
income, resources, or trust funds by a person or entity who knows or

1 reasonably should know that the vulnerable adult lacks capacity to
2 consent to the release or use of his or her property, income,
3 resources, or trust funds;

4 (iv) Improper and unauthorized use of the identity of the
5 vulnerable adult; or

6 (v) Attempted financial exploitation which is established with
7 evidence that a substantial step toward the commission of financial
8 exploitation has occurred.

9 (b) As used in this chapter, "property, income, or other resources"
10 of a vulnerable adult includes property, income, or other resources
11 maintained by a fiduciary or representative on behalf of the vulnerable
12 adult including, without limitation, trust accounts, conservatorships,
13 guardianship accounts, or other fiduciary accounts.

14 ~~((+7))~~ (12) "Finding" means a finding made by the department on a
15 more probable than not basis that an act of abuse, abandonment,
16 financial exploitation, neglect, or self-neglect has occurred.

17 (13) "Incapacitated person" means a person who is at a significant
18 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),
19 (c), or (d).

20 ~~((+8))~~ (14) "Individual provider" means a person under contract
21 with the department to provide services in the home under chapter
22 ~~((74.09))~~ 74.38 or 74.39A RCW.

23 ~~((+9))~~ (15) "Interested person" means a person who demonstrates to
24 the court's satisfaction that the person is interested in the welfare
25 of the vulnerable adult, that the person has a good faith belief that
26 the court's intervention is necessary, and that the vulnerable adult is
27 unable, due to incapacity, undue influence, or duress at the time the
28 petition is filed, to protect his or her own interests.

29 ~~((+10))~~ (16) "Mandated reporter" is an employee of the department;
30 law enforcement officer; social worker; professional school personnel;
31 individual provider; an employee of a facility; an operator of a
32 facility; an employee of a social service, welfare, mental health,
33 adult day health, adult day care, home health, home care, or hospice
34 agency; county coroner or medical examiner; Christian Science
35 practitioner; ~~((or))~~ health care provider subject to chapter 18.130
36 RCW; or a nonemergency transportation provider specializing in the
37 transportation of vulnerable adults.

1 (~~(11)~~) (17) "Neglect" means (a) a pattern of conduct or inaction
2 by a person or entity with a duty of care that fails to provide the
3 goods and services that maintain physical or mental health of a
4 vulnerable adult, or that fails to avoid or prevent physical or mental
5 harm or pain to a vulnerable adult; or (b) (~~(a)~~) a single act or
6 omission by a person or entity with a duty of care that demonstrates a
7 serious disregard of consequences of such a magnitude as to constitute
8 a clear and present danger to the vulnerable adult's health, welfare,
9 or safety, including but not limited to conduct prohibited under RCW
10 9A.42.100.

11 (~~(12)~~) (18) "Permissive reporter" means any person(~~(7)~~)
12 including, but not limited to, an employee of a financial institution,
13 attorney, or volunteer in a facility or program providing services for
14 vulnerable adults.

15 (~~(13)~~) (19) "Perpetrator" means a person or entity whom the
16 department concludes, on a more probable than not basis following
17 investigation, has perpetrated abandonment, abuse, financial
18 exploitation, or neglect of a vulnerable adult.

19 (20) "Protective services" means any services provided by the
20 department to a vulnerable adult with the consent of the vulnerable
21 adult, or the legal representative of the vulnerable adult, who has
22 been abandoned, abused, financially exploited, neglected, or in a state
23 of self-neglect. These services may include, but are not limited to
24 case management, social casework, home care, placement, arranging for
25 medical evaluations, psychological evaluations, day care, or referral
26 for legal assistance.

27 (~~(14)~~) (21) "Self-neglect" means the failure of a vulnerable
28 adult, not living in a facility, to provide for himself or herself the
29 goods and services necessary for the vulnerable adult's physical or
30 mental health, and the absence of which impairs or threatens the
31 vulnerable adult's well-being. This definition may include a
32 vulnerable adult who is receiving services through home health,
33 hospice, or a home care agency, or an individual provider when the
34 neglect is not a result of inaction by that agency or individual
35 provider.

36 (~~(15)~~) (22) "Vulnerable adult" includes a person:
37 (a) Sixty years of age or older at the time of the alleged

1 mistreatment who has the functional, mental, or physical inability to
2 care for himself or herself; or

3 (b) (~~Found~~) Eighteen years of age or older at the time of the
4 alleged mistreatment who:

5 (i) Is adjudicated as incapacitated under chapter 11.88 RCW; (~~or~~
6 ~~e) Who~~) (ii) Has a developmental disability as defined under RCW
7 71A.10.020; (~~or~~

8 ~~d))~~ (iii) Is admitted to any facility; (~~or~~
9 ~~e))~~ (iv) Is receiving services from home health, hospice, or home
10 care agencies licensed or required to be licensed under chapter 70.127
11 RCW; (~~or~~

12 ~~f))~~ (v) Is receiving services from an individual provider; or
13 (vi) Is receiving services from any individual who, for
14 compensation, serves as a personal aide to a person who self-directs
15 his or her own care in his or her home under RCW 74.39.007.

16 (23) "Willful" means an intentional, nonaccidental act or omission.
17 A requirement that an act or omission be committed willfully may be
18 satisfied if a person acts knowingly with respect to the material
19 outcome of the act or omission.

20 **Sec. 5.** RCW 74.34.035 and 2003 c 230 s 2 are each amended to read
21 as follows:

22 (1) When there is reasonable cause to believe that abandonment,
23 abuse, financial exploitation, or neglect of a vulnerable adult has
24 occurred, mandated reporters shall immediately report to the
25 department.

26 (2) When there is reason to suspect that sexual assault, theft,
27 criminal mistreatment, or fraud has occurred, mandated reporters shall
28 immediately report to the appropriate law enforcement agency and to the
29 department. The office of the attorney general shall assist the
30 department in developing training materials for the mandatory reporting
31 of the crimes listed in this subsection which shall be posted on the
32 department's web site.

33 (3) When there is reason to suspect that physical assault has
34 occurred or there is reasonable cause to believe that an act has caused
35 fear of imminent harm:

36 (a) Mandated reporters shall immediately report to the department;
37 and

1 (b) Mandated reporters shall immediately report to the appropriate
2 law enforcement agency, except as provided in subsection (4) of this
3 section.

4 (4) A mandated reporter is not required to report to a law
5 enforcement agency, unless requested by the injured vulnerable adult or
6 his or her legal representative or family member, an incident of
7 physical assault between vulnerable adults that causes minor bodily
8 injury and does not require more than basic first aid, unless:

9 (a) The injury appears on the back, face, head, neck, chest,
10 breasts, groin, inner thigh, buttock, genital, or anal area;

11 (b) There is a fracture;

12 (c) There is a pattern of physical assault between the same
13 vulnerable adults or involving the same vulnerable adults; or

14 (d) There is an attempt to choke a vulnerable adult.

15 (5) Permissive reporters may report to the department or a law
16 enforcement agency when there is reasonable cause to believe that a
17 vulnerable adult is being or has been abandoned, abused, financially
18 exploited, or neglected.

19 (6) No facility, as defined by this chapter, agency licensed or
20 required to be licensed under chapter 70.127 RCW, or facility or agency
21 under contract with the department to provide care for vulnerable
22 adults may develop policies or procedures that interfere with the
23 reporting requirements of this chapter.

24 (7) Each report, oral or written, must contain as much as possible
25 of the following information:

26 (a) The name and address of the person making the report;

27 (b) The name and address of the vulnerable adult and the name of
28 the facility or agency providing care for the vulnerable adult;

29 (c) The name and address of the legal guardian or alternate
30 decision maker;

31 (d) The nature and extent of the abandonment, abuse, financial
32 exploitation, neglect, or self-neglect;

33 (e) Any history of previous abandonment, abuse, financial
34 exploitation, neglect, or self-neglect;

35 (f) The identity of the alleged perpetrator, if known; and

36 (g) Other information that may be helpful in establishing the
37 extent of abandonment, abuse, financial exploitation, neglect, or the
38 cause of death of the deceased vulnerable adult.

1 (8) Unless (~~there is a judicial proceeding~~) authorized by a court
2 or administrative order, or the person consents, the identity of the
3 person making the report under this section is confidential.

4 **Sec. 6.** RCW 74.34.050 and 1999 c 176 s 6 are each amended to read
5 as follows:

6 (1) A person participating in good faith in making a report, which
7 includes the provision of information or documents in any resulting
8 investigation by the department, a law enforcement agency, or the
9 prosecuting attorney's office, under this chapter or testifying about
10 alleged abuse, neglect, abandonment, financial exploitation, or self-
11 neglect of a vulnerable adult in a judicial or administrative
12 proceeding under this chapter is immune from liability or professional
13 licensure action resulting from the report or testimony. The making of
14 permissive reports as allowed in this chapter does not create any duty
15 to report and no criminal, civil, or administrative liability or
16 professional licensure action shall attach for any failure to make a
17 permissive report as allowed under this chapter.

18 (2) Conduct conforming with the reporting and testifying provisions
19 of this chapter shall not be deemed a violation of any confidential
20 communication privilege or a violation or waiver of the protections
21 found in RCW 43.70.510 or 70.41.200. Nothing in this chapter shall be
22 construed as superseding or abridging remedies provided in chapter 4.92
23 RCW.

24 **Sec. 7.** RCW 74.34.063 and 2005 c 274 s 354 are each amended to
25 read as follows:

26 (1) The department shall initiate a response to a report, no later
27 than twenty-four hours after knowledge of the report, of suspected
28 abandonment, abuse, financial exploitation, neglect, or self-neglect of
29 a vulnerable adult.

30 (2) When the initial report or investigation by the department
31 indicates that the alleged abandonment, abuse, financial exploitation,
32 or neglect may be criminal, the department shall make an immediate
33 report to the appropriate law enforcement agency. The department and
34 local law enforcement (~~will coordinate in investigating reports made~~
35 ~~under this chapter. The department may provide protective services and~~
36 ~~other remedies as specified in this chapter~~) agencies may enter into

1 local agreements in which the law enforcement agency shall specify the
2 criteria for those referrals constituting potential criminal
3 abandonment, abuse, financial exploitation, and neglect which
4 subsequently shall be forwarded by the department to the law
5 enforcement agency.

6 (3) The department and law enforcement shall coordinate in
7 investigation reports made under this chapter. The department may
8 provide protective services and other remedies as specified in this
9 chapter.

10 (4) The law enforcement agency (~~(or the department)~~) shall report
11 the incident in writing to the proper county prosecutor or city
12 attorney for appropriate action whenever the investigation reveals that
13 a crime may have been committed.

14 (~~(+4)~~) (5) The department (~~and~~), law enforcement, and the
15 prosecuting attorney's office may share information contained in
16 reports and findings of abandonment, abuse, financial exploitation, and
17 neglect of vulnerable adults, consistent with RCW 74.04.060, chapter
18 42.56 RCW, and other applicable confidentiality laws.

19 (~~(+5)~~) (6) The department shall notify the proper (~~(licensing)~~)
20 authority or agency concerning any report received under this chapter
21 that alleges that a person who is professionally licensed, certified,
22 or registered under Title 18 RCW has abandoned, abused, financially
23 exploited, or neglected a vulnerable adult.

24 **Sec. 8.** RCW 74.34.067 and 2007 c 312 s 2 are each amended to read
25 as follows:

26 (1) Where appropriate, an investigation by the department may
27 include a private interview with the vulnerable adult regarding the
28 alleged abandonment, abuse, financial exploitation, neglect, or self-
29 neglect.

30 (2) In conducting the investigation, the department shall interview
31 the complainant, unless anonymous, and shall use its best efforts to
32 interview the vulnerable adult or adults harmed, and, consistent with
33 the protection of the vulnerable adult shall interview facility staff,
34 any available independent sources of relevant information, including if
35 appropriate the family members of the vulnerable adult.

36 (3) The department may conduct ongoing case planning and
37 consultation with: (a) Those persons or agencies required to report

1 under this chapter or submit a report under this chapter; (b)
2 consultants designated by the department; and (c) designated
3 representatives of Washington Indian tribes if client information
4 exchanged is pertinent to cases under investigation or the provision of
5 protective services. Information considered privileged by statute and
6 not directly related to reports required by this chapter must not be
7 divulged without a valid written waiver of the privilege.

8 (4) The department shall prepare and keep on file a report of each
9 investigation conducted by the department for a period of time in
10 accordance with policies established by the department.

11 (5) If the department has reason to believe that the vulnerable
12 adult has suffered from abuse, neglect, self-neglect, abandonment, or
13 financial exploitation, and lacks the ability or capacity to consent,
14 and needs the protection of a guardian, the department may bring a
15 guardianship action under chapter 11.88 RCW.

16 (6) When the investigation is completed and the department
17 determines that an incident of abandonment, abuse, financial
18 exploitation, neglect, or self-neglect has occurred, the department
19 shall inform the vulnerable adult of their right to refuse protective
20 services, and ensure that, if necessary, appropriate protective
21 services are provided to the vulnerable adult, with the consent of the
22 vulnerable adult. The vulnerable adult has the right to withdraw or
23 refuse protective services.

24 (7) The department may photograph a vulnerable adult or their
25 environment for the purpose of providing documentary evidence of the
26 physical condition of the vulnerable adult or his or her environment.
27 When photographing the vulnerable adult, the department shall obtain
28 permission from the vulnerable adult or his or her legal representative
29 unless immediate photographing is necessary to preserve evidence.
30 However, if the legal representative is alleged to have abused,
31 neglected, abandoned, or exploited the vulnerable adult, consent from
32 the legal representative is not necessary. No such consent is
33 necessary when photographing the physical environment.

34 ~~((8) When the investigation is complete and the department~~
35 ~~determines that the incident of abandonment, abuse, financial~~
36 ~~exploitation, or neglect has occurred, the department shall inform the~~
37 ~~facility in which the incident occurred, consistent with~~

1 confidentiality requirements concerning the vulnerable adult,
2 witnesses, and complainants.))

3 **Sec. 9.** RCW 74.34.080 and 1999 c 176 s 11 are each amended to read
4 as follows:

5 (1) Willful interference with an investigation under this chapter
6 is illegal, and the department is authorized to obtain injunctive
7 relief from superior court ordering anyone willfully interfering with
8 an investigation to refrain from doing so.

9 (2) If access is denied to an employee of the department seeking to
10 investigate an allegation of abandonment, abuse, financial
11 exploitation, or neglect of a vulnerable adult by an individual, the
12 department may seek an injunction to prevent interference with the
13 investigation. The court shall issue the injunction if the department
14 shows that:

15 ~~((1))~~ (a) There is reasonable cause to believe that the person is
16 a vulnerable adult and is or has been abandoned, abused, financially
17 exploited, or neglected; and

18 ~~((2))~~ (b) The employee of the department seeking to investigate
19 the report has been denied access.

20 **Sec. 10.** RCW 74.34.095 and 2000 c 87 s 4 are each amended to read
21 as follows:

22 (1) The following information is confidential and not subject to
23 disclosure, except as provided in this section:

24 (a) A report of abandonment, abuse, financial exploitation, or
25 neglect made under this chapter;

26 (b) The identity of the person making the report; and

27 (c) All files, reports, records, communications, and working papers
28 used or developed ~~((in))~~ during the investigation or in the provision
29 of protective services.

30 (2) Information considered confidential may be disclosed only to
31 the extent specified in this section or for a purpose consistent with
32 this chapter or as authorized by chapter 74.04, 18.20, 18.51, 70.128,
33 or 74.39A RCW, Titles XVIII or XIX of the federal social security act,
34 or ~~((as authorized by))~~ the long-term care ombudsman programs under
35 ~~((federal law or state law,))~~ chapter 43.190 RCW, or other applicable
36 federal law. Information about department investigations related to

1 the certification of entities providing residential services and
2 supports under RCW 71A.12.040 may be disclosed to the same extent that
3 information may be disclosed under RCW 74.39A.060(6).

4 (3) Upon request, unless the department has a reason to believe
5 disclosing such information could compromise the safety or well-being
6 of a vulnerable adult or compromise the investigation by the department
7 or law enforcement, the department shall disclose the fact that a
8 report was received by the department and disclose whether or not an
9 investigator has been assigned and whether the investigation is
10 completed or ongoing. The department may also disclose whether
11 protective services were offered and whether or not the vulnerable
12 adult accepted or refused protective services.

13 (4) The department may provide a written report of the outcome of
14 a completed investigation under this chapter to a public or private
15 agency that has or is serving the vulnerable adult, or that employed or
16 employs the perpetrator, subject to the following conditions:

17 (a) The name of the vulnerable adult may be disclosed to a public
18 or private agency, program, or provider serving the vulnerable adult;

19 (b) The name of the individual investigated for abuse, abandonment,
20 neglect, or financial exploitation may be disclosed;

21 (c) The department shall not disclose the identity of the person
22 making the report or of a witness without the individual's written
23 permission;

24 (d) The report must include a determination by the department as to
25 whether or not an incident of abuse, neglect, self-neglect,
26 abandonment, or financial exploitation has occurred;

27 (e) The department must inform the recipient whether the finding is
28 pending, subject to the perpetrator's right to challenge the finding in
29 an administrative appeal, or whether the finding is final after
30 completion of the administrative appeal process.

31 (5) When the department has determined that an incident of abuse,
32 abandonment, neglect, or financial exploitation has occurred, the
33 department shall inform:

34 (a) The facility in which the incident occurred or in which the
35 vulnerable adult resides or the provider of adult day care or adult day
36 health services in which the vulnerable adult received or receives
37 services;

1 (b) The appropriate state or local government authority responsible
2 for licensing, certification, or registration of the agency, program,
3 or provider serving the vulnerable adult; and

4 (c) The proper licensing or certifying authority of any person
5 professionally licensed, certified, or registered under Title 18 RCW
6 found to have abandoned, abused, neglected, or financially exploited
7 the vulnerable adult.

8 (6) When the department has completed the investigation and
9 determined that an incident of abuse, abandonment, neglect, or
10 financial exploitation has occurred, the department shall notify the
11 alleged perpetrator by sending a notice to the alleged perpetrator's
12 last known address. The notice shall advise the alleged perpetrator of
13 his or her right to appeal the finding and how to contact the
14 department to verify the name of the vulnerable adult.

15 (7) The department may share information contained in reports and
16 investigations of abuse, abandonment, neglect, self-neglect, or
17 financial exploitation of vulnerable adults with the certified
18 professional guardian board and the office of public guardianship, as
19 described in chapter 2.72 RCW and General Rule GR 23, when consistent
20 with the actions of the office of public guardianship or certified
21 professional guardian board in recruiting, administering, monitoring,
22 or regulating certified professional guardians providing services to
23 certain vulnerable adults found incapacitated under chapter 11.88 RCW.
24 Except to the extent authorized by this chapter, disclosure of the
25 information shared by the department with the office of public
26 guardianship or certified professional guardian board is prohibited.

27 (8) A court or presiding officer in an administrative proceeding
28 may order disclosure of confidential information only if the court((7))
29 or presiding officer ((in an administrative proceeding,7)) determines
30 that disclosure is essential to the administration of justice and will
31 not endanger the life or safety of the vulnerable adult or the
32 individual who made the report. The court or presiding officer in an
33 administrative hearing may place restrictions on such disclosure as the
34 court or presiding officer deems proper.

35 (9) The department shall adopt rules necessary to implement this
36 section.

1 NEW SECTION. **Sec. 11.** (1) A financial institution, as defined in
2 RCW 30.22.040 and 30.22.041, must ensure that existing employees
3 complete training concerning the financial exploitation of vulnerable
4 adults within one year of the effective date of this section, and must
5 thereafter provide the training to new employees as part of new
6 employee orientation. The training must include recognition of
7 indicators of financial exploitation, how employees may report
8 suspected financial exploitation to the department and to law
9 enforcement as permissive reporters, and what steps employees may take
10 to prevent suspected financial exploitation, consistent with the
11 employing institution's agreement with customers, or as otherwise
12 authorized by law. The attorney general's office and the department
13 will develop a standardized training that financial institutions may
14 offer, or the financial institution may develop its own training.

15 (2) Financial institutions may provide access to or copies of
16 records which are relevant to suspected financial exploitation or
17 attempted financial exploitation of a vulnerable adult to the
18 department, law enforcement, or the prosecuting attorney's office,
19 consistent with a referral to the department law enforcement or as
20 requested by the department, law enforcement, or prosecuting attorney's
21 office as part of an investigation. The records may include those
22 relating to the most recent transaction or transactions which may
23 comprise financial exploitation, as well as historical records.

24 (3) No criminal, civil, or administrative liability shall attach to
25 any financial institution or employee for conduct conforming with the
26 reporting or prevention of financial exploitation or the provision of
27 access to or copies of records to the department or law enforcement as
28 provided in this chapter, the provisions of the financial institution's
29 customer agreements, or as otherwise provided by law.

30 NEW SECTION. **Sec. 12.** (1) Subject to available resources, the
31 department may establish and maintain a searchable electronic database
32 of findings of abuse, neglect, financial exploitation, and abandonment
33 made by the department under this chapter, which shall be available to
34 the public.

35 (2) The database shall contain a summary of the finding of abuse,
36 neglect, financial exploitation, or abandonment and as much of the
37 following information as known to the department about each

1 perpetrator, such as: The name, gender, date of birth, home address,
2 business address and telephone number, and any other identifying
3 information.

4 (3) The database shall contain the disclaimer stating that the
5 department does not guarantee the identity of a perpetrator on the
6 database. The department is immune from liability for placing an
7 individual's name on the database in good faith.

8 (4) After a perpetrator has been provided the opportunity to
9 contest the finding in an administrative hearing and the finding is
10 made final through the administrative process, the perpetrator's name
11 and publicly disclosable identifying information shall be posted on the
12 database. If the administrative law judge upholds a finding, the judge
13 may order the perpetrator to provide identifying information to the
14 department, including his or her date of birth and social security
15 number. Nothing in this section shall limit the department's authority
16 to share initial findings as authorized in RCW 74.34.067 and
17 74.34.095(2), or make referrals to law enforcement and licensing or
18 certifying agencies as authorized in RCW 74.34.063.

19 (5) The database shall not contain the names or identifying
20 information of any vulnerable adult victim or any other information
21 which is confidential under RCW 74.34.095.

22 (6) A nursing home, boarding home, adult family home, employer
23 providing in-home services under chapter 70.127 RCW or services
24 authorized under RCW 71A.12.040(10) and 74.09.520, person who seeks to
25 employ an in-home care provider for themselves or another person, or
26 employer of persons providing adult day care or adult day health
27 services, who reasonably relies on information obtained from the
28 database shall be immune from liability for an employment decision
29 based exclusively upon information obtained directly from the database.

30 (7) The department shall report to the legislature, the governor,
31 and the long-term care ombudsman on the status of the development and
32 implementation of a perpetrator database by January 2010.

33 NEW SECTION. **Sec. 13.** The department shall substantiate an
34 allegation if it finds, on a more probable than not basis, that
35 abandonment, abuse, financial exploitation, neglect, or self-neglect as
36 defined in this chapter has occurred. The department is not required
37 to determine the subjective intent of a perpetrator of abandonment,

1 abuse, financial exploitation, or neglect. Abandonment, abuse,
2 financial exploitation, or neglect are established if a reasonable
3 person in the same circumstances would know or should have known that
4 the act or omission or acts or omissions could reasonably be expected
5 to result in abandonment, abuse, financial exploitation, or neglect.

6 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 74.34.021 (Vulnerable adult--Definition) and 1999 c 336 s
9 6; and

10 (2) RCW 74.34.068 (Investigation results--Report--Rules) and 2001
11 c 233 s 2.

12 NEW SECTION. **Sec. 15.** Sections 11 through 13 of this act are each
13 added to chapter 74.34 RCW.

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