
ENGROSSED SUBSTITUTE HOUSE BILL 1471

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Cody, Zellinsky, Conway, Ogden, Linville, Tokuda, Kessler, Scott, Blalock, Gombosky, Costa and Dickerson; by request of Attorney General)

Read first time 03/05/97.

1 AN ACT Relating to vulnerable adults; amending RCW 9A.42.010,
2 9A.42.050, 9A.42.020, 9A.42.030, 9A.44.010, 9A.44.050, 9A.44.100,
3 18.130.200, 43.43.842, 70.124.020, 70.124.030, 70.124.040, 70.124.070,
4 and 74.34.020; reenacting and amending RCW 18.130.040; adding new
5 sections to chapter 9A.42 RCW; adding a new section to chapter 70.124
6 RCW; adding new sections to chapter 74.34 RCW; and prescribing
7 penalties.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.42 RCW
10 to read as follows:

11 The legislature finds that there is a significant need to protect
12 children and dependent persons, including frail elder and vulnerable
13 adults, from abuse and neglect by their parents, by persons entrusted
14 with their physical custody, or by persons employed to provide them
15 with the basic necessities of life. The legislature further finds that
16 such abuse and neglect often takes the forms of either withholding from
17 them the basic necessities of life, including food, water, shelter,
18 clothing, and health care, or abandoning them, or both. Therefore, it
19 is the intent of the legislature that criminal penalties be imposed on

1 those guilty of such abuse or neglect. It is the intent of the
2 legislature that a person who, in good faith, is furnished Christian
3 Science treatment by a duly accredited Christian Science practitioner
4 in lieu of medical care is not considered deprived of medically
5 necessary health care or abandoned. Prosecutions under this chapter
6 shall be consistent with the rules of evidence, including hearsay,
7 under law.

8 **Sec. 2.** RCW 9A.42.010 and 1996 c 302 s 1 are each amended to read
9 as follows:

10 As used in this chapter:

11 (1) "Basic necessities of life" means food, water, shelter,
12 clothing, and medically necessary health care, including but not
13 limited to health-related treatment or activities, hygiene, oxygen, and
14 medication.

15 (2)(a) "Bodily injury" means physical pain or injury, illness, or
16 an impairment of physical condition;

17 (b) "Substantial bodily harm" means bodily injury which involves a
18 temporary but substantial disfigurement, or which causes a temporary
19 but substantial loss or impairment of the function of any bodily part
20 or organ, or which causes a fracture of any bodily part;

21 (c) "Great bodily harm" means bodily injury which creates a high
22 probability of death, or which causes serious permanent disfigurement,
23 or which causes a permanent or protracted loss or impairment of the
24 function of any bodily part or organ.

25 (3) "Child" means a person under eighteen years of age.

26 (4) "Dependent person" means a person who, because of physical or
27 mental disability, or because of extreme advanced age, is dependent
28 upon another person to provide the basic necessities of life. A
29 resident of a nursing home, as defined in RCW 18.51.010, a resident of
30 an adult family home, as defined in RCW 70.128.010, and a frail elder
31 or vulnerable adult, as defined in RCW 74.34.020(8), is presumed to be
32 a dependent person for purposes of this chapter.

33 (5) "Employed" means hired by a dependent person, another person
34 acting on behalf of a dependent person, or by an organization or
35 governmental entity, to provide to a dependent person any of the basic
36 necessities of life. A person may be "employed" regardless of whether
37 the person is paid for the services or, if paid, regardless of who pays
38 for the person's services.

1 (6) "Parent" has its ordinary meaning and also includes a guardian
2 and the authorized agent of a parent or guardian.

3 (7) "Abandons" means leaving a child or other dependent person
4 without the means or ability to obtain one or more of the basic
5 necessities of life.

6 **Sec. 3.** RCW 9A.42.050 and 1986 c 250 s 5 are each amended to read
7 as follows:

8 In any prosecution for criminal mistreatment, it shall be a defense
9 that the withholding of the basic necessities of life is due to
10 financial inability only if the person charged has made a reasonable
11 effort to obtain adequate assistance. This defense is available to
12 persons in the business of providing care only when the agreed-upon
13 payment for the care has not been received.

14 **Sec. 4.** RCW 9A.42.020 and 1986 c 250 s 2 are each amended to read
15 as follows:

16 (1) A parent of a child ((~~or~~)), the person entrusted with the
17 physical custody of a child or dependent person, or a person employed
18 to provide to the child or dependent person the basic necessities of
19 life is guilty of criminal mistreatment in the first degree if he or
20 she recklessly, as defined in RCW 9A.08.010, causes great bodily harm
21 to a child or dependent person by withholding any of the basic
22 necessities of life.

23 (2) Criminal mistreatment in the first degree is a class B felony.

24 **Sec. 5.** RCW 9A.42.030 and 1986 c 250 s 3 are each amended to read
25 as follows:

26 (1) A parent of a child ((~~or~~)), the person entrusted with the
27 physical custody of a child or dependent person, or a person employed
28 to provide to the child or dependent person the basic necessities of
29 life is guilty of criminal mistreatment in the second degree if he or
30 she recklessly, as defined in RCW 9A.08.010, either (a) creates an
31 imminent and substantial risk of death or great bodily harm, or (b)
32 causes substantial bodily harm by withholding any of the basic
33 necessities of life.

34 (2) Criminal mistreatment in the second degree is a class C felony.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 9A.42 RCW
2 to read as follows:

3 RCW 9A.42.020 and 9A.42.030 do not apply when a terminally ill
4 person is receiving palliative care by a licensed home health agency,
5 hospice agency, nursing home, or hospital providing hospice care under
6 the medical direction of a physician.

7 **Sec. 7.** RCW 9A.44.010 and 1994 c 271 s 302 are each amended to
8 read as follows:

9 As used in this chapter:

10 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
11 upon any penetration, however slight, and

12 (b) Also means any penetration of the vagina or anus however
13 slight, by an object, when committed on one person by another, whether
14 such persons are of the same or opposite sex, except when such
15 penetration is accomplished for medically recognized treatment or
16 diagnostic purposes, and

17 (c) Also means any act of sexual contact between persons involving
18 the sex organs of one person and the mouth or anus of another whether
19 such persons are of the same or opposite sex.

20 (2) "Sexual contact" means any touching of the sexual or other
21 intimate parts of a person done for the purpose of gratifying sexual
22 desire of either party or a third party.

23 (3) "Married" means one who is legally married to another, but does
24 not include a person who is living separate and apart from his or her
25 spouse and who has filed in an appropriate court for legal separation
26 or for dissolution of his or her marriage.

27 (4) "Mental incapacity" is that condition existing at the time of
28 the offense which prevents a person from understanding the nature or
29 consequences of the act of sexual intercourse whether that condition is
30 produced by illness, defect, the influence of a substance or from some
31 other cause.

32 (5) "Physically helpless" means a person who is unconscious or for
33 any other reason is physically unable to communicate unwillingness to
34 an act.

35 (6) "Forcible compulsion" means physical force which overcomes
36 resistance, or a threat, express or implied, that places a person in
37 fear of death or physical injury to herself or himself or another
38 person, or in fear that she or he or another person will be kidnapped.

1 (7) "Consent" means that at the time of the act of sexual
2 intercourse or sexual contact there are actual words or conduct
3 indicating freely given agreement to have sexual intercourse or sexual
4 contact.

5 (8) "Significant relationship" means a situation in which the
6 perpetrator is:

7 (a) A person who undertakes the responsibility, professionally or
8 voluntarily, to provide education, health, welfare, or organized
9 recreational activities principally for minors; ((or))

10 (b) A person who in the course of his or her employment supervises
11 minors; or

12 (c) A person who provides welfare, health or residential
13 assistance, personal care, or organized recreational activities to
14 frail elders or vulnerable adults, including a provider, employee,
15 temporary employee, volunteer, or independent contractor who supplies
16 services to long-term care facilities licensed or required to be
17 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
18 health, hospice, or home care agencies licensed or required to be
19 licensed under chapter 70.127 RCW.

20 (9) "Abuse of a supervisory position" means a direct or indirect
21 threat or promise to use authority to the detriment or benefit of a
22 minor.

23 (10) "Developmentally disabled," for purposes of RCW
24 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
25 developmental disability as defined in RCW 71A.10.020.

26 (11) "Person with supervisory authority," for purposes of RCW
27 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
28 proprietor or employee of any public or private care or treatment
29 facility who directly supervises developmentally disabled, mentally
30 disordered, or chemically dependent persons at the facility.

31 (12) "Mentally disordered person" for the purposes of RCW
32 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
33 disorder" as defined in RCW 71.05.020(2).

34 (13) "Chemically dependent person" for purposes of RCW
35 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
36 dependent" as defined in RCW 70.96A.020(4).

37 (14) "Health care provider" for purposes of RCW 9A.44.050 and
38 9A.44.100 means a person who is, holds himself or herself out to be, or
39 provides services as if he or she were: (a) A member of a health care

1 profession under chapter 18.130 RCW; or (b) registered or certified
2 under chapter 18.19 RCW, regardless of whether the health care provider
3 is licensed, certified, or registered by the state.

4 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
5 the active delivery of professional services by a health care provider
6 which the health care provider holds himself or herself out to be
7 qualified to provide.

8 (16) "Frail elder or vulnerable adult" means a person sixty years
9 of age or older who has the functional, mental, or physical inability
10 to care for himself or herself. "Frail elder or vulnerable adult" also
11 includes a person found incapacitated under chapter 11.88 RCW, a person
12 over eighteen years of age who has a developmental disability under
13 chapter 71A.10 RCW, a person admitted to a long-term care facility that
14 is licensed or required to be licensed under chapter 18.20, 18.51,
15 72.36, or 70.128 RCW, and a person receiving services from a home
16 health, hospice, or home care agency licensed or required to be
17 licensed under chapter 70.127 RCW.

18 **Sec. 8.** RCW 9A.44.050 and 1993 c 477 s 2 are each amended to read
19 as follows:

20 (1) A person is guilty of rape in the second degree when, under
21 circumstances not constituting rape in the first degree, the person
22 engages in sexual intercourse with another person:

23 (a) By forcible compulsion;

24 (b) When the victim is incapable of consent by reason of being
25 physically helpless or mentally incapacitated;

26 (c) When the victim is developmentally disabled and the perpetrator
27 is a person who is not married to the victim and who has supervisory
28 authority over the victim;

29 (d) When the perpetrator is a health care provider, the victim is
30 a client or patient, and the sexual intercourse occurs during a
31 treatment session, consultation, interview, or examination. It is an
32 affirmative defense that the defendant must prove by a preponderance of
33 the evidence that the client or patient consented to the sexual
34 intercourse with the knowledge that the sexual intercourse was not for
35 the purpose of treatment; ~~((or))~~

36 (e) When the victim is a resident of a facility for mentally
37 disordered or chemically dependent persons and the perpetrator is a

1 person who is not married to the victim and has supervisory authority
2 over the victim; or

3 (f) When the victim is a frail elder or vulnerable adult and the
4 perpetrator is a person who is not married to the victim and who has a
5 significant relationship with the victim.

6 (2) Rape in the second degree is a class A felony.

7 **Sec. 9.** RCW 9A.44.100 and 1993 c 477 s 3 are each amended to read
8 as follows:

9 (1) A person is guilty of indecent liberties when he knowingly
10 causes another person who is not his spouse to have sexual contact with
11 him or another:

12 (a) By forcible compulsion; ~~((or))~~

13 (b) When the other person is incapable of consent by reason of
14 being mentally defective, mentally incapacitated, or physically
15 helpless;

16 (c) When the victim is developmentally disabled and the perpetrator
17 is a person who is not married to the victim and who has supervisory
18 authority over the victim;

19 (d) When the perpetrator is a health care provider, the victim is
20 a client or patient, and the sexual contact occurs during a treatment
21 session, consultation, interview, or examination. It is an affirmative
22 defense that the defendant must prove by a preponderance of the
23 evidence that the client or patient consented to the sexual contact
24 with the knowledge that the sexual contact was not for the purpose of
25 treatment; ~~((or))~~

26 (e) When the victim is a resident of a facility for mentally
27 disordered or chemically dependent persons and the perpetrator is a
28 person who is not married to the victim and has supervisory authority
29 over the victim; or

30 (f) When the victim is a frail elder or vulnerable adult and the
31 perpetrator is a person who is not married to the victim and who has a
32 significant relationship with the victim.

33 (2) Indecent liberties is a class B felony.

34 **Sec. 10.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are
35 each reenacted and amended to read as follows:

36 (1) This chapter applies only to the secretary and the boards and
37 commissions having jurisdiction in relation to the professions licensed

1 under the chapters specified in this section. This chapter does not
2 apply to any business or profession not licensed under the chapters
3 specified in this section.

4 (2)(a) The secretary has authority under this chapter in relation
5 to the following professions:

6 (i) Dispensing opticians licensed under chapter 18.34 RCW;

7 (ii) Naturopaths licensed under chapter 18.36A RCW;

8 (iii) Midwives licensed under chapter 18.50 RCW;

9 (iv) Ocularists licensed under chapter 18.55 RCW;

10 (v) Massage operators and businesses licensed under chapter 18.108
11 RCW;

12 (vi) Dental hygienists licensed under chapter 18.29 RCW;

13 (vii) Acupuncturists licensed under chapter 18.06 RCW;

14 (viii) Radiologic technologists certified and X-ray technicians
15 registered under chapter 18.84 RCW;

16 (ix) Respiratory care practitioners certified under chapter 18.89
17 RCW;

18 (x) Persons registered or certified under chapter 18.19 RCW;

19 (xi) Persons registered as nursing pool operators under chapter
20 18.52C RCW;

21 (xii) Nursing assistants registered or certified under chapter
22 ((~~18.79~~) 18.88A RCW;

23 (xiii) Health care assistants certified under chapter 18.135 RCW;

24 (xiv) Dietitians and nutritionists certified under chapter 18.138
25 RCW;

26 (xv) Sex offender treatment providers certified under chapter
27 18.155 RCW;

28 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
29 18.71.205;

30 (xvii) Persons registered as adult family home providers and
31 resident managers under RCW 18.48.020; and

32 (xviii) Denturists licensed under chapter 18.30 RCW.

33 (b) The boards and commissions having authority under this chapter
34 are as follows:

35 (i) The podiatric medical board as established in chapter 18.22
36 RCW;

37 (ii) The chiropractic quality assurance commission as established
38 in chapter 18.25 RCW;

1 (iii) The dental quality assurance commission as established in
2 chapter 18.32 RCW;

3 (iv) The board of hearing and speech as established in chapter
4 18.35 RCW;

5 (v) The board of examiners for nursing home administrators as
6 established in chapter 18.52 RCW;

7 (vi) The optometry board as established in chapter 18.54 RCW
8 governing licenses issued under chapter 18.53 RCW;

9 (vii) The board of osteopathic medicine and surgery as established
10 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
11 18.57A RCW;

12 (viii) The board of pharmacy as established in chapter 18.64 RCW
13 governing licenses issued under chapters 18.64 and 18.64A RCW;

14 (ix) The medical quality assurance commission as established in
15 chapter 18.71 RCW governing licenses and registrations issued under
16 chapters 18.71 and 18.71A RCW;

17 (x) The board of physical therapy as established in chapter 18.74
18 RCW;

19 (xi) The board of occupational therapy practice as established in
20 chapter 18.59 RCW;

21 (xii) The nursing care quality assurance commission as established
22 in chapter 18.79 RCW governing licenses issued under that chapter;

23 (xiii) The examining board of psychology and its disciplinary
24 committee as established in chapter 18.83 RCW; and

25 (xiv) The veterinary board of governors as established in chapter
26 18.92 RCW.

27 (3) In addition to the authority to discipline license holders, the
28 disciplining authority has the authority to grant or deny licenses
29 based on the conditions and criteria established in this chapter and
30 the chapters specified in subsection (2) of this section. This chapter
31 also governs any investigation, hearing, or proceeding relating to
32 denial of licensure or issuance of a license conditioned on the
33 applicant's compliance with an order entered pursuant to RCW 18.130.160
34 by the disciplining authority.

35 (4) All disciplining authorities shall adopt procedures to ensure
36 substantially consistent application of this chapter, the Uniform
37 Disciplinary Act, among the disciplining authorities listed in
38 subsection (2) of this section.

1 **Sec. 11.** RCW 18.130.200 and 1986 c 259 s 12 are each amended to
2 read as follows:

3 A person who attempts to obtain ~~((or))~~, obtains, or attempts to
4 maintain a license by willful misrepresentation or fraudulent
5 representation is guilty of a gross misdemeanor.

6 **Sec. 12.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read
7 as follows:

8 (1)~~(a)~~ The secretary of social and health services and the
9 secretary of health shall adopt additional requirements for the
10 licensure or relicensure of agencies ~~((or))~~, facilities ~~((which))~~, and
11 licensed individuals who provide care and treatment to vulnerable
12 adults. These additional requirements shall ensure that any person
13 associated with a licensed agency or facility having direct contact
14 with a vulnerable adult shall not have been: ~~((a))~~ (i) Convicted of
15 a crime against persons as defined in RCW 43.43.830, except as provided
16 in this section; ~~((b))~~ (ii) convicted of crimes relating to financial
17 exploitation as defined in RCW 43.43.830, except as provided in this
18 section; ~~((c))~~ (iii) found in any disciplinary board final decision
19 to have abused a vulnerable adult under RCW 43.43.830; or ~~((d))~~ (iv)
20 the subject in a protective proceeding under chapter 74.34 RCW.

21 (b) A person associated with a licensed agency or facility who has
22 direct contact with a vulnerable adult shall make the disclosures
23 specified in RCW 43.43.834(2). The person shall make the disclosures
24 in writing, sign, and swear to the contents under penalty of perjury.
25 The person shall, in the disclosures, specify all crimes against
26 children or other persons, and all crimes relating to financial
27 exploitation as defined in RCW 43.43.830, committed by the person.

28 (2) The rules adopted under this section shall permit the licensee
29 to consider the criminal history of an applicant for employment in a
30 licensed facility when the applicant has one or more convictions for a
31 past offense and:

32 (a) The offense was simple assault, assault in the fourth degree,
33 or the same offense as it may be renamed, and three or more years have
34 passed between the most recent conviction and the date of application
35 for employment;

36 (b) The offense was prostitution, or the same offense as it may be
37 renamed, and three or more years have passed between the most recent
38 conviction and the date of application for employment;

1 (c) The offense was theft in the third degree, or the same offense
2 as it may be renamed, and three or more years have passed between the
3 most recent conviction and the date of application for employment;

4 (d) The offense was theft in the second degree, or the same offense
5 as it may be renamed, and five or more years have passed between the
6 most recent conviction and the date of application for employment;

7 (e) The offense was forgery, or the same offense as it may be
8 renamed, and five or more years have passed between the most recent
9 conviction and the date of application for employment.

10 The offenses set forth in (a) through (e) of this subsection do not
11 automatically disqualify an applicant from employment by a licensee.
12 Nothing in this section may be construed to require the employment of
13 any person against a licensee's judgment.

14 In consultation with law enforcement personnel, the secretary of
15 social and health services and the secretary of health shall
16 investigate the conviction record and the protection proceeding record
17 information under this chapter ((43.43 RCW)) of each agency or facility
18 and its staff under their respective jurisdictions seeking licensure or
19 relicensure. The individual responding to criminal background inquiry
20 requests by the individual's employer or potential employer shall
21 disclose the information about the individual's criminal history under
22 penalty of perjury. The secretaries shall use the information solely
23 for the purpose of determining eligibility for licensure or
24 relicensure. Criminal justice agencies shall provide the secretaries
25 such information as they may have and that the secretaries may require
26 for such purpose.

27 **Sec. 13.** RCW 70.124.020 and 1996 c 178 s 24 are each amended to
28 read as follows:

29 Unless the context requires otherwise, the definitions in this
30 section apply throughout this chapter.

31 (1) "Court" means the superior court of the state of Washington.

32 (2) "Law enforcement agency" means the police department, the
33 director of public safety, or the office of the sheriff.

34 (3) "Practitioner of the healing arts" or "practitioner" means a
35 person licensed by this state to practice podiatric medicine and
36 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,
37 dentistry, osteopathic medicine and surgery, or medicine and surgery.
38 The term "practitioner" shall include a nurses aide, a nursing home

1 administrator licensed under chapter 18.52 RCW, and a duly accredited
2 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home
3 patient who is being furnished Christian Science treatment by a duly
4 accredited Christian Science practitioner shall not be considered, for
5 that reason alone, a neglected patient for the purposes of this
6 chapter.

7 (4) "Department" means the state department of social and health
8 services.

9 (5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

10 (6) "Social worker" means anyone engaged in a professional capacity
11 during the regular course of employment in encouraging or promoting the
12 health, welfare, support, or education of nursing home patients, or
13 providing social services to nursing home patients, whether in an
14 individual capacity or as an employee or agent of any public or private
15 organization or institution.

16 (7) "Psychologist" means any person licensed to practice psychology
17 under chapter 18.83 RCW, whether acting in an individual capacity or as
18 an employee or agent of any public or private organization or
19 institution.

20 (8) "Pharmacist" means any registered pharmacist under chapter
21 18.64 RCW, whether acting in an individual capacity or as an employee
22 or agent of any public or private organization or institution.

23 (9) "Abuse or neglect" or "patient abuse or neglect" means the
24 nonaccidental physical injury or condition, sexual abuse, or negligent
25 treatment of a nursing home, adult family home, or state hospital
26 patient under circumstances which indicate that the patient's health,
27 welfare, ((and)) or safety is harmed thereby.

28 (10) "Negligent treatment" means an act or omission which evinces
29 a serious disregard of consequences of such magnitude as to constitute
30 a clear and present danger to the patient's health, welfare, ((and)) or
31 safety.

32 (11) "State hospital" means any hospital operated and maintained by
33 the state for the care of the mentally ill under chapter 72.23 RCW.

34 (12) "Adult family home" has the meaning set forth in RCW
35 70.128.010.

36 **Sec. 14.** RCW 70.124.030 and 1981 c 174 s 3 are each amended to
37 read as follows:

1 (1) When any practitioner, social worker, psychologist, pharmacist,
2 employee of a nursing home, employee of an adult family home, employee
3 of a state hospital, or employee of the department has reasonable cause
4 to believe that a nursing home, adult family home, or state hospital
5 patient has suffered abuse or neglect, the person shall report such
6 incident, or cause a report to be made, to either a law enforcement
7 agency or to the department as provided in RCW 70.124.040.

8 (2) Any other person who has reasonable cause to believe that a
9 nursing home, adult family home, or state hospital patient has suffered
10 abuse or neglect may report such incident to either a law enforcement
11 agency or to the department as provided in RCW 70.124.040.

12 (3) The department or any law enforcement agency receiving a report
13 of an incident of abuse or neglect involving a nursing home, adult
14 family home, or state hospital patient who has died or has had physical
15 injury or injuries inflicted other than by accidental means or who has
16 been subjected to sexual abuse shall report the incident to the proper
17 county prosecutor for appropriate action.

18 **Sec. 15.** RCW 70.124.040 and 1981 c 174 s 4 are each amended to
19 read as follows:

20 (1) Where a report is (~~deemed warranted~~) required under RCW
21 70.124.030, an immediate oral report shall be made by telephone or
22 otherwise to either a law enforcement agency or to the department and,
23 upon request, shall be followed by a report in writing. The reports
24 shall contain the following information, if known:

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

26 (b) The name and address of the nursing home, adult family home, or
27 state hospital patient;

28 (c) The name and address of the patient's relatives having
29 responsibility for the patient;

30 (d) The nature and extent of the injury or injuries;

31 (e) The nature and extent of the neglect;

32 (f) The nature and extent of the sexual abuse;

33 (g) Any evidence of previous injuries, including their nature and
34 extent; and

35 (h) Any other information which may be helpful in establishing the
36 cause of the patient's death, injury, or injuries, and the identity of
37 the perpetrator or perpetrators.

1 (2) Each law enforcement agency receiving such a report shall, in
2 addition to taking the action required by RCW 70.124.050, immediately
3 relay the report to the department, and to other law enforcement
4 agencies, including the medicaid fraud control unit of the office of
5 the attorney general, as appropriate. For any report it receives, the
6 department shall likewise take the required action and in addition
7 relay the report to the appropriate law enforcement agency or agencies.
8 The appropriate law enforcement agency or agencies shall receive
9 immediate notification when the department, upon receipt of such
10 report, has reasonable cause to believe that a criminal act has been
11 committed.

12 **Sec. 16.** RCW 70.124.070 and 1979 ex.s. c 228 s 7 are each amended
13 to read as follows:

14 A person who is required to make or to cause to be made a report
15 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to
16 make such report or fails to cause such report to be made is guilty of
17 a gross misdemeanor.

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.124
19 RCW to read as follows:

20 (1) An employee who is a whistleblower and who as a result of being
21 a whistleblower has been subjected to workplace reprisal or retaliatory
22 action, has the remedies provided under chapter 49.60 RCW. RCW
23 4.24.500 through 4.24.520, providing certain protection to persons who
24 communicate to government agencies, apply to complaints made under this
25 section. The identity of a whistleblower who complains, in good faith,
26 to the department about suspected abuse, negligent treatment, financial
27 exploitation, or abandonment, as defined in RCW 74.34.020, by any
28 person in a nursing home, state hospital, or adult family home, may
29 remain confidential if requested. The identity of the whistleblower
30 shall subsequently remain confidential unless the department determines
31 that the complaint was not made in good faith.

32 (2)(a) An attempt to expel a resident from a nursing home, state
33 hospital, or adult family home, or any type of discriminatory treatment
34 of a resident by whom, or upon whose behalf, a complaint has been
35 submitted to the department or any proceeding instituted under or
36 related to this chapter within one year of the filing of the complaint
37 or the institution of the action, raises a rebuttable presumption that

1 the action was in retaliation for the filing of the complaint, if the
2 department substantiates the complaint.

3 (b) The presumption in (a) of this subsection is rebutted by
4 credible evidence establishing the alleged retaliatory action was
5 initiated before the complaint, or by a functional assessment conducted
6 by the department that shows the resident's physical or mental health
7 needs cannot be met through reasonable accommodations by the facility.

8 (3) For the purposes of this section:

9 (a) "Whistleblower" means a resident or employee of a nursing home,
10 state hospital, or adult family home, or any person licensed under
11 Title 18 RCW, who in good faith reports alleged abuse or neglect to the
12 department or to a law enforcement agency; and

13 (b) "Workplace reprisal or retaliatory action" means, but is not
14 limited to, an unwarranted or unsubstantiated: Denial of adequate
15 staff to perform duties; frequent staff changes; frequent and
16 undesirable office changes; refusal to assign meaningful work; report
17 of misconduct under Title 18 RCW; letters of reprimand or
18 unsatisfactory performance evaluations; demotion; or denial of
19 employment. It also includes a supervisor or superior encouraging
20 coworkers to behave in a hostile manner toward the whistleblower. The
21 protections provided to whistleblowers under this chapter shall not
22 prevent a nursing home, state hospital, or adult family home from: (i)
23 Terminating, suspending, or disciplining a whistleblower for other
24 lawful purposes; or (ii) for facilities with fewer than six residents,
25 reducing the hours of employment or terminating employment as a result
26 of the demonstrated inability to meet payroll requirements. The
27 department shall determine if the facility cannot meet payroll in cases
28 in which a whistleblower has been terminated or had hours of employment
29 reduced because of the inability of a facility to meet payroll.

30 (4) This section does not prohibit a nursing home, state hospital,
31 or adult family home from exercising its authority to terminate,
32 suspend, or discipline an employee who engages in workplace reprisal or
33 retaliatory action against a whistleblower. The protections provided
34 to whistleblowers under this chapter shall not prevent a nursing home,
35 state hospital, or adult family home from terminating, suspending,
36 reducing the hours of employment, or disciplining a whistleblower for
37 other lawful purposes.

1 (5) The department shall adopt rules to implement procedures for
2 filing, investigation, and resolution of whistleblower complaints that
3 are integrated with complaint procedures under this chapter.

4 (6) The department shall adopt rules designed to discourage
5 whistleblower complaints made in bad faith or for retaliatory purposes.

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 74.34 RCW
7 to read as follows:

8 A person who is required to make or cause to be made a report under
9 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report
10 or fails to cause the report to be made is guilty of a gross
11 misdemeanor.

12 NEW SECTION. **Sec. 19.** A new section is added to chapter 74.34 RCW
13 to read as follows:

14 (1) An employee who is a whistleblower and who as a result of being
15 a whistleblower has been subjected to workplace reprisal or retaliatory
16 action, has the remedies provided under chapter 49.60 RCW. RCW
17 4.24.500 through 4.24.520, providing certain protection to persons who
18 communicate to government agencies, apply to complaints made under this
19 section. The identity of a whistleblower who complains, in good faith,
20 to the department about suspected abuse, neglect, exploitation, or
21 abandonment by any person in a boarding home licensed or required to be
22 licensed pursuant to chapter 18.20 RCW may remain confidential if
23 requested. The identity of the whistleblower shall subsequently remain
24 confidential unless the department determines that the complaint was
25 not made in good faith.

26 (2)(a) An attempt to expel a resident from a boarding home, or any
27 type of discriminatory treatment of a resident by whom, or upon whose
28 behalf, a complaint has been submitted to the department or any
29 proceeding instituted under or related to this chapter within one year
30 of the filing of the complaint or the institution of the action, raises
31 a rebuttable presumption that the action was in retaliation for the
32 filing of the complaint, if the department substantiates the complaint.

33 (b) The presumption in (a) of this subsection is rebutted by
34 credible evidence establishing the alleged retaliatory action was
35 initiated before the complaint, or by a functional assessment conducted
36 by the department that shows the resident's physical or mental health
37 needs cannot be met through reasonable accommodations by the facility.

1 (3) For the purposes of this section:

2 (a) "Whistleblower" means a resident or employee of a boarding
3 home, or any person licensed under Title 18 RCW, who in good faith
4 reports alleged abuse or neglect to the department or to a law
5 enforcement agency; and

6 (b) "Workplace reprisal or retaliatory action" means, but is not
7 limited to, an unwarranted or unsubstantiated: Denial of adequate
8 staff to perform duties; frequent staff changes; frequent and
9 undesirable office changes; refusal to assign meaningful work; report
10 of misconduct under Title 18 RCW; letters of reprimand or
11 unsatisfactory performance evaluations; demotion; or denial of
12 employment. It also includes a supervisor or superior encouraging
13 coworkers to behave in a hostile manner toward the whistleblower. The
14 protections provided to whistleblowers under this chapter shall not
15 prevent a boarding home from: (i) Terminating, suspending, reducing
16 the hours of employment, or disciplining a whistleblower for other
17 lawful purposes; or (ii) for facilities with fewer than six residents,
18 reducing the hours of employment or terminating employment as a result
19 of the demonstrated inability to meet payroll requirements. The
20 department shall determine if the facility cannot meet payroll in cases
21 in which a whistleblower has been terminated or had hours of employment
22 reduced because of the inability of a facility to meet payroll.

23 (4) This section does not prohibit a boarding home from exercising
24 its authority to terminate, suspend, or discipline any employee who
25 engages in workplace reprisal or retaliatory action against a
26 whistleblower.

27 (5) The department shall adopt rules to implement procedures for
28 filing, investigation, and resolution of whistleblower complaints that
29 are integrated with complaint procedures under this chapter. The
30 protections provided to whistleblowers under this chapter shall not
31 prevent a boarding home from terminating, suspending, or disciplining
32 a whistleblower for other lawful purposes.

33 (6) The department shall adopt rules designed to discourage
34 whistleblower complaints made in bad faith or for retaliatory purposes.

35 **Sec. 20.** RCW 74.34.020 and 1995 1st sp.s. c 18 s 84 are each
36 amended to read as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter.

1 (1) "Abandonment" means action or inaction by a person or entity
2 with a duty of care for a frail elder or a vulnerable adult that leaves
3 the vulnerable person without the means or ability to obtain necessary
4 food, clothing, shelter, or health care.

5 (2) "Abuse" means a nonaccidental act of physical or mental
6 mistreatment or injury, or sexual mistreatment, which harms a person
7 through action or inaction by another individual.

8 (3) "Consent" means express written consent granted after the
9 person has been fully informed of the nature of the services to be
10 offered and that the receipt of services is voluntary.

11 (4) "Department" means the department of social and health
12 services.

13 (5) "Exploitation" means the illegal or improper use of a frail
14 elder or vulnerable adult or that person's income or resources,
15 including trust funds, for another person's profit or advantage.

16 (6) "Neglect" means a pattern of conduct or inaction by a person or
17 entity with a duty of care for a frail elder or vulnerable adult that
18 results in the deprivation of care necessary to maintain the vulnerable
19 person's physical or mental health.

20 (7) "Secretary" means the secretary of social and health services.

21 (8) "Frail elder or vulnerable adult" means a person sixty years of
22 age or older who has the functional, mental, or physical inability to
23 care for himself or herself. "Frail elder or vulnerable adult" shall
24 include persons found incapacitated under chapter 11.88 RCW, or a
25 person who has a developmental disability under chapter 71A.10 RCW, and
26 persons admitted to any long-term care facility that is licensed or
27 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
28 RCW, or persons receiving services from home health, hospice, or home
29 care agencies licensed or required to be licensed under chapter 70.127
30 RCW.

31 (9) No frail elder or vulnerable person who relies upon and is
32 being provided spiritual treatment in lieu of medical treatment in
33 accordance with the tenets and practices of a well-recognized religious
34 denomination shall for that reason alone be considered abandoned,
35 abused, or neglected.

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