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HOUSE BILL 1471

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State of Washington

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By Representatives Dyer, Cody, Zellinsky, Conway, Ogden, Linville, Tokuda, Kessler, Scott, Blalock, Gombosky, Costa and Dickerson; by request of Attorney General

Read first time 01/28/97. Referred to Committee on Health Care.

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, and  
4 70.124.070; reenacting and amending RCW 18.130.040; adding a new  
5 section 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 **Sec. 1.** RCW 9A.42.010 and 1996 c 302 s 1 are each amended to read  
10 as follows:

11 As used in this chapter:

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

1 but substantial loss or impairment of the function of any bodily part  
2 or organ, or which causes a fracture of any bodily part;

3 (c) "Great bodily harm" means bodily injury which creates a high  
4 probability of death, or which causes serious permanent disfigurement,  
5 or which causes a permanent or protracted loss or impairment of the  
6 function of any bodily part or organ.

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

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

15 (5) "Employed" means hired by a dependent person, another person  
16 acting on behalf of a dependent person, or by an organization or  
17 governmental entity, to provide to a dependent person any of the basic  
18 necessities of life. A person may be "employed" regardless of whether  
19 the person is paid for the services or, if paid, regardless of who pays  
20 for the person's services.

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

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

26 **Sec. 2.** RCW 9A.42.050 and 1986 c 250 s 5 are each amended to read  
27 as follows:

28 In any prosecution for criminal mistreatment, it shall be a defense  
29 that the withholding of the basic necessities of life is due to  
30 financial inability only if the person charged has made a reasonable  
31 effort to obtain adequate assistance. This defense is not available to  
32 persons in the business of providing care.

33 **Sec. 3.** RCW 9A.42.020 and 1986 c 250 s 2 are each amended to read  
34 as follows:

35 (1) A parent of a child ((~~or~~)), the person entrusted with the  
36 physical custody of a child or dependent person, or a person employed  
37 to provide to the child or dependent person the basic necessities of

1 life is guilty of criminal mistreatment in the first degree if he or  
2 she recklessly causes great bodily harm to a child or dependent person  
3 by withholding any of the basic necessities of life.

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

5 **Sec. 4.** RCW 9A.42.030 and 1986 c 250 s 3 are each amended to read  
6 as follows:

7 (1) A parent of a child ((~~or~~)), the person entrusted with the  
8 physical custody of a child or dependent person, or a person employed  
9 to provide to the child or dependent person the basic necessities of  
10 life is guilty of criminal mistreatment in the second degree if he or  
11 she recklessly either (a) creates an imminent and substantial risk of  
12 death or great bodily harm, or (b) causes substantial bodily harm by  
13 withholding any of the basic necessities of life.

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

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 9A.42 RCW  
16 to read as follows:

17 (1) A person is guilty of the crime of criminal mistreatment in the  
18 third degree if the person is the parent of a child, is a person  
19 entrusted with the physical custody of a child or other dependent  
20 person, or is a person employed to provide to the child or dependent  
21 person the basic necessities of life, and either:

22 (a) The person negligently creates an imminent and substantial risk  
23 of bodily injury to a child or dependent person by withholding any of  
24 the basic necessities of life; or

25 (b) The person negligently causes bodily injury to a child or  
26 dependent person by withholding any of the basic necessities of life.

27 (2) Criminal mistreatment in the third degree is a gross  
28 misdemeanor.

29 **Sec. 6.** RCW 9A.44.010 and 1994 c 271 s 302 are each amended to  
30 read as follows:

31 As used in this chapter:

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

34 (b) Also means any penetration of the vagina or anus however  
35 slight, by an object, when committed on one person by another, whether  
36 such persons are of the same or opposite sex, except when such

1 penetration is accomplished for medically recognized treatment or  
2 diagnostic purposes, and

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

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

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

13 (4) "Mental incapacity" is that condition existing at the time of  
14 the offense which prevents a person from understanding the nature or  
15 consequences of the act of sexual intercourse whether that condition is  
16 produced by illness, defect, the influence of a substance or from some  
17 other cause.

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

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

25 (7) "Consent" means that at the time of the act of sexual  
26 intercourse or sexual contact there are actual words or conduct  
27 indicating freely given agreement to have sexual intercourse or sexual  
28 contact.

29 (8) "Significant relationship" means a situation in which the  
30 perpetrator is:

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

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

36 (c) A person who professionally or voluntarily provides welfare,  
37 health or residential assistance, personal care, or organized  
38 recreational activities to frail elders or vulnerable adults, including  
39 a provider, employee, temporary employee, volunteer, or independent

1 contractor who supplies services to long-term care facilities licensed  
2 or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128  
3 RCW, and home health, hospice, or home care agencies licensed or  
4 required to be licensed under chapter 70.127 RCW.

5 (9) "Abuse of a supervisory position" means a direct or indirect  
6 threat or promise to use authority to the detriment or benefit of a  
7 minor.

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

11 (11) "Person with supervisory authority," for purposes of RCW  
12 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any  
13 proprietor or employee of any public or private care or treatment  
14 facility who directly supervises developmentally disabled, mentally  
15 disordered, or chemically dependent persons at the facility.

16 (12) "Mentally disordered person" for the purposes of RCW  
17 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental  
18 disorder" as defined in RCW 71.05.020(2).

19 (13) "Chemically dependent person" for purposes of RCW  
20 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically  
21 dependent" as defined in RCW 70.96A.020(4).

22 (14) "Health care provider" for purposes of RCW 9A.44.050 and  
23 9A.44.100 means a person who is, holds himself or herself out to be, or  
24 provides services as if he or she were: (a) A member of a health care  
25 profession under chapter 18.130 RCW; or (b) registered or certified  
26 under chapter 18.19 RCW, regardless of whether the health care provider  
27 is licensed, certified, or registered by the state.

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

32 (16) "Frail elder or vulnerable adult" means a person sixty years  
33 of age or older who has the functional, mental, or physical inability  
34 to care for himself or herself. "Frail elder or vulnerable adult" also  
35 includes a person found incapacitated under chapter 11.88 RCW, a person  
36 over eighteen years of age who has a developmental disability under  
37 chapter 71A.10 RCW, a person admitted to a long-term care facility that  
38 is licensed or required to be licensed under chapter 18.20, 18.51,  
39 72.36, or 70.128 RCW, and a person receiving services from a home

1 health, hospice, or home care agency licensed or required to be  
2 licensed under chapter 70.127 RCW.

3 **Sec. 7.** RCW 9A.44.050 and 1993 c 477 s 2 are each amended to read  
4 as follows:

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

8 (a) By forcible compulsion;

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

11 (c) When the victim is developmentally disabled and the perpetrator  
12 is a person who is not married to the victim and who has supervisory  
13 authority over the victim;

14 (d) When the perpetrator is a health care provider, the victim is  
15 a client or patient, and the sexual intercourse occurs during a  
16 treatment session, consultation, interview, or examination. It is an  
17 affirmative defense that the defendant must prove by a preponderance of  
18 the evidence that the client or patient consented to the sexual  
19 intercourse with the knowledge that the sexual intercourse was not for  
20 the purpose of treatment; ((or))

21 (e) When the victim is a resident of a facility for mentally  
22 disordered or chemically dependent persons and the perpetrator is a  
23 person who is not married to the victim and has supervisory authority  
24 over the victim; or

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

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

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

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

34 (a) By forcible compulsion; ((or))

35 (b) When the other person is incapable of consent by reason of  
36 being mentally defective, mentally incapacitated, or physically  
37 helpless;

1 (c) When the victim is developmentally disabled and the perpetrator  
2 is a person who is not married to the victim and who has supervisory  
3 authority over the victim;

4 (d) When the perpetrator is a health care provider, the victim is  
5 a client or patient, and the sexual contact occurs during a treatment  
6 session, consultation, interview, or examination. It is an affirmative  
7 defense that the defendant must prove by a preponderance of the  
8 evidence that the client or patient consented to the sexual contact  
9 with the knowledge that the sexual contact was not for the purpose of  
10 treatment; ((or))

11 (e) When the victim is a resident of a facility for mentally  
12 disordered or chemically dependent persons and the perpetrator is a  
13 person who is not married to the victim and has supervisory authority  
14 over the victim; or

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

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

19 **Sec. 9.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are  
20 each reenacted and amended to read as follows:

21 (1) This chapter applies only to the secretary and the boards and  
22 commissions having jurisdiction in relation to the professions licensed  
23 under the chapters specified in this section. This chapter does not  
24 apply to any business or profession not licensed under the chapters  
25 specified in this section.

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

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

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

30 (iii) Midwives licensed under chapter 18.50 RCW;

31 (iv) Ocularists licensed under chapter 18.55 RCW;

32 (v) Massage operators and businesses licensed under chapter 18.108  
33 RCW;

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

35 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

1 (ix) Respiratory care practitioners certified under chapter 18.89  
2 RCW;

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

4 (xi) Persons registered as nursing pool operators under chapter  
5 18.52C RCW;

6 (xii) Nursing assistants registered or certified under chapter  
7 (~~18.79~~) 18.88A RCW;

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

9 (xiv) Dietitians and nutritionists certified under chapter 18.138  
10 RCW;

11 (xv) Sex offender treatment providers certified under chapter  
12 18.155 RCW;

13 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW  
14 18.71.205;

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

17 (xviii) Denturists licensed under chapter 18.30 RCW.

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

20 (i) The podiatric medical board as established in chapter 18.22  
21 RCW;

22 (ii) The chiropractic quality assurance commission as established  
23 in chapter 18.25 RCW;

24 (iii) The dental quality assurance commission as established in  
25 chapter 18.32 RCW;

26 (iv) The board of hearing and speech as established in chapter  
27 18.35 RCW;

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

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

32 (vii) The board of osteopathic medicine and surgery as established  
33 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
34 18.57A RCW;

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

37 (ix) The medical quality assurance commission as established in  
38 chapter 18.71 RCW governing licenses and registrations issued under  
39 chapters 18.71 and 18.71A RCW;



1 (x) The board of physical therapy as established in chapter 18.74  
2 RCW;

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

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

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

9 (xiv) The veterinary board of governors as established in chapter  
10 18.92 RCW.

11 (3) In addition to the authority to discipline license holders, the  
12 disciplining authority has the authority to grant or deny licenses  
13 based on the conditions and criteria established in this chapter and  
14 the chapters specified in subsection (2) of this section. This chapter  
15 also governs any investigation, hearing, or proceeding relating to  
16 denial of licensure or issuance of a license conditioned on the  
17 applicant's compliance with an order entered pursuant to RCW 18.130.160  
18 by the disciplining authority.

19 (4) All disciplining authorities shall adopt procedures to ensure  
20 substantially consistent application of this chapter, the Uniform  
21 Disciplinary Act, among the disciplining authorities listed in  
22 subsection (2) of this section.

23 **Sec. 10.** RCW 18.130.200 and 1986 c 259 s 12 are each amended to  
24 read as follows:

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

28 **Sec. 11.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read  
29 as follows:

30 (1)(a) The secretary of social and health services and the  
31 secretary of health shall adopt additional requirements for the  
32 licensure or relicensure of agencies ~~((or))~~, facilities ((which)), and  
33 individuals who provide care and treatment to vulnerable adults. These  
34 additional requirements shall ensure that any person associated with a  
35 licensed agency or facility having direct contact with a vulnerable  
36 adult shall not have been: ~~((+a))~~ (i) Convicted of a crime against  
37 persons as defined in RCW 43.43.830, except as provided in this

1 section; (~~(b)~~) (ii) convicted of crimes relating to financial  
2 exploitation as defined in RCW 43.43.830, except as provided in this  
3 section; (~~(e)~~) (iii) found in any disciplinary board final decision  
4 to have abused a vulnerable adult under RCW 43.43.830; or (~~(d)~~) (iv)  
5 the subject in a protective proceeding under chapter 74.34 RCW.

6 (b) A person associated with a licensed agency or facility who has  
7 direct contact with a vulnerable adult shall make the disclosures  
8 specified in RCW 43.43.834(2). The person shall make the disclosures  
9 in writing, sign, and swear to the contents under penalty of perjury.  
10 The person shall, in the disclosures, specify all crimes against  
11 children or other persons, and all crimes relating to financial  
12 exploitation as defined in RCW 43.43.830, committed by the person.

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

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

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

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

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

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

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

37 In consultation with law enforcement personnel, the secretary of  
38 social and health services and the secretary of health shall  
39 investigate the conviction record and the protection proceeding record

1 information under this chapter (~~(43.43-RCW)~~) of each agency or facility  
2 and its staff under their respective jurisdictions seeking licensure or  
3 relicensure. The individual responding to criminal background inquiry  
4 requests by the individual's employer or potential employer shall  
5 disclose the information about the individual's criminal history under  
6 penalty of perjury. The secretaries shall use the information solely  
7 for the purpose of determining eligibility for licensure or  
8 relicensure. Criminal justice agencies shall provide the secretaries  
9 such information as they may have and that the secretaries may require  
10 for such purpose.

11 **Sec. 12.** RCW 70.124.020 and 1996 c 178 s 24 are each amended to  
12 read as follows:

13 Unless the context requires otherwise, the definitions in this  
14 section apply throughout this chapter.

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

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

18 (3) "Practitioner of the healing arts" or "practitioner" means a  
19 person licensed by this state to practice podiatric medicine and  
20 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,  
21 dentistry, osteopathic medicine and surgery, or medicine and surgery.  
22 The term "practitioner" shall include a nurses aide, a nursing home  
23 administrator licensed under chapter 18.52 RCW, and a duly accredited  
24 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home  
25 patient who is being furnished Christian Science treatment by a duly  
26 accredited Christian Science practitioner shall not be considered, for  
27 that reason alone, a neglected patient for the purposes of this  
28 chapter.

29 (4) "Department" means the state department of social and health  
30 services.

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

32 (6) "Social worker" means anyone engaged in a professional capacity  
33 during the regular course of employment in encouraging or promoting the  
34 health, welfare, support, or education of nursing home patients, or  
35 providing social services to nursing home patients, whether in an  
36 individual capacity or as an employee or agent of any public or private  
37 organization or institution.

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

5 (8) "Pharmacist" means any registered pharmacist under chapter  
6 18.64 RCW, whether acting in an individual capacity or as an employee  
7 or agent of any public or private organization or institution.

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

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

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

19 (12) "Adult family home" has the meaning set forth in RCW  
20 70.128.010.

21 **Sec. 13.** RCW 70.124.030 and 1981 c 174 s 3 are each amended to  
22 read as follows:

23 (1) When any practitioner, social worker, psychologist, pharmacist,  
24 employee of a nursing home, employee of an adult family home, employee  
25 of a state hospital, or employee of the department has reasonable cause  
26 to believe that a nursing home, adult family home, or state hospital  
27 patient has suffered abuse or neglect, the person shall report such  
28 incident, or cause a report to be made, to either a law enforcement  
29 agency or to the department as provided in RCW 70.124.040.

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

34 (3) The department or any law enforcement agency receiving a report  
35 of an incident of abuse or neglect involving a nursing home, adult  
36 family home, or state hospital patient who has died or has had physical  
37 injury or injuries inflicted other than by accidental means or who has

1 been subjected to sexual abuse shall report the incident to the proper  
2 county prosecutor for appropriate action.

3 **Sec. 14.** RCW 70.124.040 and 1981 c 174 s 4 are each amended to  
4 read as follows:

5 (1) Where a report is (~~deemed warranted~~) required under RCW  
6 70.124.030, an immediate oral report shall be made by telephone or  
7 otherwise to either a law enforcement agency or to the department and,  
8 upon request, shall be followed by a report in writing. The reports  
9 shall contain the following information, if known:

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

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

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

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

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

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

18 (g) Any evidence of previous injuries, including their nature and  
19 extent; and

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

23 (2) Each law enforcement agency receiving such a report shall, in  
24 addition to taking the action required by RCW 70.124.050, immediately  
25 relay the report to the department, and to other law enforcement  
26 agencies, including the medicaid fraud control unit of the office of  
27 the attorney general, as appropriate. For any report it receives, the  
28 department shall likewise take the required action and in addition  
29 relay the report to the appropriate law enforcement agency or agencies.  
30 The appropriate law enforcement agency or agencies shall receive  
31 immediate notification when the department, upon receipt of such  
32 report, has reasonable cause to believe that a criminal act has been  
33 committed.

34 **Sec. 15.** RCW 70.124.070 and 1979 ex.s. c 228 s 7 are each amended  
35 to read as follows:

36 A person who is required to make or to cause to be made a report  
37 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to

1 make such report or fails to cause such report to be made is guilty of  
2 a gross misdemeanor.

3 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.124  
4 RCW to read as follows:

5 (1) An employee who is a whistleblower and who as a result of being  
6 a whistleblower has been subjected to workplace reprisal or retaliatory  
7 action, has the remedies provided under chapter 49.60 RCW. RCW  
8 4.24.500 through 4.24.520, providing certain protection to persons who  
9 communicate to government agencies, apply to complaints made under this  
10 section. The identity of a whistleblower who complains, in good faith,  
11 to the department about suspected abuse or neglect by any person in a  
12 nursing home, state hospital, or adult family home, may remain  
13 confidential if requested. The identity of the whistleblower shall  
14 subsequently remain confidential unless the department determines that  
15 the complaint was not made in good faith.

16 (2) An attempt to expel a resident from a nursing home, state  
17 hospital, or adult family home, or any type of discriminatory treatment  
18 of a resident by whom, or upon whose behalf, a complaint has been  
19 submitted to the department or any proceeding instituted under or  
20 related to this chapter within one year of the filing of the complaint  
21 or the institution of the action, raises a rebuttable presumption that  
22 the action was in retaliation for the filing of the complaint.

23 (3) For the purposes of this section:

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

28 (b) "Workplace reprisal or retaliatory action" means, but is not  
29 limited to: Denial of adequate staff to perform duties; frequent staff  
30 changes; frequent and undesirable office changes; refusal to assign  
31 meaningful work; unwarranted and unsubstantiated report of misconduct  
32 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
33 evaluations; demotion; denial of employment; or a supervisor or  
34 superior encouraging coworkers to behave in a hostile manner toward the  
35 whistleblower.

36 (4) This section does not prohibit a nursing home, state hospital,  
37 or adult family home from exercising its authority to terminate,

1 suspend, or discipline an employee who engages in workplace reprisal or  
2 retaliatory action against a whistleblower.

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

6 NEW SECTION. **Sec. 17.** 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. 18.** 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 or neglect by any person in a  
21 boarding home licensed or required to be licensed pursuant to chapter  
22 18.20 RCW may remain confidential if requested. The identity of the  
23 whistleblower shall subsequently remain confidential unless the  
24 department determines that the complaint was not made in good faith.

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

32 (3) For the purposes of this section:

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

1 (b) "Workplace reprisal or retaliatory action" means, but is not  
2 limited to: Denial of adequate staff to perform duties; frequent staff  
3 changes; frequent and undesirable office changes; refusal to assign  
4 meaningful work; unwarranted and unsubstantiated report of misconduct  
5 under Title 18 RCW; letters of reprimand or unsatisfactory performance  
6 evaluations; demotion; denial of employment; or a supervisor or  
7 superior encouraging coworkers to behave in a hostile manner toward the  
8 whistleblower.

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

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

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