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SENATE BILL 5707

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State of Washington

57th Legislature

2001 Regular Session

By Senators Thibaudeau, Deccio, Winsley, Costa, Kohl-Welles and Rasmussen

Read first time 01/31/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the protection of vulnerable adults; and  
2 amending RCW 74.34.035, 70.124.020, 70.124.030, 70.124.040, and  
3 70.124.060.

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

5 **Sec. 1.** RCW 74.34.035 and 1999 c 176 s 5 are each amended to read  
6 as follows:

7 (1) When there is reasonable cause to believe that abandonment,  
8 abuse, financial exploitation, self-neglect, or neglect of a vulnerable  
9 adult has occurred, mandated reporters shall immediately report to the  
10 department. If there is reason to suspect that sexual or physical  
11 (~~assault~~) abuse has occurred, mandated reporters shall immediately  
12 report to the appropriate law enforcement agency and to the department.  
13 However, suspected sexual or physical abuse by an incompetent or  
14 mentally incapacitated person shall be reported to the department only.  
15 For purposes of this section, an "incompetent or mentally incapacitated  
16 person" includes but is not limited to persons with a guardian  
17 appointed under chapter 11.88 RCW or RCW 73.36.050(4), persons  
18 determined incompetent or mentally incapacitated under a valid durable  
19 power of attorney, and persons properly assessed by a qualified

1 assessor or health care professional as incompetent or mentally  
2 incapacitated as documented in their care plan or service plan. When  
3 a mandated reporter is a state or department employee, mandated reports  
4 to the department under this chapter shall be made to the aging and  
5 adult services administration's statewide complaint hotline.

6 (2) Permissive reporters may report to the department or a law  
7 enforcement agency when there is reasonable cause to believe that a  
8 vulnerable adult is being or has been abandoned, abused, financially  
9 exploited, or neglected.

10 (3) No facility, as defined by this chapter, agency licensed or  
11 required to be licensed under chapter 70.127 RCW, or facility or agency  
12 under contract with the department to provide care for vulnerable  
13 adults may develop policies or procedures that interfere with the  
14 reporting requirements of this chapter.

15 (4) Each report, oral or written, must contain as much as possible  
16 of the following information:

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

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

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

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

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

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

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

30 (5) Unless there is a judicial proceeding or the person consents,  
31 the identity of the person making the report under this section is  
32 confidential.

33 **Sec. 2.** RCW 70.124.020 and 1999 c 176 s 21 are each amended to  
34 read as follows:

35 Unless the context requires otherwise, the definitions in this  
36 section apply throughout this chapter.

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

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

3 (3) "Practitioner of the healing arts" or "practitioner" means a  
4 person licensed by this state to practice podiatric medicine and  
5 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,  
6 dentistry, osteopathic medicine and surgery, or medicine and surgery.  
7 The term "practitioner" includes a nurse's aide and a duly accredited  
8 Christian Science practitioner.

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

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

16 (6) "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 (7) "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 ~~(8) ("Abuse or neglect" or "patient abuse or neglect" means the~~  
24 ~~nonaccidental physical injury or condition, sexual abuse, or negligent~~  
25 ~~treatment of a state hospital patient under circumstances which~~  
26 ~~indicate that the patient's health, welfare, or safety is harmed~~  
27 ~~thereby.~~

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

31 ~~(10))~~ "Abuse" means the willful action or inaction that inflicts  
32 injury, unreasonable confinement, intimidation, or punishment on a  
33 state hospital patient. In instances of abuse of a patient who is  
34 unable to express or demonstrate physical harm, pain, or mental  
35 anguish, the abuse is presumed to cause physical harm, pain, or mental  
36 anguish. "Abuse" includes sexual abuse, physical abuse, and mental  
37 abuse of a patient, which have the following meanings:

38 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
39 including but not limited to unwanted or inappropriate touching, rape,

1 sodomy, sexual coercion, sexually explicit photographing, and sexual  
2 harassment. "Sexual abuse" includes any consensual or nonconsensual  
3 sexual contact with a state hospital patient by a department employee,  
4 agent, or contractor.

5 (b) "Physical abuse" means the willful action of inflicting bodily  
6 injury or physical mistreatment. "Physical abuse" includes, but is not  
7 limited to, striking with or without an object, slapping, pinching,  
8 choking, kicking, shoving, prodding, or the use of chemical restraints  
9 or physical restraints unless the restraints are consistent with  
10 licensing or certification requirements, and includes restraints that  
11 are otherwise being used inappropriately.

12 (c) "Mental abuse" means any willful action or inaction of mental  
13 or verbal abuse. "Mental abuse" includes, but is not limited to,  
14 coercion, harassment, inappropriately isolating a patient from family,  
15 friends, or regular activity, and verbal abuse that includes  
16 ridiculing, intimidating, yelling, or swearing.

17 (9) "Neglect" means: (a) A pattern of conduct or inaction by a  
18 person or entity with a duty of care to a state hospital patient that  
19 results in the failure (i) to provide the goods and services needed to  
20 maintain the patient's physical or mental health, or (ii) to avoid or  
21 prevent physical or mental harm or pain to such patient; or (b) an act  
22 or omission that demonstrates a serious disregard of consequences of  
23 such a magnitude as to constitute a clear and present danger to the  
24 patient's health, welfare, or safety.

25 (10) "Abandonment" means action or inaction by a person or entity  
26 with a duty of care for a state hospital patient that leaves the  
27 patient without the means or ability to obtain necessary food,  
28 clothing, shelter, or health care.

29 (11) "Financial exploitation" means the illegal or improper use of  
30 the property, income, resources, or trust funds of a state hospital  
31 patient by any person for any person's profit or advantage.

32 (12) "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 **Sec. 3.** RCW 70.124.030 and 1999 c 176 s 22 are each amended to  
35 read as follows:

36 (1) When any practitioner, social worker, psychologist, pharmacist,  
37 employee of a state hospital, or employee of the department has  
38 reasonable cause to believe that a state hospital patient has suffered

1 abuse ~~((or))~~, neglect, financial exploitation, or abandonment, the  
2 person shall report such incident, or cause a report to be made, to  
3 either a law enforcement agency or to the department as provided in RCW  
4 70.124.040.

5 (2) Any other person who has reasonable cause to believe that a  
6 state hospital patient has suffered abuse ~~((or))~~, neglect, financial  
7 exploitation, or abandonment may report such incident to either a law  
8 enforcement agency or to the department as provided in RCW 70.124.040.

9 (3) The department or any law enforcement agency receiving a report  
10 of an incident of abuse ~~((or))~~, neglect, financial exploitation, or  
11 abandonment involving a state hospital patient who has died or has had  
12 physical injury or injuries inflicted other than by accidental means or  
13 who has been subjected to sexual abuse shall report the incident to the  
14 proper county prosecutor for appropriate action.

15 **Sec. 4.** RCW 70.124.040 and 1999 c 176 s 23 are each amended to  
16 read as follows:

17 (1) Where a report is required under RCW 70.124.030, an immediate  
18 oral report must be made by telephone or otherwise to either a law  
19 enforcement agency or to the department and, upon request, must be  
20 followed by a report in writing. Mandated reports to the department  
21 under this chapter shall be made to the aging and adult services  
22 administration's statewide complaint hotline. The reports must contain  
23 the following information, if known:

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

25 (b) The name and address of the state hospital patient;

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

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

29 (e) The nature and extent of the alleged abuse, neglect, financial  
30 exploitation, or abandonment;

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

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

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

37 (2) Each law enforcement agency receiving such a report shall, in  
38 addition to taking the action required by RCW 70.124.050, immediately

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

10 (3) No state hospital may have policies or procedures that  
11 interfere with the reporting requirements of this chapter.

12 **Sec. 5.** RCW 70.124.060 and 1999 c 176 s 24 are each amended to  
13 read as follows:

14 (1) A person other than a person alleged to have committed the  
15 abuse ~~((or))~~, neglect, financial exploitation, or abandonment,  
16 participating in good faith in the making of a report pursuant to this  
17 chapter, or testifying as to alleged patient abuse ~~((or))~~, neglect,  
18 financial exploitation, or abandonment in a judicial proceeding, is, in  
19 so doing, immune from any liability, civil or criminal, arising out of  
20 such reporting or testifying under any law of this state or its  
21 political subdivisions, and if such person is an employee of a state  
22 hospital it is an unfair practice under chapter 49.60 RCW for the  
23 employer to discharge, expel, or otherwise discriminate against the  
24 employee for such reporting activity.

25 (2) Conduct conforming with the reporting requirements of this  
26 chapter is not a violation of the confidential communication privilege  
27 of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter  
28 supersedes or abridges remedies provided in chapter 4.92 RCW.

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