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SENATE BILL 6420

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State of Washington

63rd Legislature

2014 Regular Session

By Senators Keiser, Bailey, Chase, and Conway; by request of Department of Social and Health Services

Read first time 01/24/14. Referred to Committee on Health Care .

1 AN ACT Relating to investigations involving vulnerable adults; and  
2 amending RCW 74.34.020.

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

4 **Sec. 1.** RCW 74.34.020 and 2013 c 263 s 1 are each amended to read  
5 as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

8 (1) "Abandonment" means action or inaction by a person or entity  
9 with a duty of care for a vulnerable adult that leaves the vulnerable  
10 person without the means or ability to obtain necessary food, clothing,  
11 shelter, or health care.

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

1 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
2 including but not limited to unwanted or inappropriate touching, rape,  
3 sodomy, sexual coercion, sexually explicit photographing, and sexual  
4 harassment. Sexual abuse includes any sexual contact between a staff  
5 person, who is not also a resident or client, of a facility or a staff  
6 person of a program authorized under chapter 71A.12 RCW, and a  
7 vulnerable adult living in that facility or receiving service from a  
8 program authorized under chapter 71A.12 RCW, whether or not it is  
9 consensual.

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

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

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

27 (3) "Consent" means express written consent granted after the  
28 vulnerable adult or his or her legal representative has been fully  
29 informed of the nature of the services to be offered and that the  
30 receipt of services is voluntary.

31 (4) "Department" means the department of social and health  
32 services.

33 (5) "Facility" means a residence licensed or required to be  
34 licensed under chapter 18.20 RCW, assisted living facilities; chapter  
35 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;  
36 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential  
37 habilitation centers; or any other facility licensed or certified by  
38 the department.

1 (6) "Financial exploitation" means the illegal or improper use,  
2 control over, or withholding of the property, income, resources, or  
3 trust funds of the vulnerable adult by any person or entity for any  
4 person's or entity's profit or advantage other than for the vulnerable  
5 adult's profit or advantage. "Financial exploitation" includes, but is  
6 not limited to:

7 (a) The use of deception, intimidation, or undue influence by a  
8 person or entity in a position of trust and confidence with a  
9 vulnerable adult to obtain or use the property, income, resources, or  
10 trust funds of the vulnerable adult for the benefit of a person or  
11 entity other than the vulnerable adult;

12 (b) The breach of a fiduciary duty, including, but not limited to,  
13 the misuse of a power of attorney, trust, or a guardianship  
14 appointment, that results in the unauthorized appropriation, sale, or  
15 transfer of the property, income, resources, or trust funds of the  
16 vulnerable adult for the benefit of a person or entity other than the  
17 vulnerable adult; or

18 (c) Obtaining or using a vulnerable adult's property, income,  
19 resources, or trust funds without lawful authority, by a person or  
20 entity who knows or clearly should know that the vulnerable adult lacks  
21 the capacity to consent to the release or use of his or her property,  
22 income, resources, or trust funds.

23 (7) "Financial institution" has the same meaning as in RCW  
24 30.22.040 and 30.22.041. For purposes of this chapter only, "financial  
25 institution" also means a "broker-dealer" or "investment adviser" as  
26 defined in RCW 21.20.005.

27 (8) "Incapacitated person" means a person who is at a significant  
28 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),  
29 (c), or (d).

30 (9) "Individual provider" means a person under contract with the  
31 department to provide services in the home under chapter 74.09 or  
32 74.39A RCW.

33 (10) "Interested person" means a person who demonstrates to the  
34 court's satisfaction that the person is interested in the welfare of  
35 the vulnerable adult, that the person has a good faith belief that the  
36 court's intervention is necessary, and that the vulnerable adult is  
37 unable, due to incapacity, undue influence, or duress at the time the  
38 petition is filed, to protect his or her own interests.

1 (11) "Mandated reporter" is an employee of the department; law  
2 enforcement officer; social worker; professional school personnel;  
3 individual provider; an employee of a facility; an operator of a  
4 facility; an employee of a social service, welfare, mental health,  
5 adult day health, adult day care, home health, home care, or hospice  
6 agency; county coroner or medical examiner; Christian Science  
7 practitioner; or health care provider subject to chapter 18.130 RCW.

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

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

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

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

37 (16) "Social worker" means:

38 (a) A social worker as defined in RCW 18.320.010(2); or

1 (b) Anyone engaged in a professional capacity during the regular  
2 course of employment in encouraging or promoting the health, welfare,  
3 support, or education of vulnerable adults, or providing social  
4 services to vulnerable adults, whether in an individual capacity or as  
5 an employee or agent of any public or private organization or  
6 institution.

7 (17) "Vulnerable adult" includes a person:

8 (a) Sixty years of age or older who has the functional, mental, or  
9 physical inability to care for himself or herself; or

10 (b) Found incapacitated under chapter 11.88 RCW; or

11 (c) Who has a developmental disability as defined under RCW  
12 71A.10.020 or who the department reasonably believes has a  
13 developmental disability; or

14 (d) Admitted to any facility; or

15 (e) Receiving services from home health, hospice, or home care  
16 agencies licensed or required to be licensed under chapter 70.127 RCW;  
17 or

18 (f) Receiving services from an individual provider; or

19 (g) Who self-directs his or her own care and receives services from  
20 a personal aide under chapter 74.39 RCW.

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