

SSB 5600 - H COMM AMD  
By Committee on Judiciary

ADOPTED 4/13/2015

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

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

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

20 (a) "Sexual abuse" means any form of nonconsensual sexual  
21 ~~((contact))~~ conduct, including but not limited to unwanted or  
22 inappropriate touching, rape, sodomy, sexual coercion, sexually  
23 explicit photographing, and sexual harassment. Sexual abuse also  
24 includes any sexual ~~((contact))~~ conduct between a staff person, who  
25 is not also a resident or client, of a facility or a staff person of  
26 a program authorized under chapter 71A.12 RCW, and a vulnerable adult  
27 living in that facility or receiving service from a program  
28 authorized under chapter 71A.12 RCW, whether or not it is consensual.

29 (b) "Physical abuse" means the willful action of inflicting  
30 bodily injury or physical mistreatment. Physical abuse includes, but  
31 is not limited to, striking with or without an object, slapping,  
32 pinching, choking, kicking, shoving, or prodding(~~(, or the use of~~  
33 ~~chemical restraints or physical restraints unless the restraints are~~

1 consistent with licensing requirements, and includes restraints that  
2 are otherwise being used inappropriately)).

3 (c) "~~Mental abuse~~" means (~~(any willful action or inaction of~~  
4 ~~mental or verbal abuse. Mental abuse includes, but is not limited to,~~  
5 ~~coercion, harassment, inappropriately isolating a vulnerable adult~~  
6 ~~from family, friends, or regular activity, and verbal assault that~~  
7 ~~includes ridiculing, intimidating,)~~) a willful verbal or nonverbal  
8 action that threatens, humiliates, harasses, coerces, intimidates,  
9 isolates, unreasonably confines, or punishes a vulnerable adult.  
10 Mental abuse may include ridiculing, yelling, or swearing.

11 (d) "Personal exploitation" means an act of forcing, compelling,  
12 or exerting undue influence over a vulnerable adult causing the  
13 vulnerable adult to act in a way that is inconsistent with relevant  
14 past behavior, or causing the vulnerable adult to perform services  
15 for the benefit of another.

16 (e) "Improper use of restraint" means the inappropriate use of  
17 chemical, physical, or mechanical restraints for convenience or  
18 discipline or in a manner that: (i) Is inconsistent with federal or  
19 state licensing or certification requirements for facilities,  
20 hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is  
21 not medically authorized; or (iii) otherwise constitutes abuse under  
22 this section.

23 (3) "Chemical restraint" means the administration of any drug to  
24 manage a vulnerable adult's behavior in a way that reduces the safety  
25 risk to the vulnerable adult or others, has the temporary effect of  
26 restricting the vulnerable adult's freedom of movement, and is not  
27 standard treatment for the vulnerable adult's medical or psychiatric  
28 condition.

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

33 ((+4)) (5) "Department" means the department of social and  
34 health services.

35 ((+5)) (6) "Facility" means a residence licensed or required to  
36 be licensed under chapter 18.20 RCW, assisted living facilities;  
37 chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family  
38 homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,  
39 residential habilitation centers; or any other facility licensed or  
40 certified by the department.

1        ~~((+6))~~ (7) "Financial exploitation" means the illegal or  
2 improper use, control over, or withholding of the property, income,  
3 resources, or trust funds of the vulnerable adult by any person or  
4 entity for any person's or entity's profit or advantage other than  
5 for the vulnerable adult's profit or advantage. "Financial  
6 exploitation" includes, but is 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  
13 to, 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  
21 lacks the capacity to consent to the release or use of his or her  
22 property, income, resources, or trust funds.

23        ~~((+7))~~ (8) "Financial institution" has the same meaning as in  
24 RCW ~~((30.22.040 and 30.22.041))~~ 30A.22.040 and 30A.22.041. For  
25 purposes of this chapter only, "financial institution" also means a  
26 "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

27        ~~((+8))~~ (9) "Hospital" means a facility licensed under chapter  
28 70.41, 71.12, or 72.23 RCW and any employee, agent, officer,  
29 director, or independent contractor thereof.

30        (10) "Incapacitated person" means a person who is at a  
31 significant risk of personal or financial harm under RCW 11.88.010(1)  
32 (a), (b), (c), or (d).

33        ~~((+9))~~ (11) "Individual provider" means a person under contract  
34 with the department to provide services in the home under chapter  
35 74.09 or 74.39A RCW.

36        ~~((+10))~~ (12) "Interested person" means a person who demonstrates  
37 to the court's satisfaction that the person is interested in the  
38 welfare of the vulnerable adult, that the person has a good faith  
39 belief that the court's intervention is necessary, and that the  
40 vulnerable adult is unable, due to incapacity, undue influence, or

1 duress at the time the petition is filed, to protect his or her own  
2 interests.

3 ~~((11))~~ (13) "Mandated reporter" is an employee of the  
4 department; law enforcement officer; social worker; professional  
5 school personnel; individual provider; an employee of a facility; an  
6 operator of a facility; an employee of a social service, welfare,  
7 mental health, adult day health, adult day care, home health, home  
8 care, or hospice agency; county coroner or medical examiner;  
9 Christian Science practitioner; or health care provider subject to  
10 chapter 18.130 RCW.

11 ~~((12))~~ (14) "Mechanical restraint" means any device attached or  
12 adjacent to the vulnerable adult's body that he or she cannot easily  
13 remove that restricts freedom of movement or normal access to his or  
14 her body. "Mechanical restraint" does not include the use of devices,  
15 materials, or equipment that are (a) medically authorized, as  
16 required, and (b) used in a manner that is consistent with federal or  
17 state licensing or certification requirements for facilities,  
18 hospitals, or programs authorized under chapter 71A.12 RCW.

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

28 ~~((13))~~ (16) "Permissive reporter" means any person, including,  
29 but not limited to, an employee of a financial institution, attorney,  
30 or volunteer in a facility or program providing services for  
31 vulnerable adults.

32 ~~((14))~~ (17) "Physical restraint" means the application of  
33 physical force without the use of any device, for the purpose of  
34 restraining the free movement of a vulnerable adult's body. "Physical  
35 restraint" does not include (a) briefly holding without undue force a  
36 vulnerable adult in order to calm or comfort him or her, or (b)  
37 holding a vulnerable adult's hand to safely escort him or her from  
38 one area to another.

39 (18) "Protective services" means any services provided by the  
40 department to a vulnerable adult with the consent of the vulnerable

1 adult, or the legal representative of the vulnerable adult, who has  
2 been abandoned, abused, financially exploited, neglected, or in a  
3 state of self-neglect. These services may include, but are not  
4 limited to case management, social casework, home care, placement,  
5 arranging for medical evaluations, psychological evaluations, day  
6 care, or referral for legal assistance.

7 ~~((15))~~ (19) "Self-neglect" means the failure of a vulnerable  
8 adult, not living in a facility, to provide for himself or herself  
9 the goods and services necessary for the vulnerable adult's physical  
10 or mental health, and the absence of which impairs or threatens the  
11 vulnerable adult's well-being. This definition may include a  
12 vulnerable adult who is receiving services through home health,  
13 hospice, or a home care agency, or an individual provider when the  
14 neglect is not a result of inaction by that agency or individual  
15 provider.

16 ~~((16))~~ (20) "Social worker" means:

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

18 (b) Anyone engaged in a professional capacity during the regular  
19 course of employment in encouraging or promoting the health, welfare,  
20 support, or education of vulnerable adults, or providing social  
21 services to vulnerable adults, whether in an individual capacity or  
22 as an employee or agent of any public or private organization or  
23 institution.

24 ~~((17))~~ (21) "Vulnerable adult" includes a person:

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

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

28 (c) Who has a developmental disability as defined under RCW  
29 71A.10.020; or

30 (d) Admitted to any facility; or

31 (e) Receiving services from home health, hospice, or home care  
32 agencies licensed or required to be licensed under chapter 70.127  
33 RCW; or

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

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

37 Correct the title.

EFFECT: Removes a reference to "resident" that is inconsistent with the other provisions of the section.

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