

# HOUSE BILL REPORT

## HB 1726

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to modifying certain definitions concerning vulnerable adults, including the definitions of abuse and sexual abuse.

**Brief Description:** Modifying certain definitions concerning the abuse of vulnerable adults.

**Sponsors:** Representatives Moeller, Jinkins, Tharinger and Appleton; by request of Department of Social and Health Services.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/5/15, 2/19/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Makes changes to the definitions of terms regarding the abuse of vulnerable adults.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall, Stokesbary and Walkinshaw.

**Minority Report:** Do not pass. Signed by 1 member: Representative Klippert.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

The Department of Social and Health Services (DSHS) investigates allegations of abandonment, abuse, financial exploitation, self-neglect, and neglect of vulnerable adults. The statutes regarding vulnerable adults require certain persons to report suspected incidents of mistreatment to the DSHS, and, in some cases, to law enforcement. Individuals found to

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have abused a vulnerable adult are prohibited from being employed in the care of vulnerable adults. In addition, a vulnerable adult, interested person on behalf of a vulnerable adult, or the DSHS may file a petition for an order for protection of a vulnerable adult who has been abandoned, abused, financially exploited, or neglected, or is threatened with such.

A vulnerable adult includes a person who:

- is 60 years of age or older and has the functional, mental, or physical inability to care for himself or herself;
- is found to be incapacitated (meaning the individual is at a significant risk of personal harm based upon a demonstrated inability to adequately care for himself or herself);
- has a developmental disability as defined in statute;
- is admitted to a facility;
- is receiving services from a home health, hospice, or home care agency, or an individual provider; or
- self-directs his or her own care but receives services from a personal aide.

"Abuse," as it pertains to mistreatment of vulnerable adults, is defined as willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation:

- Sexual abuse refers to nonconsensual sexual contact, or sexual contact between a vulnerable adult and a facility staff person.
- Physical abuse is the willful infliction of bodily injury or physical mistreatment, and may include the use of physical or chemical restraints in a manner that is inappropriate or inconsistent with licensing requirements.
- Mental abuse is any willful action or inaction of mental or verbal abuse, including but not limited to: coercion, harassment, inappropriate isolation from friends, family, or regular activity, and verbal assault that includes ridicule, intimidation, yelling, or swearing.
- Exploitation is an act of forcing, compelling, or exerting undue influence over a vulnerable adult, causing that vulnerable adult to act inconsistently with relevant past behavior or causing the vulnerable adult to perform services for the benefit of another.

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### **Summary of Substitute Bill:**

Several changes are made to the definitions of terms concerning abuse of vulnerable adults.

#### *Improper Use of Restraint.*

Abuse includes the improper use of restraint against a vulnerable adult, meaning the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline in manner that is: (1) inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or state developmental disabilities programs; (2) is not medically authorized; or (3) otherwise constitutes abuse.

- Chemical restraint is defined as the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable

- adult or others, restricts the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.
- Physical restraint is defined as the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. Physical restraint does not include briefly holding without undue force in order to calm or comfort, or holding a hand for safe escort from one area to another.
  - Mechanical restraint means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. Mechanical restraint does not include the use of devices, materials, or equipment that are medically authorized and used consistently with facility, hospital, or state developmental disabilities program licensing or certification requirements.

*Sexual Abuse.*

Sexual abuse includes nonconsensual sexual conduct, or sexual conduct between a vulnerable adult and a facility staff person, rather than sexual contact.

*Mental Abuse.*

Mental abuse is a willful verbal or nonverbal action (rather than a willful action or inaction of mental or verbal abuse) that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling or swearing.

**Substitute Bill Compared to Original Bill:**

The addition of "financial exploitation" to the definition of "abuse" is removed. The definition of "improper use of restraint" is amended to include restraint that is inconsistent with federal or state licensing or certification requirements for hospitals and state developmental disabilities programs (in addition to facilities). An exception is made in the definition of "mechanical restraint" for the use of devices, materials, or equipment that is medically authorized and used consistently with federal or state licensing or certification requirements.

Amendatory language that did the following is removed:

- adding financial exploitation to the definition of "abuse";
- expanding the definition of "developmental disability" to include persons the DSHS reasonably believes have a developmental disability based on school or medical records; and
- providing an affirmative defense to an allegation of physical abuse or improper use of restraint for instances in which the alleged perpetrator reasonably acted to prevent an imminent danger.

Minor wording changes are made for consistency.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is DSHS request legislation, and it is aligned with the Department's mission to provide safety for seniors and persons with disabilities. The proposed changes are the result of recommendations of a stakeholder group. There are some organizations that support the bill but have concerns, and the DSHS is willing to work with those organizations. The DSHS investigates allegations of abuse. Many of the definitions in the vulnerable adults chapter lack clarity, and limit the Department's ability to prove abuse. The current statute does not define restraints or proper or improper use of restraint. Substantiated cases in the past have been overturned on a finding that the use of restraint was proper. Additionally, there is an amendment to include in the definition of vulnerable adult persons the DSHS have reasonable cause to believe have a developmental disability but have never had that proven. This bill is an effort to hold people accountable when they abuse vulnerable adults, which is a good goal. All people deserve to be treated with compassion, and we should do what we can to protect vulnerable citizens.

(Opposed) None.

**Persons Testifying:** Representative Moeller, prime sponsor; Bea Rector, Department of Social and Health Services; and David Lord, Disability Rights Washington.

**Persons Signed In To Testify But Not Testifying:** None.