
SUBSTITUTE HOUSE BILL 1726

State of Washington

64th Legislature

2015 Regular Session

By House Judiciary (originally sponsored by Representatives Moeller, Jinkins, Tharinger, and Appleton; by request of Department of Social and Health Services)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to modifying certain definitions concerning
2 vulnerable adults, including the definitions of abuse and sexual
3 abuse; and amending RCW 74.34.020.

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

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

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

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

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

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

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

17 (c) "Mental abuse" means (~~(any willful action or inaction of~~
18 ~~mental or verbal abuse. Mental abuse includes, but is not limited to,~~
19 ~~coercion, harassment, inappropriately isolating a vulnerable adult~~
20 ~~from family, friends, or regular activity, and verbal assault that~~
21 ~~includes ridiculing, intimidating,)) a willful verbal or nonverbal
22 action that threatens, humiliates, harasses, coerces, intimidates,
23 isolates, unreasonably confines, or punishes a vulnerable adult.
24 Mental abuse may include ridiculing, yelling, or swearing.~~

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

30 (e) "Improper use of restraint" means the inappropriate use of
31 chemical, physical, or mechanical restraints. Improper use of
32 restraint includes the use of chemical, physical, or mechanical
33 restraints for convenience or discipline or in a manner that: (i) Is
34 inconsistent with federal or state licensing or certification
35 requirements for facilities, hospitals, or programs authorized under
36 chapter 71A.12 RCW; (ii) is not medically authorized; or (iii)
37 otherwise constitutes abuse under this section.

38 (3) "Chemical restraint" means the administration of any drug to
39 manage a vulnerable adult's behavior in a way that reduces the safety
40 risk to the vulnerable adult or others, has the temporary effect of

1 restricting the vulnerable adult's freedom of movement, and is not
2 standard treatment for the vulnerable adult's medical or psychiatric
3 condition.

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

8 ((4)) (5) "Department" means the department of social and
9 health services.

10 ((5)) (6) "Facility" means a residence licensed or required to
11 be licensed under chapter 18.20 RCW, assisted living facilities;
12 chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family
13 homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
14 residential habilitation centers; or any other facility licensed or
15 certified by the department.

16 ((6)) (7) "Financial exploitation" means the illegal or
17 improper use, control over, or withholding of the property, income,
18 resources, or trust funds of the vulnerable adult by any person or
19 entity for any person's or entity's profit or advantage other than
20 for the vulnerable adult's profit or advantage. "Financial
21 exploitation" includes, but is not limited to:

22 (a) The use of deception, intimidation, or undue influence by a
23 person or entity in a position of trust and confidence with a
24 vulnerable adult to obtain or use the property, income, resources, or
25 trust funds of the vulnerable adult for the benefit of a person or
26 entity other than the vulnerable adult;

27 (b) The breach of a fiduciary duty, including, but not limited
28 to, the misuse of a power of attorney, trust, or a guardianship
29 appointment, that results in the unauthorized appropriation, sale, or
30 transfer of the property, income, resources, or trust funds of the
31 vulnerable adult for the benefit of a person or entity other than the
32 vulnerable adult; or

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

38 ((7)) (8) "Financial institution" has the same meaning as in
39 RCW ((30.22.040 and 30.22.041)) 30A.22.040 and 30A.22.041. For

1 purposes of this chapter only, "financial institution" also means a
2 "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

3 ~~((8))~~ (9) "Hospital" means a facility licensed under chapter
4 70.41, 71.12, or 72.23 RCW and any employee, agent, officer,
5 director, or independent contractor thereof.

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

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

12 ~~((10))~~ (12) "Interested person" means a person who demonstrates
13 to the court's satisfaction that the person is interested in the
14 welfare of the vulnerable adult, that the person has a good faith
15 belief that the court's intervention is necessary, and that the
16 vulnerable adult is unable, due to incapacity, undue influence, or
17 duress at the time the petition is filed, to protect his or her own
18 interests.

19 ~~((11))~~ (13) "Mandated reporter" is an employee of the
20 department; law enforcement officer; social worker; professional
21 school personnel; individual provider; an employee of a facility; an
22 operator of a facility; an employee of a social service, welfare,
23 mental health, adult day health, adult day care, home health, home
24 care, or hospice agency; county coroner or medical examiner;
25 Christian Science practitioner; or health care provider subject to
26 chapter 18.130 RCW.

27 ~~((12))~~ (14) "Mechanical restraint" means any device attached or
28 adjacent to the vulnerable adult's body that he or she cannot easily
29 remove that restricts freedom of movement or normal access to his or
30 her body. "Mechanical restraint" does not include the use of devices,
31 materials, or equipment that are (a) medically authorized, as
32 required, and (b) used in a manner that is consistent with federal or
33 state licensing or certification requirements for facilities,
34 hospitals, or programs authorized under chapter 71A.12 RCW.

35 (15) "Neglect" means (a) a pattern of conduct or inaction by a
36 person or entity with a duty of care that fails to provide the goods
37 and services that maintain physical or mental health of a vulnerable
38 adult, or that fails to avoid or prevent physical or mental harm or
39 pain to a vulnerable adult; or (b) an act or omission by a person or
40 entity with a duty of care that demonstrates a serious disregard of

1 consequences of such a magnitude as to constitute a clear and present
2 danger to the vulnerable adult's health, welfare, or safety,
3 including but not limited to conduct prohibited under RCW 9A.42.100.

4 ~~((13))~~ (16) "Permissive reporter" means any person, including,
5 but not limited to, an employee of a financial institution, attorney,
6 or volunteer in a facility or program providing services for
7 vulnerable adults.

8 ~~((14))~~ (17) "Physical restraint" means the application of
9 physical force without the use of any device, for the purpose of
10 restraining the free movement of a vulnerable adult's body. "Physical
11 restraint" does not include (a) briefly holding without undue force a
12 vulnerable adult in order to calm or comfort him or her, or (b)
13 holding a vulnerable adult's hand to safely escort him or her from
14 one area to another.

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

23 ~~((15))~~ (19) "Self-neglect" means the failure of a vulnerable
24 adult, not living in a facility, to provide for himself or herself
25 the goods and services necessary for the vulnerable adult's physical
26 or mental health, and the absence of which impairs or threatens the
27 vulnerable adult's well-being. This definition may include a
28 vulnerable adult who is receiving services through home health,
29 hospice, or a home care agency, or an individual provider when the
30 neglect is not a result of inaction by that agency or individual
31 provider.

32 ~~((16))~~ (20) "Social worker" means:

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

34 (b) Anyone engaged in a professional capacity during the regular
35 course of employment in encouraging or promoting the health, welfare,
36 support, or education of vulnerable adults, or providing social
37 services to vulnerable adults, whether in an individual capacity or
38 as an employee or agent of any public or private organization or
39 institution.

40 ~~((17))~~ (21) "Vulnerable adult" includes a person:

- 1 (a) Sixty years of age or older who has the functional, mental,
2 or physical inability to care for himself or herself; or
3 (b) Found incapacitated under chapter 11.88 RCW; or
4 (c) Who has a developmental disability as defined under RCW
5 71A.10.020(5); or
6 (d) Admitted to any facility; or
7 (e) Receiving services from home health, hospice, or home care
8 agencies licensed or required to be licensed under chapter 70.127
9 RCW; or
10 (f) Receiving services from an individual provider; or
11 (g) Who self-directs his or her own care and receives services
12 from a personal aide under chapter 74.39 RCW.

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