

CERTIFICATION OF ENROLLMENT
SUBSTITUTE HOUSE BILL 1620

56th Legislature
1999 Regular Session

Passed by the House March 16, 1999
Yea 96 Nays 1

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1620** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

President of the Senate

Approved

FILED

Governor of the State of Washington

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1620

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Conway, Parlette, Cody, Miloscia, Poulsen, Hatfield and Keiser; by request of Department of Social and Health Services)

Read first time 03/02/1999.

1 AN ACT Relating to protection of vulnerable adults; amending RCW
2 74.34.020, 74.34.025, 74.34.050, 74.34.070, 74.34.080, 74.34.110,
3 74.34.130, 74.34.180, 74.34.200, 70.124.010, 70.124.020, 70.124.030,
4 70.124.060, 70.124.090, 70.124.100, 26.44.010, 26.44.015, 26.44.020,
5 26.44.030, 26.44.032, 26.44.040, and 74.39A.060; reenacting and
6 amending RCW 70.124.040 and 26.44.050; adding new sections to chapter
7 74.34 RCW; creating new sections; and repealing RCW 74.34.010,
8 74.34.015, 74.34.030, 74.34.055, and 74.34.060.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that the provisions
11 for the protection of vulnerable adults found in chapters 26.44,
12 70.124, and 74.34 RCW contain different definitions for abandonment,
13 abuse, exploitation, and neglect. The legislature finds that combining
14 the sections of these chapters that pertain to the protection of
15 vulnerable adults would better serve this state's population of
16 vulnerable adults. The purpose of chapter 74.34 RCW is to provide the
17 department and law enforcement agencies with the authority to
18 investigate complaints of abandonment, abuse, financial exploitation,

1 or neglect of vulnerable adults and to provide protective services and
2 legal remedies to protect these vulnerable adults.

3 **NEW SECTION.** **Sec. 2.** A new section is added to chapter 74.34 RCW
4 to read as follows:

5 The legislature finds and declares that:

6 (1) Some adults are vulnerable and may be subjected to abuse,
7 neglect, financial exploitation, or abandonment by a family member,
8 care provider, or other person who has a relationship with the
9 vulnerable adult;

10 (2) A vulnerable adult may be home bound or otherwise unable to
11 represent himself or herself in court or to retain legal counsel in
12 order to obtain the relief available under this chapter or other
13 protections offered through the courts;

14 (3) A vulnerable adult may lack the ability to perform or obtain
15 those services necessary to maintain his or her well-being because he
16 or she lacks the capacity for consent;

17 (4) A vulnerable adult may have health problems that place him or
18 her in a dependent position;

19 (5) The department and appropriate agencies must be prepared to
20 receive reports of abandonment, abuse, financial exploitation, or
21 neglect of vulnerable adults;

22 (6) The department must provide protective services in the least
23 restrictive environment appropriate and available to the vulnerable
24 adult.

25 **Sec. 3.** RCW 74.34.020 and 1997 c 392 s 523 are each amended to
26 read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Abandonment" means action or inaction by a person or entity
30 with a duty of care for a ((frail elder or a)) vulnerable adult that
31 leaves the vulnerable person without the means or ability to obtain
32 necessary food, clothing, shelter, or health care.

33 (2) "Abuse" means ((a nonaccidental act of physical or mental
34 mistreatment or injury, or sexual mistreatment, which harms a person
35 through action or inaction by another individual)) the willful action
36 or inaction that inflicts injury, unreasonable confinement,
37 intimidation, or punishment on a vulnerable adult. In instances of

1 abuse of a vulnerable adult who is unable to express or demonstrate
2 physical harm, pain, or mental anguish, the abuse is presumed to cause
3 physical harm, pain, or mental anguish. Abuse includes sexual abuse,
4 mental abuse, physical abuse, and exploitation of a vulnerable adult,
5 which have the following meanings:

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

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

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

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

32 (3) "Consent" means express written consent granted after the
33 ((person)) vulnerable adult or his or her legal representative has been
34 fully informed of the nature of the services to be offered and that the
35 receipt of services is voluntary.

36 (4) "Department" means the department of social and health
37 services.

1 (5) ("Exploitation" means the illegal or improper use of a frail
2 elder or vulnerable adult or that person's income or resources,
3 including trust funds, for another person's profit or advantage.

4 (6) "Neglect" means a pattern of conduct or inaction by a person or
5 entity with a duty of care for a frail elder or vulnerable adult that
6 results in the deprivation of care necessary to maintain the vulnerable
7 person's physical or mental health.

8 (7) "Secretary" means the secretary of social and health services.

9 (8) "Frail elder or vulnerable adult" means a person sixty years of
10 age or older who has the functional, mental, or physical inability to
11 care for himself or herself. "Frail elder or vulnerable adult" shall
12 include persons found incapacitated under chapter 11.88 RCW, or a
13 person who has a developmental disability under chapter 71A.10 RCW, and
14 persons admitted to any long term care facility that is licensed or
15 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
16 RCW, or persons receiving services from home health, hospice, or home
17 care agencies licensed or required to be licensed under chapter 70.127
18 RCW.

19 (9) No frail elder or vulnerable person who relies upon and is
20 being provided spiritual treatment in lieu of medical treatment in
21 accordance with the tenets and practices of a well recognized religious
22 denomination shall for that reason alone be considered abandoned,
23 abused, or neglected.) "Facility" means a residence licensed or
24 required to be licensed under chapter 18.20 RCW, boarding homes;
25 chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family
26 homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
27 residential habilitation centers; or any other facility licensed by the
28 department.

29 (6) "Financial exploitation" means the illegal or improper use of
30 the property, income, resources, or trust funds of the vulnerable adult
31 by any person for any person's profit or advantage.

32 (7) "Individual provider" means a person under contract with the
33 department to provide services in the home under chapter 74.09 or
34 74.39A RCW.

35 (8) "Mandated reporter" is an employee of the department; law
36 enforcement officer; social worker; professional school personnel;
37 individual provider; an employee of a facility; an operator of a
38 facility; an employee of a social service, welfare, mental health,
39 adult day health, adult day care, home health, home care, or hospice

1 agency; county coroner or medical examiner; Christian Science
2 practitioner; or health care provider subject to chapter 18.130 RCW.

3 (9) "Neglect" means (a) a pattern of conduct or inaction by a
4 person or entity with a duty of care to provide the goods and services
5 that maintain physical or mental health of a vulnerable adult, or that
6 avoids or prevents physical or mental harm or pain to a vulnerable
7 adult; or (b) an act or omission that demonstrates a serious disregard
8 of consequences of such a magnitude as to constitute a clear and
9 present danger to the vulnerable adult's health, welfare, or safety.

10 (10) "Permissive reporter" means any person, employee of a
11 financial institution, attorney, or volunteer in a facility or program
12 providing services for vulnerable adults.

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

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

29 (13) "Vulnerable adult" includes a person:

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

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

33 (c) Who has a developmental disability as defined under RCW
34 71A.10.020; or

35 (d) Admitted to any facility; or

36 (e) Receiving services from home health, hospice, or home care
37 agencies licensed or required to be licensed under chapter 70.127 RCW;
38 or

39 (f) Receiving services from an individual provider.

1 **Sec. 4.** RCW 74.34.025 and 1997 c 392 s 304 are each amended to
2 read as follows:

3 The cost of benefits and services provided to a ((frail elder or))
4 vulnerable adult under this chapter with state funds only does not
5 constitute an obligation or lien and is not recoverable from the
6 recipient of the services or from the recipient's estate, whether by
7 lien, adjustment, or any other means of recovery.

8 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.34 RCW
9 to read as follows:

10 (1) When there is reasonable cause to believe that abandonment,
11 abuse, financial exploitation, or neglect of a vulnerable adult has
12 occurred, mandated reporters shall immediately report to the
13 department. If there is reason to suspect that sexual or physical
14 assault has occurred, mandated reporters shall immediately report to
15 the appropriate law enforcement agency and to the department.

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

20 (3) No facility, as defined by this chapter, agency licensed or
21 required to be licensed under chapter 70.127 RCW, or facility or agency
22 under contract with the department to provide care for vulnerable
23 adults may develop policies or procedures that interfere with the
24 reporting requirements of this chapter.

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

27 (a) The name and address of the person making the report;
28 (b) The name and address of the vulnerable adult and the name of
29 the facility or agency providing care for the vulnerable adult;
30 (c) The name and address of the legal guardian or alternate
31 decision maker;

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

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

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

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

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

7 **Sec. 6.** RCW 74.34.050 and 1997 c 386 s 34 are each amended to read
8 as follows:

9 (1) A person participating in good faith in making a report under
10 this chapter or testifying about alleged abuse, neglect, abandonment,
11 ((or)) financial exploitation, or self-neglect of a vulnerable adult in
12 a judicial or administrative proceeding under this chapter is immune
13 from liability resulting from the report or testimony. The making of
14 permissive reports as allowed in ((RCW 74.34.030)) this chapter does
15 not create any duty to report and no civil liability shall attach for
16 any failure to make a permissive report ((under RCW 74.34.030)) as
17 allowed under this chapter.

18 (2) Conduct conforming with the reporting and testifying provisions
19 of this chapter shall not be deemed a violation of any confidential
20 communication privilege. Nothing in this chapter shall be construed as
21 superseding or abridging remedies provided in chapter 4.92 RCW.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.34 RCW
23 to read as follows:

24 (1) A person who is required to make a report under this chapter
25 and who knowingly fails to make the report is guilty of a gross
26 misdemeanor.

27 (2) A person who intentionally, maliciously, or in bad faith makes
28 a false report of alleged abandonment, abuse, financial exploitation,
29 or neglect of a vulnerable adult is guilty of a misdemeanor.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.34 RCW
31 to read as follows:

32 (1) The department shall initiate a response to a report, no later
33 than twenty-four hours after knowledge of the report, of suspected
34 abandonment, abuse, financial exploitation, neglect, or self-neglect of
35 a vulnerable adult.

1 (2) When the initial report or investigation by the department
2 indicates that the alleged abandonment, abuse, financial exploitation,
3 or neglect may be criminal, the department shall make an immediate
4 report to the appropriate law enforcement agency. The department and
5 law enforcement will coordinate in investigating reports made under
6 this chapter. The department may provide protective services and other
7 remedies as specified in this chapter.

8 (3) The law enforcement agency or the department shall report the
9 incident in writing to the proper county prosecutor or city attorney
10 for appropriate action whenever the investigation reveals that a crime
11 may have been committed.

12 (4) The department and law enforcement may share information
13 contained in reports and findings of abandonment, abuse, financial
14 exploitation, and neglect of vulnerable adults, consistent with RCW
15 74.04.060, 42.17.310, and other applicable confidentiality laws.

16 (5) The department shall notify the proper licensing authority
17 concerning any report received under this chapter that alleges that a
18 person who is professionally licensed, certified, or registered under
19 Title 18 RCW has abandoned, abused, financially exploited, or neglected
20 a vulnerable adult.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.34 RCW
22 to read as follows:

23 (1) Where appropriate, an investigation by the department may
24 include a private interview with the vulnerable adult regarding the
25 alleged abandonment, abuse, financial exploitation, neglect, or self-
26 neglect.

27 (2) In conducting the investigation, the department shall interview
28 the complainant, unless anonymous, and shall use its best efforts to
29 interview the vulnerable adult or adults harmed, and, consistent with
30 the protection of the vulnerable adult shall interview facility staff,
31 any available independent sources of relevant information, including if
32 appropriate the family members of the vulnerable adult.

33 (3) The department may conduct ongoing case planning and
34 consultation with: (a) Those persons or agencies required to report
35 under this chapter or submit a report under this chapter; (b)
36 consultants designated by the department; and (c) designated
37 representatives of Washington Indian tribes if client information
38 exchanged is pertinent to cases under investigation or the provision of

1 protective services. Information considered privileged by statute and
2 not directly related to reports required by this chapter must not be
3 divulged without a valid written waiver of the privilege.

4 (4) The department shall prepare and keep on file a report of each
5 investigation conducted by the department for a period of time in
6 accordance with policies established by the department.

7 (5) If the department determines that the vulnerable adult has
8 suffered from abuse, neglect, self-neglect, abandonment, or financial
9 exploitation, and lacks the ability or capacity to consent, and needs
10 the protection of a guardian, the department may bring a guardianship
11 action under chapter 11.88 RCW as an interested person.

12 (6) When the investigation is completed and the department
13 determines that an incident of abandonment, abuse, financial
14 exploitation, neglect, or self-neglect has occurred, the department
15 shall inform the vulnerable adult of their right to refuse protective
16 services, and ensure that, if necessary, appropriate protective
17 services are provided to the vulnerable adult, with the consent of the
18 vulnerable adult. The vulnerable adult has the right to withdraw or
19 refuse protective services.

20 (7) The department may photograph a vulnerable adult or their
21 environment for the purpose of providing documentary evidence of the
22 physical condition of the vulnerable adult or his or her environment.
23 When photographing the vulnerable adult, the department shall obtain
24 permission from the vulnerable adult or his or her legal representative
25 unless immediate photographing is necessary to preserve evidence.
26 However, if the legal representative is alleged to have abused,
27 neglected, abandoned, or exploited the vulnerable adult, consent from
28 the legal representative is not necessary. No such consent is
29 necessary when photographing the physical environment.

30 (8) When the investigation is complete and the department
31 determines that the incident of abandonment, abuse, financial
32 exploitation, or neglect has occurred, the department shall inform the
33 facility in which the incident occurred, consistent with
34 confidentiality requirements concerning the vulnerable adult,
35 witnesses, and complainants.

36 **Sec. 10.** RCW 74.34.070 and 1997 c 386 s 35 are each amended to
37 read as follows:

1 ((In responding to reports of alleged abuse, exploitation, neglect,
2 or abandonment under this chapter, the department shall provide
3 information to the frail elder or vulnerable adult on protective
4 services available to the person and inform the person of the right to
5 refuse such services.)) The department ((shall)) may develop
6 cooperative agreements with community-based agencies ((servicing the
7 abused elderly and)) providing services for vulnerable adults. The
8 agreements shall cover ((such subjects as)): (1) The appropriate roles
9 and responsibilities of the department and community-based agencies in
10 identifying and responding to reports of alleged abuse((,)); (2) the
11 provision of case-management services((,)); (3) standardized data
12 collection procedures((,)); and (4) related coordination activities.

13 **Sec. 11.** RCW 74.34.080 and 1984 c 97 s 14 are each amended to read
14 as follows:

15 If access is denied to an employee of the department seeking to
16 investigate an allegation of abandonment, abuse, ((neglect,)) financial
17 exploitation, or ((abandonment)) neglect of a vulnerable adult by an
18 individual, the department may seek an injunction to prevent
19 interference with the investigation. The court shall issue the
20 injunction if the department shows that:

21 (1) There is reasonable cause to believe that the person is a
22 vulnerable adult and is or has been abandoned, abused, ((neglected,))
23 financially exploited, or ((abandoned)) neglected; and

24 (2) The employee of the department seeking to investigate the
25 report has been denied access.

26 **Sec. 12.** RCW 74.34.110 and 1986 c 187 s 5 are each amended to read
27 as follows:

28 An action known as a petition for an order for protection of a
29 vulnerable adult in cases of abandonment, abuse ((or)), financial
30 exploitation, or neglect is created.

31 (1) A vulnerable adult may seek relief from abandonment, abuse
32 ((or)), financial exploitation, or neglect, or the threat thereof, by
33 filing a petition for an order for protection in superior court.

34 (2) A petition shall allege that the petitioner is a vulnerable
35 adult and that the petitioner has been abandoned, abused ((or)),
36 financially exploited, or neglected, or is threatened with abandonment,
37 abuse ((or)), financial exploitation, or neglect by respondent.

1 (3) A petition shall be accompanied by affidavit made under oath
2 stating the specific facts and circumstances which demonstrate the need
3 for the relief sought.

4 (4) A petition for an order may be made whether or not there is a
5 pending lawsuit, complaint, petition, or other action between the
6 parties.

7 (5) A petitioner is not required to post bond to obtain relief in
8 any proceeding under this section.

9 (6) An action under this section shall be filed in the county where
10 the petitioner resides; except that if the petitioner has left the
11 residence as a result of abandonment, abuse ((or)), financial
12 exploitation, or neglect, or in order to avoid abandonment, abuse
13 ((or)), financial exploitation, or neglect, the petitioner may bring an
14 action in the county of either the previous or new residence.

15 (7) The filing fee for the petition may be waived at the discretion
16 of the court.

17 **Sec. 13.** RCW 74.34.130 and 1986 c 187 s 7 are each amended to read
18 as follows:

19 The court may order relief as it deems necessary for the protection
20 of the petitioner, including, but not limited to the following:

21 (1) Restraining respondent from committing acts of abandonment,
22 abuse ((or)), neglect, or financial exploitation;

23 (2) Excluding the respondent from petitioner's residence for a
24 specified period or until further order of the court;

25 (3) Prohibiting contact by respondent for a specified period or
26 until further order of the court;

27 (4) Requiring an accounting by respondent of the disposition of
28 petitioner's income or other resources;

29 (5) Restraining the transfer of property for a specified period not
30 exceeding ninety days;

31 (6) Requiring the respondent to pay the filing fee and court costs,
32 including service fees, and to reimburse the petitioner for costs
33 incurred in bringing the action, including a reasonable attorney's fee.

34 Any relief granted by an order for protection, other than a
35 judgment for costs, shall be for a fixed period not to exceed one year.

36 **Sec. 14.** RCW 74.34.180 and 1997 c 392 s 202 are each amended to
37 read as follows:

1 (1) An employee or contractor who is a whistleblower and who as a
2 result of being a whistleblower has been subjected to workplace
3 reprisal or retaliatory action, has the remedies provided under chapter
4 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection
5 to persons who communicate to government agencies, apply to complaints
6 made under this section. The identity of a whistleblower who
7 complains, in good faith, to the department or the department of health
8 about suspected abandonment, abuse, ((neglect,)) financial
9 exploitation, or ((abandonment)) neglect by any person in a ((boarding
10 home)) facility, licensed or required to be licensed ((pursuant to
11 chapter 18.20 RCW or a veterans' home pursuant to chapter 72.36 RCW))
12 or care provided in a ((boarding home or a veterans' home)) facility or
13 in a home setting, by any person associated with a hospice, home care,
14 or home health agency licensed under chapter 70.127 RCW or other in-
15 home provider, may remain confidential if requested. The identity of
16 the whistleblower shall subsequently remain confidential unless the
17 department determines that the complaint was not made in good faith.

18 (2)(a) An attempt to expel a resident from a ((boarding home or
19 veterans' home)) facility, or any type of discriminatory treatment of
20 a resident who is a consumer of hospice, home health, home care
21 services, or other in-home services by whom, or upon whose behalf, a
22 complaint substantiated by the department or the department of health
23 has been submitted to the department or the department of health or any
24 proceeding instituted under or related to this chapter within one year
25 of the filing of the complaint or the institution of the action, raises
26 a rebuttable presumption that the action was in retaliation for the
27 filing of the complaint.

28 (b) The presumption is rebutted by credible evidence establishing
29 the alleged retaliatory action was initiated prior to the complaint.

30 (c) The presumption is rebutted by a ((functional assessment))
31 review conducted by the department that shows that the resident or
32 consumer's needs cannot be met by the reasonable accommodations of the
33 facility due to the increased needs of the resident.

34 (3) For the purposes of this section:

35 (a) "Whistleblower" means a resident or a person with a mandatory
36 duty to report under this chapter, or any person licensed under Title
37 18 RCW, who in good faith reports alleged abandonment, abuse,
38 ((neglect,)) financial exploitation, or ((abandonment)) neglect to the

1 department, or the department of health, or to a law enforcement
2 agency;

3 (b) "Workplace reprisal or retaliatory action" means, but is not
4 limited to: Denial of adequate staff to perform duties; frequent staff
5 changes; frequent and undesirable office changes; refusal to assign
6 meaningful work; unwarranted and unsubstantiated report of misconduct
7 under Title 18 RCW; letters of reprimand or unsatisfactory performance
8 evaluations; demotion; denial of employment; or a supervisor or
9 superior encouraging coworkers to behave in a hostile manner toward the
10 whistleblower. The protections provided to whistleblowers under this
11 chapter shall not prevent a ((nursing home, state hospital, boarding
12 home, or adult family home)) facility or an agency licensed under
13 chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining
14 a whistleblower for other lawful purposes; or (ii) for facilities
15 licensed under chapter 70.128 RCW, reducing the hours of employment or
16 terminating employment as a result of the demonstrated inability to
17 meet payroll requirements. The department shall determine if the
18 facility cannot meet payroll in cases in which a whistleblower has been
19 terminated or had hours of employment reduced because of the inability
20 of a facility to meet payroll; and

21 (c) "Reasonable accommodation" by a facility to the needs of a
22 prospective or current resident has the meaning given to this term
23 under the federal Americans with disabilities act of 1990, 42 U.S.C.
24 Sec. 12101 et seq. and other applicable federal or state
25 antidiscrimination laws and regulations.

26 (4) This section does not prohibit a ((boarding home or veterans'
27 home)) facility or an agency licensed under chapter 70.127 RCW from
28 exercising its authority to terminate, suspend, or discipline any
29 employee who engages in workplace reprisal or retaliatory action
30 against a whistleblower.

31 (5) The department shall adopt rules to implement procedures for
32 filing, investigation, and resolution of whistleblower complaints that
33 are integrated with complaint procedures under this chapter.

34 ((No frail elder or)) (a) Any vulnerable ((person)) adult who
35 relies upon and is being provided spiritual treatment in lieu of
36 medical treatment in accordance with the tenets and practices of a
37 well-recognized religious denomination ((shall)) may not for that
38 reason alone be considered abandoned, abused, or neglected((, nor shall
39 anything in this chapter be construed to authorize, permit, or require

1 medical treatment contrary to the stated or clearly implied objection
2 of such a person)).

3 (b) Any vulnerable adult may not be considered abandoned, abused,
4 or neglected under this chapter by any health care provider, facility,
5 facility employee, agency, agency employee, or individual provider who
6 participates in good faith in the withholding or withdrawing of life-
7 sustaining treatment from a vulnerable adult under chapter 70.122 RCW,
8 or who acts in accordance with chapter 7.70 RCW or other state laws to
9 withhold or withdraw treatment, goods, or services.

10 (7) The department, and the department of health for facilities,
11 agencies, or individuals it regulates, shall adopt rules designed to
12 discourage whistleblower complaints made in bad faith or for
13 retaliatory purposes.

14 **Sec. 15.** RCW 74.34.200 and 1995 1st sp.s. c 18 s 85 are each
15 amended to read as follows:

16 (1) In addition to other remedies available under the law, a
17 ((frail elder or)) vulnerable adult ((or a person age eighteen or
18 elder)) who has been subjected to abandonment, abuse, ((neglect,))
19 financial exploitation, or ((abandonment)) neglect either while
20 residing in a ((long-term care)) facility or in the case of a person
21 ((in the)) residing at home who receives care ((or)) from a home
22 health, hospice, or home care agency, ((residing at home)) or an
23 individual provider, shall have a cause of action for damages on
24 account of his or her injuries, pain and suffering, and loss of
25 property sustained thereby. This action shall be available where the
26 defendant is or was a corporation, trust, unincorporated association,
27 partnership, administrator, employee, agent, officer, partner, or
28 director of a ((long-term care)) facility, ((such as a nursing home or
29 boarding home, that is licensed or required to be licensed under
30 chapter 18.20, 18.51, 72.36, or 70.128 RCW,)) or of a home health,
31 hospice, or home care agency licensed or required to be licensed under
32 chapter 70.127 RCW, as now or subsequently designated, or an individual
33 provider.

34 (2) It is the intent of the legislature, however, that where there
35 is a dispute about the care or treatment of a ((frail elder or))
36 vulnerable adult, the parties should use the least formal means
37 available to try to resolve the dispute. Where feasible, parties are
38 encouraged but not mandated to employ direct discussion with the health

1 care provider, use of the long-term care ombudsman or other
2 intermediaries, and, when necessary, recourse through licensing or
3 other regulatory authorities.

4 (3) In an action brought under this section, a prevailing plaintiff
5 shall be awarded his or her actual damages, together with the costs of
6 the suit, including a reasonable attorney's fee. The term "costs"
7 includes, but is not limited to, the reasonable fees for a guardian,
8 guardian ad litem, and experts, if any, that may be necessary to the
9 litigation of a claim brought under this section.

10 **NEW SECTION.** **Sec. 16.** A new section is added to chapter 74.34 RCW
11 to read as follows:

12 (1) Any vulnerable adult who relies upon and is being provided
13 spiritual treatment in lieu of medical treatment in accordance with the
14 tenets and practices of a well-recognized religious denomination may
15 not for that reason alone be considered abandoned, abused, or
16 neglected.

17 (2) Any vulnerable adult may not be considered abandoned, abused,
18 or neglected under this chapter by any health care provider, facility,
19 facility employee, agency, agency employee, or individual provider who
20 participates in good faith in the withholding or withdrawing of life-
21 sustaining treatment from a vulnerable adult under chapter 70.122 RCW,
22 or who acts in accordance with chapter 7.70 RCW or other state laws to
23 withhold or withdraw treatment, goods, or services.

24 **NEW SECTION.** **Sec. 17.** A new section is added to chapter 74.34 RCW
25 to read as follows:

26 (1) The following information is confidential and not subject to
27 disclosure, except as provided in this section:

28 (a) A report of abandonment, abuse, financial exploitation, or
29 neglect made under this chapter;

30 (b) The identity of the person making the report; and

31 (c) All files, reports, records, communications, and working papers
32 used or developed in the investigation or provision of protective
33 services.

34 (2) Information considered confidential may be disclosed only for
35 a purpose consistent with this chapter or as authorized by chapter
36 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
37 ombudsman programs under federal law or state law, chapter 43.190 RCW.

1 (3) A court or presiding officer in an administrative proceeding
2 may order disclosure of confidential information only if the court
3 determines that disclosure is essential to the administration of
4 justice and will not endanger the life or safety of the vulnerable
5 adult or individual who made the report. The court or presiding
6 officer in an administrative hearing may place restrictions on such
7 disclosure as the court or presiding officer deems proper.

8 NEW SECTION. **Sec. 18.** A new section is added to chapter 74.34 RCW
9 to read as follows:

10 The department may adopt rules relating to the reporting,
11 investigation, and provision of protective services in in-home
12 settings, consistent with the objectives of this chapter.

13 NEW SECTION. **Sec. 19.** The department of social and health
14 services shall conduct a feasibility study to determine the need, use,
15 role of due process, and cost of developing and maintaining a registry
16 relating to incidents of abuse, neglect, abandonment, and financial
17 exploitation of vulnerable adults. The results of the study are due by
18 November 30, 1999.

19 **Sec. 20.** RCW 70.124.010 and 1981 c 174 s 1 are each amended to
20 read as follows:

21 (1) The Washington state legislature finds and declares that a
22 reporting system is needed to protect ((nursing home and)) state
23 hospital patients from abuse. Instances of nonaccidental injury,
24 neglect, death, sexual abuse, and cruelty to such patients have
25 occurred, and in the instance where such a patient is deprived of his
26 or her right to conditions of minimal health and safety, the state is
27 justified in emergency intervention based upon verified information.
28 Therefore the Washington state legislature hereby provides for the
29 reporting of such cases to the appropriate public authorities.

30 (2) It is the intent of the legislature that: (a) As a result of
31 such reports, protective services shall be made available in an effort
32 to prevent further abuses, and to safeguard the general welfare of the
33 patients; and (b) such reports shall be maintained and disseminated
34 with strictest regard for the privacy of the subjects of such reports
35 and so as to safeguard against arbitrary, malicious, or erroneous
36 information or actions.

1 **Sec. 21.** RCW 70.124.020 and 1997 c 392 s 519 are each amended to
2 read as follows:

3 Unless the context requires otherwise, the definitions in this
4 section apply throughout this chapter.

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

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

8 (3) "Practitioner of the healing arts" or "practitioner" means a
9 person licensed by this state to practice podiatric medicine and
10 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,
11 dentistry, osteopathic medicine and surgery, or medicine and surgery.
12 The term "practitioner" ((shall)) includes a nurse's aide((, a nursing
13 home administrator licensed under chapter 18.52 RCW,)) and a duly
14 accredited Christian Science practitioner((: PROVIDED, HOWEVER, That
15 a nursing home patient who is being furnished Christian Science
16 treatment by a duly accredited Christian Science practitioner shall not
17 be considered, for that reason alone, a neglected patient for the
18 purposes of this chapter)).

19 (4) "Department" means the state department of social and health
20 services.

21 (5) (("Nursing home" has the meaning prescribed by RCW 18.51.010.
22 +6))) "Social worker" means anyone engaged in a professional
23 capacity during the regular course of employment in encouraging or
24 promoting the health, welfare, support, or education of ((nursing
25 home)) patients, or providing social services to ((nursing home))
26 patients, whether in an individual capacity or as an employee or agent
27 of any public or private organization or institution.

28 ((+7))) (6) "Psychologist" means any person licensed to practice
29 psychology under chapter 18.83 RCW, whether acting in an individual
30 capacity or as an employee or agent of any public or private
31 organization or institution.

32 ((+8))) (7) "Pharmacist" means any registered pharmacist under
33 chapter 18.64 RCW, whether acting in an individual capacity or as an
34 employee or agent of any public or private organization or institution.

35 ((+9))) (8) "Abuse or neglect" or "patient abuse or neglect" means
36 the nonaccidental physical injury or condition, sexual abuse, or
37 negligent treatment of a ((nursing home or)) state hospital patient
38 under circumstances which indicate that the patient's health, welfare,
39 or safety is harmed thereby.

1 ((+10))) (9) "Negligent treatment" means an act or omission which
2 evinces a serious disregard of consequences of such magnitude as to
3 constitute a clear and present danger to the patient's health, welfare,
4 or safety.

5 ((+11))) (10) "State hospital" means any hospital operated and
6 maintained by the state for the care of the mentally ill under chapter
7 72.23 RCW.

8 **Sec. 22.** RCW 70.124.030 and 1981 c 174 s 3 are each amended to
9 read as follows:

10 (1) When any practitioner, social worker, psychologist, pharmacist,
11 ~~((employee of a nursing home,))~~ employee of a state hospital, or
12 employee of the department has reasonable cause to believe that a
13 ~~((nursing home or))~~ state hospital patient has suffered abuse or
14 neglect, the person shall report such incident, or cause a report to be
15 made, to either a law enforcement agency or to the department as
16 provided in RCW 70.124.040.

17 (2) Any other person who has reasonable cause to believe that a
18 ~~((nursing home or))~~ state hospital patient has suffered abuse or
19 neglect may report such incident to either a law enforcement agency or
20 to the department as provided in RCW 70.124.040.

21 (3) The department or any law enforcement agency receiving a report
22 of an incident of abuse or neglect involving a ~~((nursing home or))~~
23 state hospital patient who has died or has had physical injury or
24 injuries inflicted other than by accidental means or who has been
25 subjected to sexual abuse shall report the incident to the proper
26 county prosecutor for appropriate action.

27 **Sec. 23.** RCW 70.124.040 and 1997 c 392 s 520 and 1997 c 386 s 30
28 are each reenacted and amended to read as follows:

29 (1) Where a report is required under RCW 70.124.030, an immediate
30 oral report ~~((shall))~~ must be made by telephone or otherwise to either
31 a law enforcement agency or to the department and, upon request,
32 ~~((shall))~~ must be followed by a report in writing. The reports
33 ~~((shall))~~ must contain the following information, if known:

34 (a) The name and address of the person making the report;
35 (b) The name and address of the ~~((nursing home or))~~ state hospital
36 patient;

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

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

4 (e) The nature and extent of the alleged neglect;

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

6 (g) Any evidence of previous injuries, including their nature and
7 extent; and

8 (h) Any other information ((which)) that may be helpful in
9 establishing the cause of the patient's death, injury, or injuries, and
10 the identity of the perpetrator or perpetrators.

11 (2) Each law enforcement agency receiving such a report shall, in
12 addition to taking the action required by RCW 70.124.050, immediately
13 relay the report to the department, and to other law enforcement
14 agencies, including the medicaid fraud control unit of the office of
15 the attorney general, as appropriate. For any report it receives, the
16 department shall likewise take the required action and in addition
17 relay the report to the appropriate law enforcement agency or agencies.
18 The appropriate law enforcement agency or agencies ((shall)) must
19 receive immediate notification when the department, upon receipt of
20 such report, has reasonable cause to believe that a criminal act has
21 been committed.

22 **Sec. 24.** RCW 70.124.060 and 1993 c 510 s 25 are each amended to
23 read as follows:

24 (1) A person other than a person alleged to have committed the
25 abuse or neglect participating in good faith in the making of a report
26 pursuant to this chapter, or testifying as to alleged patient abuse or
27 neglect in a judicial proceeding, ((shall)) is, in so doing, ((be))
28 immune from any liability, civil or criminal, arising out of such
29 reporting or testifying under any law of this state or its political
30 subdivisions, and if such person is an employee of a ((nursing home
31 or)) state hospital it ((shall be)) is an unfair practice under chapter
32 49.60 RCW for the employer to discharge, expel, or otherwise
33 discriminate against the employee for such reporting activity.

34 (2) Conduct conforming with the reporting requirements of this
35 chapter ((shall)) is not ((be deemed)) a violation of the confidential
36 communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110.
37 Nothing in this chapter ((shall be construed as to)) supersedes or
38 abridges remedies provided in chapter 4.92 RCW.

1 **Sec. 25.** RCW 70.124.090 and 1981 c 174 s 6 are each amended to
2 read as follows:

3 In the adoption of rules under the authority of this chapter, the
4 department shall provide for the publication and dissemination to
5 ((nursing homes,)) state hospitals((, and nursing home)) and state
6 hospital employees and the posting where appropriate by ((nursing homes
7 and)) state hospitals of informational, educational, or training
8 materials calculated to aid and assist in achieving the objectives of
9 this chapter.

10 **Sec. 26.** RCW 70.124.100 and 1997 c 392 s 201 are each amended to
11 read as follows:

12 (1) An employee who is a whistleblower and who as a result of being
13 a whistleblower has been subjected to workplace reprisal or retaliatory
14 action, has the remedies provided under chapter 49.60 RCW. RCW
15 4.24.500 through 4.24.520, providing certain protection to persons who
16 communicate to government agencies, apply to complaints made under this
17 section. The identity of a whistleblower who complains, in good faith,
18 to the department about suspected abuse, neglect, financial
19 exploitation, or abandonment by any person in a ((nursing home,)) state
20 hospital((, or adult family home)) may remain confidential if
21 requested. The identity of the whistleblower shall subsequently remain
22 confidential unless the department determines that the complaint was
23 not made in good faith.

24 (2)(a) An attempt to discharge a resident from a ((nursing home,))
25 state hospital((, adult family home,)) or any type of discriminatory
26 treatment of a resident by whom, or upon whose behalf, a complaint
27 substantiated by the department has been submitted to the department or
28 any proceeding instituted under or related to this chapter within one
29 year of the filing of the complaint or the institution of the action,
30 raises a rebuttable presumption that the action was in retaliation for
31 the filing of the complaint.

32 (b) The presumption is rebutted by credible evidence establishing
33 the alleged retaliatory action was initiated prior to the complaint.

34 (c) The presumption is rebutted by a functional assessment
35 conducted by the department that shows that the resident's needs cannot
36 be met by the reasonable accommodations of the facility due to the
37 increased needs of the resident.

38 (3) For the purposes of this section:

1 (a) "Whistleblower" means a resident or employee of a ((nursing
2 ~~home,)) state hospital((, or adult family home,)) or any person
3 licensed under Title 18 RCW, who in good faith reports alleged abuse,
4 neglect, financial exploitation, or abandonment to the department or to
5 a law enforcement agency;~~

6 (b) "Workplace reprisal or retaliatory action" means, but is not
7 limited to: Denial of adequate staff to perform duties; frequent staff
8 changes; frequent and undesirable office changes; refusal to assign
9 meaningful work; unwarranted and unsubstantiated report of misconduct
10 under Title 18 RCW; letters of reprimand or unsatisfactory performance
11 evaluations; demotion; denial of employment; or a supervisor or
12 superior encouraging coworkers to behave in a hostile manner toward the
13 whistleblower; and

14 (c) "Reasonable accommodation" by a facility to the needs of a
15 prospective or current resident has the meaning given to this term
16 under the federal Americans with disabilities act of 1990, 42 U.S.C.
17 Sec. 12101 et seq. and other applicable federal or state
18 antidiscrimination laws and regulations.

19 (4) This section does not prohibit a ((nursing home,)) state
20 hospital((, or adult family home)) from exercising its authority to
21 terminate, suspend, or discipline an employee who engages in workplace
22 reprisal or retaliatory action against a whistleblower. The
23 protections provided to whistleblowers under this chapter shall not
24 prevent a ((nursing home,)) state hospital((, or adult family home))
25 from: (a) Terminating, suspending, or disciplining a whistleblower for
26 other lawful purposes; or (b) for facilities with six or fewer
27 residents, reducing the hours of employment or terminating employment
28 as a result of the demonstrated inability to meet payroll requirements.
29 The department shall determine if the facility cannot meet payroll in
30 cases where a whistleblower has been terminated or had hours of
31 employment reduced due to the inability of a facility to meet payroll.

32 (5) The department shall adopt rules to implement procedures for
33 filing, investigation, and resolution of whistleblower complaints that
34 are integrated with complaint procedures under this chapter.

35 (6) No ((frail elder or vulnerable person)) resident who relies
36 upon and is being provided spiritual treatment in lieu of medical
37 treatment in accordance with the tenets and practices of a well-
38 recognized religious denomination shall for that reason alone be
39 considered abandoned, abused, or neglected, nor shall anything in this

1 chapter be construed to authorize, permit, or require medical treatment
2 contrary to the stated or clearly implied objection of such a person.

3 (7) The department shall adopt rules designed to discourage
4 whistleblower complaints made in bad faith or for retaliatory purposes.

5 **Sec. 27.** RCW 26.44.010 and 1987 c 206 s 1 are each amended to read
6 as follows:

7 The Washington state legislature finds and declares: The bond
8 between a child and his or her parent, custodian, or guardian is of
9 paramount importance, and any intervention into the life of a child is
10 also an intervention into the life of the parent, custodian, or
11 guardian; however, instances of nonaccidental injury, neglect, death,
12 sexual abuse and cruelty to children by their parents, custodians or
13 guardians have occurred, and in the instance where a child is deprived
14 of his or her right to conditions of minimal nurture, health, and
15 safety, the state is justified in emergency intervention based upon
16 verified information; and therefore the Washington state legislature
17 hereby provides for the reporting of such cases to the appropriate
18 public authorities. It is the intent of the legislature that, as a
19 result of such reports, protective services shall be made available in
20 an effort to prevent further abuses, and to safeguard the general
21 welfare of such children: PROVIDED, That such reports shall be
22 maintained and disseminated with strictest regard for the privacy of
23 the subjects of such reports and so as to safeguard against arbitrary,
24 malicious or erroneous information or actions: PROVIDED FURTHER, That
25 this chapter shall not be construed to authorize interference with
26 child-raising practices, including reasonable parental discipline,
27 which are not proved to be injurious to the child's health, welfare and
28 safety.

29 ((Adult dependent or developmentally disabled persons not able to
30 provide for their own protection through the criminal justice system
31 shall also be afforded the protection offered children through the
32 reporting and investigation requirements mandated in this chapter.))

33 **Sec. 28.** RCW 26.44.015 and 1997 c 386 s 23 are each amended to
34 read as follows:

35 (1) This chapter shall not be construed to authorize interference
36 with child-raising practices, including reasonable parental discipline,
37 which are not injurious to the child's health, welfare, and safety.

1 (2) Nothing in this chapter may be used to prohibit the reasonable
2 use of corporal punishment as a means of discipline.

3 (3) No parent or guardian may be deemed abusive or neglectful
4 solely by reason of the parent's or child's blindness, deafness,
5 developmental disability, or other handicap.

6 ((+4) A person reporting alleged injury, abuse, or neglect to an
7 adult dependent person shall not suffer negative consequences if the
8 person reporting believes in good faith that the adult dependent person
9 has been found legally incompetent or disabled.))

10 **Sec. 29.** RCW 26.44.020 and 1998 c 314 s 7 are each amended to read
11 as follows:

12 ((For the purpose of and as used in)) The definitions in this
13 section apply throughout this chapter(÷)) unless the context clearly
14 requires otherwise.

15 (1) "Court" means the superior court of the state of Washington,
16 juvenile department.

17 (2) "Law enforcement agency" means the police department, the
18 prosecuting attorney, the state patrol, the director of public safety,
19 or the office of the sheriff.

20 (3) "Practitioner of the healing arts" or "practitioner" means a
21 person licensed by this state to practice podiatric medicine and
22 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
23 medicine and surgery, or medicine and surgery or to provide other
24 health services. The term "practitioner" ((shall)) includes a duly
25 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
26 person who is being furnished Christian Science treatment by a duly
27 accredited Christian Science practitioner ((shall)) will not be
28 considered, for that reason alone, a neglected person for the purposes
29 of this chapter.

30 (4) "Institution" means a private or public hospital or any other
31 facility providing medical diagnosis, treatment or care.

32 (5) "Department" means the state department of social and health
33 services.

34 (6) "Child" or "children" means any person under the age of
35 eighteen years of age.

36 (7) "Professional school personnel" ((shall)) include, but are not
37 ((be)) limited to, teachers, counselors, administrators, child care
38 facility personnel, and school nurses.

1 (8) "Social service counselor" ((~~shall~~)) means anyone engaged in a
2 professional capacity during the regular course of employment in
3 encouraging or promoting the health, welfare, support or education of
4 children, or providing social services to adults or families, including
5 mental health, drug and alcohol treatment, and domestic violence
6 programs, whether in an individual capacity, or as an employee or agent
7 of any public or private organization or institution.

8 (9) "Psychologist" ((~~shall~~)) means any person licensed to practice
9 psychology under chapter 18.83 RCW, whether acting in an individual
10 capacity or as an employee or agent of any public or private
11 organization or institution.

12 (10) "Pharmacist" ((~~shall~~)) means any registered pharmacist under
13 ((the provisions of)) chapter 18.64 RCW, whether acting in an
14 individual capacity or as an employee or agent of any public or private
15 organization or institution.

16 (11) "Clergy" ((~~shall~~)) means any regularly licensed or ordained
17 minister, priest, or rabbi of any church or religious denomination,
18 whether acting in an individual capacity or as an employee or agent of
19 any public or private organization or institution.

20 (12) "Abuse or neglect" ((~~shall~~)) means the injury, sexual abuse,
21 sexual exploitation, negligent treatment, or maltreatment of a child((-,
22 adult dependent, or developmentally disabled person)) by any person
23 under circumstances which indicate that the child's ((or adult's))
24 health, welfare, and safety is harmed, excluding conduct permitted
25 under RCW 9A.16.100. An abused child is a child who has been subjected
26 to child abuse or neglect as defined ((herein)) in this section.

27 (13) "Child protective services section" ((~~shall~~)) means the child
28 protective services section of the department.

29 (14) (("Adult dependent persons" shall be defined as those persons
30 over the age of eighteen years who have been found to be legally
31 incompetent or disabled pursuant to chapter 11.88 RCW.

32 (15)) "Sexual exploitation" includes: (a) Allowing, permitting,
33 or encouraging a child to engage in prostitution by any person; or (b)
34 allowing, permitting, encouraging, or engaging in the obscene or
35 pornographic photographing, filming, or depicting of a child by any
36 person.

37 ((+16))) (15) "Negligent treatment or maltreatment" means an act or
38 omission ((which)) that evidences a serious disregard of consequences
39 of such magnitude as to constitute a clear and present danger to the

1 child's health, welfare, and safety. The fact that siblings share a
2 bedroom is not, in and of itself, ((¶))negligent treatment or
3 maltreatment.((¶

4 (17) "Developmentally disabled person" means a person who has a
5 disability defined in RCW 71A.10.020.

6 (18)) (16) "Child protective services" means those services
7 provided by the department designed to protect children from child
8 abuse and neglect and safeguard such children from future abuse and
9 neglect, and conduct investigations of child abuse and neglect reports.
10 Investigations may be conducted regardless of the location of the
11 alleged abuse or neglect. Child protective services includes referral
12 to services to ameliorate conditions ((which)) that endanger the
13 welfare of children, the coordination of necessary programs and
14 services relevant to the prevention, intervention, and treatment of
15 child abuse and neglect, and services to children to ensure that each
16 child has a permanent home. In determining whether protective services
17 should be provided, the department shall not decline to provide such
18 services solely because of the child's unwillingness or developmental
19 inability to describe the nature and severity of the abuse or neglect.

20 ((+19)) (17) "Malice" or "maliciously" means an evil intent, wish,
21 or design to vex, annoy, or injure another person. Such malice may be
22 inferred from an act done in willful disregard of the rights of
23 another, or an act wrongfully done without just cause or excuse, or an
24 act or omission of duty betraying a willful disregard of social duty.

25 ((+20)) (18) "Sexually aggressive youth" means a child who is
26 defined in RCW 74.13.075(1)(b) as being a ((¶))sexually aggressive
27 youth.((¶

28 (21)) (19) "Unfounded" means available information indicates that,
29 more likely than not, child abuse or neglect did not occur.

30 **Sec. 30.** RCW 26.44.030 and 1998 c 328 s 5 are each amended to read
31 as follows:

32 (1)(a) When any practitioner, county coroner or medical examiner,
33 law enforcement officer, professional school personnel, registered or
34 licensed nurse, social service counselor, psychologist, pharmacist,
35 licensed or certified child care providers or their employees, employee
36 of the department, juvenile probation officer, or state family and
37 children's ombudsman or any volunteer in the ombudsman's office has
38 reasonable cause to believe that a child ((or adult dependent or

1 developmentally disabled person,)) has suffered abuse or neglect, he or
2 she shall report such incident, or cause a report to be made, to the
3 proper law enforcement agency or to the department as provided in RCW
4 26.44.040.

5 (b) The reporting requirement ((shall)) also ((apply)) applies to
6 department of corrections personnel who, in the course of their
7 employment, observe offenders or the children with whom the offenders
8 are in contact. If, as a result of observations or information
9 received in the course of his or her employment, any department of
10 corrections personnel has reasonable cause to believe that a child ((or
11 adult dependent or developmentally disabled person)) has suffered abuse
12 or neglect, he or she shall report the incident, or cause a report to
13 be made, to the proper law enforcement agency or to the department as
14 provided in RCW 26.44.040.

15 (c) The reporting requirement shall also apply to any adult who has
16 reasonable cause to believe that a child ((or adult dependent or
17 developmentally disabled person,)) who resides with them, has suffered
18 severe abuse, and is able or capable of making a report. For the
19 purposes of this subsection, "severe abuse" means any of the following:
20 Any single act of abuse that causes physical trauma of sufficient
21 severity that, if left untreated, could cause death; any single act of
22 sexual abuse that causes significant bleeding, deep bruising, or
23 significant external or internal swelling; or more than one act of
24 physical abuse, each of which causes bleeding, deep bruising,
25 significant external or internal swelling, bone fracture, or
26 unconsciousness.

27 (d) The report ((shall)) must be made at the first opportunity, but
28 in no case longer than forty-eight hours after there is reasonable
29 cause to believe that the child ((or adult)) has suffered abuse or
30 neglect. The report ((shall)) must include the identity of the accused
31 if known.

32 (2) The reporting requirement of subsection (1) of this section
33 does not apply to the discovery of abuse or neglect that occurred
34 during childhood if it is discovered after the child has become an
35 adult. However, if there is reasonable cause to believe other
36 children((, dependent adults, or developmentally disabled persons)) are
37 or may be at risk of abuse or neglect by the accused, the reporting
38 requirement of subsection (1) of this section ((shall)) does apply.

1 (3) Any other person who has reasonable cause to believe that a
2 child ((or adult dependent or developmentally disabled person)) has
3 suffered abuse or neglect may report such incident to the proper law
4 enforcement agency or to the department of social and health services
5 as provided in RCW 26.44.040.

6 (4) The department, upon receiving a report of an incident of
7 alleged abuse or neglect pursuant to this chapter, involving a child
8 ((or adult dependent or developmentally disabled person)) who has died
9 or has had physical injury or injuries inflicted upon him or her other
10 than by accidental means or who has been subjected to alleged sexual
11 abuse, shall report such incident to the proper law enforcement agency.
12 In emergency cases, where the ((child, adult dependent, or
13 developmentally disabled person's)) child's welfare is endangered, the
14 department shall notify the proper law enforcement agency within
15 twenty-four hours after a report is received by the department. In all
16 other cases, the department shall notify the law enforcement agency
17 within seventy-two hours after a report is received by the department.
18 If the department makes an oral report, a written report ((shall)) must
19 also be made to the proper law enforcement agency within five days
20 thereafter.

21 (5) Any law enforcement agency receiving a report of an incident of
22 alleged abuse or neglect pursuant to this chapter, involving a child
23 ((or adult dependent or developmentally disabled person)) who has died
24 or has had physical injury or injuries inflicted upon him or her other
25 than by accidental means, or who has been subjected to alleged sexual
26 abuse, shall report such incident in writing as provided in RCW
27 26.44.040 to the proper county prosecutor or city attorney for
28 appropriate action whenever the law enforcement agency's investigation
29 reveals that a crime may have been committed. The law enforcement
30 agency shall also notify the department of all reports received and the
31 law enforcement agency's disposition of them. In emergency cases,
32 where the ((child, adult dependent, or developmentally disabled
33 person's)) child's welfare is endangered, the law enforcement agency
34 shall notify the department within twenty-four hours. In all other
35 cases, the law enforcement agency shall notify the department within
36 seventy-two hours after a report is received by the law enforcement
37 agency.

38 (6) Any county prosecutor or city attorney receiving a report under
39 subsection (5) of this section shall notify the victim, any persons the

1 victim requests, and the local office of the department, of the
2 decision to charge or decline to charge a crime, within five days of
3 making the decision.

4 (7) The department may conduct ongoing case planning and
5 consultation with those persons or agencies required to report under
6 this section, with consultants designated by the department, and with
7 designated representatives of Washington Indian tribes if the client
8 information exchanged is pertinent to cases currently receiving child
9 protective services ((or department case services for the
10 developmentally disabled)). Upon request, the department shall conduct
11 such planning and consultation with those persons required to report
12 under this section if the department determines it is in the best
13 interests of the child ((or developmentally disabled person)).
14 Information considered privileged by statute and not directly related
15 to reports required by this section ((shall)) must not be divulged
16 without a valid written waiver of the privilege.

17 (8) Any case referred to the department by a physician licensed
18 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
19 opinion that child abuse, neglect, or sexual assault has occurred and
20 that the child's safety will be seriously endangered if returned home,
21 the department shall file a dependency petition unless a second
22 licensed physician of the parents' choice believes that such expert
23 medical opinion is incorrect. If the parents fail to designate a
24 second physician, the department may make the selection. If a
25 physician finds that a child has suffered abuse or neglect but that
26 such abuse or neglect does not constitute imminent danger to the
27 child's health or safety, and the department agrees with the
28 physician's assessment, the child may be left in the parents' home
29 while the department proceeds with reasonable efforts to remedy
30 parenting deficiencies.

31 (9) Persons or agencies exchanging information under subsection (7)
32 of this section shall not further disseminate or release the
33 information except as authorized by state or federal statute.
34 Violation of this subsection is a misdemeanor.

35 (10) Upon receiving reports of alleged abuse or neglect, the
36 department or law enforcement agency may interview children. The
37 interviews may be conducted on school premises, at day-care facilities,
38 at the child's home, or at other suitable locations outside of the
39 presence of parents. Parental notification of the interview ((shall))

1 must occur at the earliest possible point in the investigation that
2 will not jeopardize the safety or protection of the child or the course
3 of the investigation. Prior to commencing the interview the department
4 or law enforcement agency shall determine whether the child wishes a
5 third party to be present for the interview and, if so, shall make
6 reasonable efforts to accommodate the child's wishes. Unless the child
7 objects, the department or law enforcement agency shall make reasonable
8 efforts to include a third party in any interview so long as the
9 presence of the third party will not jeopardize the course of the
10 investigation.

11 (11) Upon receiving a report of alleged child abuse and neglect,
12 the department or investigating law enforcement agency shall have
13 access to all relevant records of the child in the possession of
14 mandated reporters and their employees.

15 (12) The department shall maintain investigation records and
16 conduct timely and periodic reviews of all cases constituting abuse and
17 neglect. The department shall maintain a log of screened-out
18 nonabusive cases.

19 (13) The department shall use a risk assessment process when
20 investigating alleged child abuse and neglect referrals. The
21 department shall present the risk factors at all hearings in which the
22 placement of a dependent child is an issue. Substance abuse must be a
23 risk factor. The department shall, within funds appropriated for this
24 purpose, offer enhanced community-based services to persons who are
25 determined not to require further state intervention.

26 The department shall provide annual reports to the legislature on
27 the effectiveness of the risk assessment process.

28 (14) Upon receipt of a report of alleged abuse or neglect the law
29 enforcement agency may arrange to interview the person making the
30 report and any collateral sources to determine if any malice is
31 involved in the reporting.

32 (15) The department shall make reasonable efforts to learn the
33 name, address, and telephone number of each person making a report of
34 abuse or neglect under this section. The department shall provide
35 assurances of appropriate confidentiality of the identification of
36 persons reporting under this section. If the department is unable to
37 learn the information required under this subsection, the department
38 shall only investigate cases in which: (a) The department believes
39 there is a serious threat of substantial harm to the child; (b) the

1 report indicates conduct involving a criminal offense that has, or is
2 about to occur, in which the child is the victim; or (c) the department
3 has, after investigation, a report of abuse or neglect that has been
4 founded with regard to a member of the household within three years of
5 receipt of the referral.

6 **Sec. 31.** RCW 26.44.032 and 1988 c 87 s 1 are each amended to read
7 as follows:

8 In cases in which a public employee subject to RCW 26.44.030 acts
9 in good faith and without gross negligence in his or her reporting
10 duty, and if the employee's judgment as to what constitutes reasonable
11 cause to believe that a child ((or adult dependent or developmentally
12 disabled person)) has suffered abuse or neglect is being challenged,
13 the public employer shall provide for the legal defense of the
14 employee.

15 **Sec. 32.** RCW 26.44.040 and 1997 c 386 s 27 are each amended to
16 read as follows:

17 An immediate oral report ((shall)) must be made by telephone or
18 otherwise to the proper law enforcement agency or the department of
19 social and health services and, upon request, ((shall)) must be
20 followed by a report in writing. Such reports ((shall)) must contain
21 the following information, if known:

22 (1) The name, address, and age of the child ((or adult dependent or
23 developmentally disabled person));

24 (2) The name and address of the child's parents, stepparents,
25 guardians, or other persons having custody of the child ((or the
26 residence of the adult dependent or developmentally disabled person));

27 (3) The nature and extent of the alleged injury or injuries;

28 (4) The nature and extent of the alleged neglect;

29 (5) The nature and extent of the alleged sexual abuse;

30 (6) Any evidence of previous injuries, including their nature and
31 extent; and

32 (7) Any other information ((which)) that may be helpful in
33 establishing the cause of the child's ((or adult dependent or
34 developmentally disabled person's)) death, injury, or injuries and the
35 identity of the alleged perpetrator or perpetrators.

1 **Sec. 33.** RCW 26.44.050 and 1987 c 450 s 7 and 1987 c 206 s 5 are
2 each reenacted and amended to read as follows:

3 Upon the receipt of a report concerning the possible occurrence of
4 abuse or neglect, ((it shall be the duty of)) the law enforcement
5 agency or the department of social and health services ((to)) must
6 investigate and provide the protective services section with a report
7 in accordance with ((the provision of)) chapter 74.13 RCW, and where
8 necessary to refer such report to the court.

9 A law enforcement officer may take, or cause to be taken, a child
10 into custody without a court order if there is probable cause to
11 believe that the child is abused or neglected and that the child would
12 be injured or could not be taken into custody if it were necessary to
13 first obtain a court order pursuant to RCW 13.34.050. The law
14 enforcement agency or the department of social and health services
15 investigating such a report is hereby authorized to photograph such a
16 child ((or adult dependent or developmentally disabled person)) for the
17 purpose of providing documentary evidence of the physical condition of
18 the child((, adult dependent or developmentally disabled person)).

19 **Sec. 34.** RCW 74.39A.060 and 1997 c 392 s 210 are each amended to
20 read as follows:

21 (1) The aging and adult services administration of the department
22 shall establish and maintain a toll-free telephone number for receiving
23 complaints regarding a facility that the administration licenses or
24 with which it contracts for long-term care services.

25 (2) All facilities that are licensed by, or that contract with the
26 aging and adult services administration to provide chronic long-term
27 care services shall post in a place and manner clearly visible to
28 residents and visitors the department's toll-free complaint telephone
29 number and the toll-free number and program description of the long-
30 term care ombudsman as provided by RCW 43.190.050.

31 (3) The aging and adult services administration shall investigate
32 complaints if the subject of the complaint is within its authority
33 unless the department determines that: (a) The complaint is intended
34 to willfully harass a licensee or employee of the licensee; or (b)
35 there is no reasonable basis for investigation; or (c) corrective
36 action has been taken as determined by the ombudsman or the department.

37 (4) The aging and adult services administration shall refer
38 complaints to appropriate state agencies, law enforcement agencies, the

1 attorney general, the long-term care ombudsman, or other entities if
2 the department lacks authority to investigate or if its investigation
3 reveals that a follow-up referral to one or more of these entities is
4 appropriate.

5 (5) The department shall adopt rules that include the following
6 complaint investigation protocols:

7 (a) Upon receipt of a complaint, the department shall make a
8 preliminary review of the complaint, assess the severity of the
9 complaint, and assign an appropriate response time. Complaints
10 involving imminent danger to the health, safety, or well-being of a
11 resident must be responded to within two days. When appropriate, the
12 department shall make an on-site investigation within a reasonable time
13 after receipt of the complaint or otherwise ensure that complaints are
14 responded to.

15 (b) The complainant must be: Promptly contacted by the department,
16 unless anonymous or unavailable despite several attempts by the
17 department, and informed of the right to discuss the alleged violations
18 with the inspector and to provide other information the complainant
19 believes will assist the inspector; informed of the department's course
20 of action; and informed of the right to receive a written copy of the
21 investigation report.

22 (c) In conducting the investigation, the department shall interview
23 the complainant, unless anonymous, and shall use its best efforts to
24 interview the ((resident or residents)) vulnerable adult or adults
25 allegedly harmed ((by the violations)), and, ((in addition to))
26 consistent with the protection of the vulnerable adult shall interview
27 facility staff, any available independent sources of relevant
28 information, including if appropriate the family members of the
29 ((resident)) vulnerable adult.

30 (d) Substantiated complaints involving harm to a resident, if an
31 applicable law or ((regulation)) rule has been violated, shall be
32 subject to one or more of the actions provided in RCW 74.39A.080 or
33 70.128.160. Whenever appropriate, the department shall also give
34 consultation and technical assistance to the provider.

35 (e) In the best practices of total quality management and
36 continuous quality improvement, after a department finding of a
37 violation that is serious, recurring, or uncorrected following a
38 previous citation, the department shall make an on-site revisit of the

1 facility to ensure correction of the violation, except for license or
2 contract suspensions or revocations.

3 (f) Substantiated complaints of neglect, abuse, exploitation, or
4 abandonment of residents, or suspected criminal violations, shall also
5 be referred by the department to the appropriate law enforcement
6 agencies, the attorney general, and appropriate professional
7 disciplining authority.

8 (6) The department may provide the substance of the complaint to
9 the licensee or contractor before the completion of the investigation
10 by the department unless such disclosure would reveal the identity of
11 a complainant, witness, or resident who chooses to remain anonymous.
12 Neither the substance of the complaint provided to the licensee or
13 contractor nor any copy of the complaint or related report published,
14 released, or made otherwise available shall disclose, or reasonably
15 lead to the disclosure of, the name, title, or identity of any
16 complainant, or other person mentioned in the complaint, except that
17 the name of the provider and the name or names of any officer,
18 employee, or agent of the department conducting the investigation shall
19 be disclosed after the investigation has been closed and the complaint
20 has been substantiated. The department may disclose the identity of
21 the complainant if such disclosure is requested in writing by the
22 complainant. Nothing in this subsection shall be construed to
23 interfere with the obligation of the long-term care ombudsman program
24 or department staff to monitor the department's licensing, contract,
25 and complaint investigation files for long-term care facilities.

26 (7) The resident has the right to be free of interference,
27 coercion, discrimination, and reprisal from a facility in exercising
28 his or her rights, including the right to voice grievances about
29 treatment furnished or not furnished. A facility that provides long-
30 term care services shall not discriminate or retaliate in any manner
31 against a resident, employee, or any other person on the basis or for
32 the reason that such resident or any other person made a complaint to
33 the department, the attorney general, law enforcement agencies, or the
34 long-term care ombudsman, provided information, or otherwise cooperated
35 with the investigation of such a complaint. Any attempt to discharge
36 a resident against the resident's wishes, or any type of retaliatory
37 treatment of a resident by whom or upon whose behalf a complaint
38 substantiated by the department has been made to the department, the
39 attorney general, law enforcement agencies, or the long-term care

1 ombudsman, within one year of the filing of the complaint, raises a
2 rebuttable presumption that such action was in retaliation for the
3 filing of the complaint. "Retaliatory treatment" means, but is not
4 limited to, monitoring a resident's phone, mail, or visits; involuntary
5 seclusion or isolation; transferring a resident to a different room
6 unless requested or based upon legitimate management reasons;
7 withholding or threatening to withhold food or treatment unless
8 authorized by a terminally ill resident or his or her representative
9 pursuant to law; or persistently delaying responses to a resident's
10 request for service or assistance. A facility that provides long-term
11 care services shall not willfully interfere with the performance of
12 official duties by a long-term care ombudsman. The department shall
13 sanction and may impose a civil penalty of not more than three thousand
14 dollars for a violation of this subsection.

15 NEW SECTION. **Sec. 35.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 74.34.010 (Legislative findings--Intent) and 1997 c 392 s
18 303, 1995 1st sp.s. c 18 s 82, & 1984 c 97 s 7;
19 (2) RCW 74.34.015 (Protection of frail elders and vulnerable
20 adults--Legislative findings and intent) and 1995 1st sp.s. c 18 s 83
21 & 1986 c 187 s 4;
22 (3) RCW 74.34.030 (Reports--Duty to make) and 1995 1st sp.s. c 18
23 s 88, 1986 c 187 s 1, & 1984 c 97 s 9;
24 (4) RCW 74.34.055 (Failure to report is gross misdemeanor) and 1997
25 c 392 s 522; and
26 (5) RCW 74.34.060 (Response to reports--Services--Consent) and 1984
27 c 97 s 12.

28 NEW SECTION. **Sec. 36.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 37.** If any part of this act is found to be in
33 conflict with federal requirements that are a prescribed condition to
34 the allocation of federal funds to the state, the conflicting part of
35 this act is inoperative solely to the extent of the conflict and with
36 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application to
2 the agencies concerned. Rules adopted under this act must meet federal
3 requirements that are a necessary condition to the receipt of federal
4 funds by the state.

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