

SSB 5042 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/04/2011

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

3 "Sec. 1. RCW 74.34.020 and 2010 c 133 s 2 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

28 (b) "Physical abuse" means the willful action of inflicting bodily
29 injury or physical mistreatment. Physical abuse includes, but is not
30 limited to, striking with or without an object, slapping, pinching,

1 choking, kicking, shoving, prodding, or the use of chemical restraints
2 or physical restraints unless the restraints are consistent with
3 licensing requirements, and includes restraints that are otherwise
4 being used inappropriately.

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

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

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

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

21 (5) "Facility" means a residence licensed or required to be
22 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,
23 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
24 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
25 centers; or any other facility licensed or certified by the department.

26 (6) "Financial exploitation" means the illegal or improper use,
27 control over, or withholding of the property, income, resources, or
28 trust funds of the vulnerable adult by any person or entity for any
29 person's or entity's profit or advantage other than for the vulnerable
30 adult's profit or advantage. "Financial exploitation" includes, but is
31 not limited to:

32 (a) The use of deception, intimidation, or undue influence by a
33 person or entity in a position of trust and confidence with a
34 vulnerable adult to obtain or use the property, income, resources, or
35 trust funds of the vulnerable adult for the benefit of a person or
36 entity other than the vulnerable adult;

37 (b) The breach of a fiduciary duty, including, but not limited to,
38 the misuse of a power of attorney, trust, or a guardianship

1 appointment, that results in the unauthorized appropriation, sale, or
2 transfer of the property, income, resources, or trust funds of the
3 vulnerable adult for the benefit of a person or entity other than the
4 vulnerable adult; or

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

10 (7) "Financial institution" has the same meaning as in RCW
11 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
12 institution" also means a "broker-dealer" or "investment adviser" as
13 defined in RCW 21.20.005.

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

17 (9) "Individual provider" means a person under contract with the
18 department to provide services in the home under chapter 74.09 or
19 74.39A RCW.

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

26 (11) "Mandated reporter" is an employee of the department; law
27 enforcement officer; social worker; professional school personnel;
28 individual provider; an employee of a facility; an operator of a
29 facility; an employee of a social service, welfare, mental health,
30 adult day health, adult day care, home health, home care, or hospice
31 agency; county coroner or medical examiner; Christian Science
32 practitioner; or health care provider subject to chapter 18.130 RCW.

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

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

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

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

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

24 (16) "Vulnerable adult" includes a person:

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

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

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

30 (d) Admitted to any facility; or

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

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

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

1 **Sec. 2.** RCW 74.34.067 and 2007 c 312 s 2 are each amended to read
2 as follows:

3 (1) Where appropriate, an investigation by the department may
4 include a private interview with the vulnerable adult regarding the
5 alleged abandonment, abuse, financial exploitation, neglect, or self-
6 neglect.

7 (2) In conducting the investigation, the department shall interview
8 the complainant, unless anonymous, and shall use its best efforts to
9 interview the vulnerable adult or adults harmed, and, consistent with
10 the protection of the vulnerable adult shall interview facility staff,
11 any available independent sources of relevant information, including if
12 appropriate the family members of the vulnerable adult.

13 (3) The department may conduct ongoing case planning and
14 consultation with: (a) Those persons or agencies required to report
15 under this chapter or submit a report under this chapter; (b)
16 consultants designated by the department; and (c) designated
17 representatives of Washington Indian tribes if client information
18 exchanged is pertinent to cases under investigation or the provision of
19 protective services. Information considered privileged by statute and
20 not directly related to reports required by this chapter must not be
21 divulged without a valid written waiver of the privilege.

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

25 (5) If the department has reason to believe that the vulnerable
26 adult has suffered from abandonment, abuse, financial exploitation,
27 neglect, or self-neglect, (~~(abandonment, or financial exploitation,)~~)
28 and lacks the ability or capacity to consent, and needs the protection
29 of a guardian, the department may bring a guardianship action under
30 chapter 11.88 RCW.

31 (6) When the investigation is completed and the department
32 determines that an incident of abandonment, abuse, financial
33 exploitation, neglect, or self-neglect has occurred, the department
34 shall inform the vulnerable adult of their right to refuse protective
35 services, and ensure that, if necessary, appropriate protective
36 services are provided to the vulnerable adult, with the consent of the
37 vulnerable adult. The vulnerable adult has the right to withdraw or
38 refuse protective services.

1 (1) When the department opens an investigation of a report of
2 abandonment, abuse, financial exploitation, or neglect of a vulnerable
3 adult, the department shall, at the time of the interview of the
4 vulnerable adult who is an alleged victim, provide a written statement
5 of the rights afforded under this chapter and other applicable law to
6 alleged victims or legal guardians. This statement must include the
7 department's name, address, and telephone number and may include other
8 appropriate referrals. The statement must be substantially in the
9 following form:

10 "You are entitled to be free from abandonment, abuse, financial
11 exploitation, and neglect. If there is a reason to believe that you
12 have experienced abandonment, abuse, financial exploitation, or
13 neglect, you have the right to:

14 (a) Make a report to the department of social and health services
15 and law enforcement and share any information you believe could be
16 relevant to the investigation, and identify any persons you believe
17 could have relevant information.

18 (b) Be free from retaliation for reporting or causing a report of
19 abandonment, abuse, financial exploitation, or neglect.

20 (c) Be treated with dignity and addressed with respectful language.

21 (d) Reasonable accommodation for your disability when reporting,
22 and during investigations and administrative proceedings.

23 (e) Request an order that prohibits anyone who has abandoned,
24 abused, financially exploited, or neglected you from remaining in your
25 home, having contact with you, or accessing your money or property.

26 (f) Receive from the department of social and health services
27 information and appropriate referrals to other agencies that can
28 advocate, investigate, or take action.

29 (g) Be informed of the status of investigations, proceedings, court
30 actions, and outcomes by the agency that is handling any case in which
31 you are a victim.

32 (h) Request referrals for advocacy or legal assistance to help with
33 safety planning, investigations, and hearings.

34 (i) Complain to the department of social and health services,
35 formally or informally, about investigations or proceedings, and
36 receive a prompt response."

37 (2) This section shall not be construed to create any new cause of
38 action or limit any existing remedy.

1 NEW SECTION. **Sec. 4.** RCW 74.34.021 (Vulnerable adult--Definition)
2 and 1999 c 336 s 6 are each repealed."

3 Correct the title.

EFFECT: Specifies that the Department and its employees are not
liable when a tribe takes jurisdiction over an investigation. Makes
language consistent throughout the bill.

--- END ---