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SENATE BILL 5510

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By Senators Becker, Keiser, Kohl-Welles, McAuliffe, and Conway; by request of Department of Social and Health Services

Read first time 02/01/13. Referred to Committee on Health Care .

1 AN ACT Relating to abuse of vulnerable adults; and amending RCW  
2 74.34.020, 74.34.035, and 74.34.067.

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

4 **Sec. 1.** RCW 74.34.020 and 2012 c 10 s 62 are each amended to read  
5 as follows:

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

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

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

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

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

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

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

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

31 (4) "Department" means the department of social and health  
32 services.

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

1 (6) "Financial exploitation" means the illegal or improper use,  
2 control over, or withholding of the property, income, resources, or  
3 trust funds of the vulnerable adult by any person or entity for any  
4 person's or entity's profit or advantage other than for the vulnerable  
5 adult's profit or advantage. "Financial exploitation" includes, but is  
6 not limited to:

7 (a) The use of deception, intimidation, or undue influence by a  
8 person or entity in a position of trust and confidence with a  
9 vulnerable adult to obtain or use the property, income, resources, or  
10 trust funds of the vulnerable adult for the benefit of a person or  
11 entity other than the vulnerable adult;

12 (b) The breach of a fiduciary duty, including, but not limited to,  
13 the misuse of a power of attorney, trust, or a guardianship  
14 appointment, that results in the unauthorized appropriation, sale, or  
15 transfer of the property, income, resources, or trust funds of the  
16 vulnerable adult for the benefit of a person or entity other than the  
17 vulnerable adult; or

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

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

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

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

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

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

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

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

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

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

37 (16) "Social worker" means:

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

1 (b) Anyone engaged in a professional capacity during the regular  
2 course of employment in encouraging or promoting the health, welfare,  
3 support, or education of vulnerable adults, or providing social  
4 services to vulnerable adults, whether in an individual capacity or as  
5 an employee or agent of any public or private organization or  
6 institution.

7 (17) "Vulnerable adult" includes a person:

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

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

11 (c) Who has a developmental disability as defined under RCW  
12 71A.10.020; or

13 (d) Admitted to any facility; or

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

16 or

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

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

20 **Sec. 2.** RCW 74.34.035 and 2010 c 133 s 4 are each amended to read  
21 as follows:

22 (1) When there is reasonable cause to believe that abandonment,  
23 abuse, financial exploitation, or neglect of a vulnerable adult has  
24 occurred, mandated reporters shall immediately report to the  
25 department.

26 (2) When there is reason to suspect that sexual assault has  
27 occurred, mandated reporters shall immediately report to the  
28 appropriate law enforcement agency and to the department.

29 (3) When there is reason to suspect that physical assault has  
30 occurred or there is reasonable cause to believe that an act has caused  
31 fear of imminent harm:

32 (a) Mandated reporters shall immediately report to the department;  
33 and

34 (b) Mandated reporters shall immediately report to the appropriate  
35 law enforcement agency, except as provided in subsection (4) of this  
36 section.

1 (4) A mandated reporter is not required to report to a law  
2 enforcement agency, unless requested by the injured vulnerable adult or  
3 his or her legal representative or family member, an incident of  
4 physical assault between vulnerable adults that causes minor bodily  
5 injury and does not require more than basic first aid, unless:

6 (a) The injury appears on the back, face, head, neck, chest,  
7 breasts, groin, inner thigh, buttock, genital, or anal area;

8 (b) There is a fracture;

9 (c) There is a pattern of physical assault between the same  
10 vulnerable adults or involving the same vulnerable adults; or

11 (d) There is an attempt to choke a vulnerable adult.

12 (5) When there is reason to suspect that the death of a vulnerable  
13 adult was caused by abuse, neglect, or abandonment by another person,  
14 mandated reporters shall, pursuant to RCW 68.50.020, report the death  
15 to the medical examiner or coroner having jurisdiction, as well as the  
16 department and local law enforcement, in the most expeditious manner  
17 possible. A mandated reporter is not relieved from the reporting  
18 requirement provisions of this subsection by the existence of a  
19 previously signed death certificate. If abuse, neglect, or abandonment  
20 caused or contributed to the death of a vulnerable adult, the death is  
21 a death caused by unnatural or unlawful means, and the body shall be  
22 the jurisdiction of the coroner or medical examiner pursuant to RCW  
23 68.50.010.

24 (6) Permissive reporters may report to the department or a law  
25 enforcement agency when there is reasonable cause to believe that a  
26 vulnerable adult is being or has been abandoned, abused, financially  
27 exploited, or neglected.

28 (7) No facility, as defined by this chapter, agency licensed or  
29 required to be licensed under chapter 70.127 RCW, or facility or agency  
30 under contract with the department to provide care for vulnerable  
31 adults may develop policies or procedures that interfere with the  
32 reporting requirements of this chapter.

33 (8) Each report, oral or written, must contain as much as possible  
34 of the following information:

35 (a) The name and address of the person making the report;

36 (b) The name and address of the vulnerable adult and the name of  
37 the facility or agency providing care for the vulnerable adult;

1 (c) The name and address of the legal guardian or alternate  
2 decision maker;

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

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

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

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

11 (9) Unless there is a judicial proceeding or the person consents,  
12 the identity of the person making the report under this section is  
13 confidential.

14 (10) In conducting an investigation of abandonment, abuse,  
15 financial exploitation, self-neglect, or neglect, the department or law  
16 enforcement, upon request, must have access to all relevant records  
17 related to the vulnerable adult that are in the possession of mandated  
18 reporters and their employees, unless otherwise prohibited by law.  
19 Providing access to records relevant to an investigation by the  
20 department or law enforcement under this provision may not be deemed a  
21 violation of any confidential communication privilege.

22 **Sec. 3.** RCW 74.34.067 and 2011 c 170 s 2 are each amended to read  
23 as follows:

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

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

34 (3) The department may conduct ongoing case planning and  
35 consultation with: (a) Those persons or agencies required to report  
36 under this chapter or submit a report under this chapter; (b)  
37 consultants designated by the department; and (c) designated

1 representatives of Washington Indian tribes if client information  
2 exchanged is pertinent to cases under investigation or the provision of  
3 protective services. Information considered privileged by statute and  
4 not directly related to reports required by this chapter must not be  
5 divulged without a valid written waiver of the privilege.

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

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

14 (6) For purposes consistent with this chapter, the department, the  
15 certified professional guardian board, and the office of public  
16 guardianship may share information contained in reports and  
17 investigations of the abuse, abandonment, neglect, self-neglect, and  
18 financial exploitation of vulnerable adults. This information may be  
19 used solely for (a) recruiting or appointing appropriate guardians and  
20 (b) monitoring, or when appropriate, disciplining certified  
21 professional or public guardians. Reports of abuse, abandonment,  
22 neglect, self-neglect, and financial exploitation are confidential  
23 under RCW 74.34.095 and other laws, and secondary disclosure of  
24 information shared under this section is prohibited.

25 (7) When the investigation is completed and the department  
26 determines that an incident of abandonment, abuse, financial  
27 exploitation, neglect, or self-neglect has occurred, the department  
28 shall inform the vulnerable adult of their right to refuse protective  
29 services, and ensure that, if necessary, appropriate protective  
30 services are provided to the vulnerable adult, with the consent of the  
31 vulnerable adult. The vulnerable adult has the right to withdraw or  
32 refuse protective services.

33 ((+7)) (8) The department's adult protective services division may  
34 enter into agreements with federally recognized tribes to investigate  
35 reports of abandonment, abuse, financial exploitation, neglect, or  
36 self-neglect of vulnerable adults on property over which a federally  
37 recognized tribe has exclusive jurisdiction. If the department has  
38 information that abandonment, abuse, financial exploitation, or neglect

1 is criminal or is placing a vulnerable adult on tribal property at  
2 potential risk of personal or financial harm, the department may notify  
3 tribal law enforcement or another tribal representative specified by  
4 the tribe. Upon receipt of the notification, the tribe may assume  
5 jurisdiction of the matter. Neither the department nor its employees  
6 may participate in the investigation after the tribe assumes  
7 jurisdiction. The department, its officers, and its employees are not  
8 liable for any action or inaction of the tribe or for any harm to the  
9 alleged victim, the person against whom the allegations were made, or  
10 other parties that occurs after the tribe assumes jurisdiction.  
11 Nothing in this section limits the department's jurisdiction and  
12 authority over facilities or entities that the department licenses or  
13 certifies under federal or state law.

14 ((+8)) (9) The department may photograph a vulnerable adult or  
15 their environment for the purpose of providing documentary evidence of  
16 the physical condition of the vulnerable adult or his or her  
17 environment. When photographing the vulnerable adult, the department  
18 shall obtain permission from the vulnerable adult or his or her legal  
19 representative unless immediate photographing is necessary to preserve  
20 evidence. However, if the legal representative is alleged to have  
21 abused, neglected, abandoned, or exploited the vulnerable adult,  
22 consent from the legal representative is not necessary. No such  
23 consent is necessary when photographing the physical environment.

24 ((+9)) (10) When the investigation is complete and the department  
25 determines that the incident of abandonment, abuse, financial  
26 exploitation, or neglect has occurred, the department shall inform the  
27 facility in which the incident occurred, consistent with  
28 confidentiality requirements concerning the vulnerable adult,  
29 witnesses, and complainants.

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