
HOUSE BILL 2343

State of Washington

65th Legislature

2018 Regular Session

By Representatives Valdez, Harris, Jinkins, Tharinger, Muri, Goodman, Pellicciotti, Reeves, Macri, Appleton, and Doglio; by request of Department of Social and Health Services

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1 AN ACT Relating to defining willful in chapter 74.34 RCW
2 regarding abuse of vulnerable adults; and reenacting and amending RCW
3 74.34.020.

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

5 **Sec. 1.** RCW 74.34.020 and 2017 c 268 s 2 and 2017 c 266 s 12 are
6 each reenacted and amended to read as follows:

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

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

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

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

10 (b) "Physical abuse" means the willful action of inflicting
11 bodily injury or physical mistreatment. Physical abuse includes, but
12 is not limited to, striking with or without an object, slapping,
13 pinching, choking, kicking, shoving, or prodding.

14 (c) "Mental abuse" means a willful verbal or nonverbal action
15 that threatens, humiliates, harasses, coerces, intimidates, isolates,
16 unreasonably confines, or punishes a vulnerable adult. Mental abuse
17 may include ridiculing, yelling, or swearing.

18 (d) "Personal exploitation" means an act of forcing, compelling,
19 or exerting undue influence over a vulnerable adult causing the
20 vulnerable adult to act in a way that is inconsistent with relevant
21 past behavior, or causing the vulnerable adult to perform services
22 for the benefit of another.

23 (e) "Improper use of restraint" means the inappropriate use of
24 chemical, physical, or mechanical restraints for convenience or
25 discipline or in a manner that: (i) Is inconsistent with federal or
26 state licensing or certification requirements for facilities,
27 hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is
28 not medically authorized; or (iii) otherwise constitutes abuse under
29 this section.

30 (3) "Chemical restraint" means the administration of any drug to
31 manage a vulnerable adult's behavior in a way that reduces the safety
32 risk to the vulnerable adult or others, has the temporary effect of
33 restricting the vulnerable adult's freedom of movement, and is not
34 standard treatment for the vulnerable adult's medical or psychiatric
35 condition.

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

1 (5) "Department" means the department of social and health
2 services.

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

9 (7) "Financial exploitation" means the illegal or improper use,
10 control over, or withholding of the property, income, resources, or
11 trust funds of the vulnerable adult by any person or entity for any
12 person's or entity's profit or advantage other than for the
13 vulnerable adult's profit or advantage. "Financial exploitation"
14 includes, but is not limited to:

15 (a) The use of deception, intimidation, or undue influence by a
16 person or entity in a position of trust and confidence with a
17 vulnerable adult to obtain or use the property, income, resources, or
18 trust funds of the vulnerable adult for the benefit of a person or
19 entity other than the vulnerable adult;

20 (b) The breach of a fiduciary duty, including, but not limited
21 to, the misuse of a power of attorney, trust, or a guardianship
22 appointment, that results in the unauthorized appropriation, sale, or
23 transfer of the property, income, resources, or trust funds of the
24 vulnerable adult for the benefit of a person or entity other than the
25 vulnerable adult; or

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

31 (8) "Financial institution" has the same meaning as in RCW
32 30A.22.040 and 30A.22.041. For purposes of this chapter only,
33 "financial institution" also means a "broker-dealer" or "investment
34 adviser" as defined in RCW 21.20.005.

35 (9) "Hospital" means a facility licensed under chapter 70.41,
36 71.12, or 72.23 RCW and any employee, agent, officer, director, or
37 independent contractor thereof.

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

1 (11) "Individual provider" means a person under contract with the
2 department to provide services in the home under chapter 74.09 or
3 74.39A RCW.

4 (12) "Interested person" means a person who demonstrates to the
5 court's satisfaction that the person is interested in the welfare of
6 the vulnerable adult, that the person has a good faith belief that
7 the court's intervention is necessary, and that the vulnerable adult
8 is unable, due to incapacity, undue influence, or duress at the time
9 the petition is filed, to protect his or her own interests.

10 (13)(a) "Isolate" or "isolation" means to restrict a vulnerable
11 adult's ability to communicate, visit, interact, or otherwise
12 associate with persons of his or her choosing. Isolation may be
13 evidenced by acts including but not limited to:

14 (i) Acts that prevent a vulnerable adult from sending, making, or
15 receiving his or her personal mail, electronic communications, or
16 telephone calls; or

17 (ii) Acts that prevent or obstruct the vulnerable adult from
18 meeting with others, such as telling a prospective visitor or caller
19 that a vulnerable adult is not present, or does not wish contact,
20 where the statement is contrary to the express wishes of the
21 vulnerable adult.

22 (b) The term "isolate" or "isolation" may not be construed in a
23 manner that prevents a guardian or limited guardian from performing
24 his or her fiduciary obligations under chapter 11.92 RCW or prevents
25 a hospital or facility from providing treatment consistent with the
26 standard of care for delivery of health services.

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

34 (15) "Mechanical restraint" means any device attached or adjacent
35 to the vulnerable adult's body that he or she cannot easily remove
36 that restricts freedom of movement or normal access to his or her
37 body. "Mechanical restraint" does not include the use of devices,
38 materials, or equipment that are (a) medically authorized, as
39 required, and (b) used in a manner that is consistent with federal or

1 state licensing or certification requirements for facilities,
2 hospitals, or programs authorized under chapter 71A.12 RCW.

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

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

16 (18) "Physical restraint" means the application of physical force
17 without the use of any device, for the purpose of restraining the
18 free movement of a vulnerable adult's body. "Physical restraint" does
19 not include (a) briefly holding without undue force a vulnerable
20 adult in order to calm or comfort him or her, or (b) holding a
21 vulnerable adult's hand to safely escort him or her from one area to
22 another.

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

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

39 (21) "Social worker" means:

40 (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
5 as an employee or agent of any public or private organization or
6 institution.

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

8 (a) Sixty years of age or older who has the functional, mental,
9 or 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
16 RCW; or

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

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

20 (23) "Vulnerable adult advocacy team" means a team of three or
21 more persons who coordinate a multidisciplinary process, in
22 compliance with chapter 266, Laws of 2017 and the protocol governed
23 by RCW 74.34.320, for preventing, identifying, investigating,
24 prosecuting, and providing services related to abuse, neglect, or
25 financial exploitation of vulnerable adults.

26 (24) "Willful" means that the individual must have acted
27 deliberately, not that the individual must have intended to inflict
28 injury or harm.

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