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**SUBSTITUTE HOUSE BILL 1620**

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**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,  
19 or neglect of vulnerable adults and to provide protective services and  
20 legal remedies to protect these vulnerable adults.

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

3        The legislature finds and declares that:

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

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

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

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

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

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

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

25        Unless the context clearly requires otherwise, the definitions in  
26 this section apply throughout this chapter.

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

31        (2) "Abuse" means (~~a nonaccidental act of physical or mental~~  
32 ~~mistreatment or injury, or sexual mistreatment, which harms a person~~  
33 ~~through action or inaction by another individual~~) the willful action  
34 or inaction that inflicts injury, unreasonable confinement,  
35 intimidation, or punishment on a vulnerable adult. In instances of  
36 abuse of a vulnerable adult who is unable to express or demonstrate  
37 physical harm, pain, or mental anguish, the abuse is presumed to cause  
38 physical harm, pain, or mental anguish. Abuse includes sexual abuse,

1 mental abuse, physical abuse, and exploitation of a vulnerable adult,  
2 which have the following meanings:

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

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

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

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

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

33 (4) "Department" means the department of social and health  
34 services.

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

38 (6) "Neglect" means a pattern of conduct or inaction by a person or  
39 entity with a duty of care for a frail elder or vulnerable adult that

1 results in the deprivation of care necessary to maintain the vulnerable  
2 person's physical or mental health.

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

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

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

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

27 (7) "Individual provider" means a person under contract with the  
28 department to provide services in the home under chapter 74.09 or  
29 74.39A RCW.

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

37 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
38 person or entity with a duty of care to provide the goods and services  
39 that maintain physical or mental health of a vulnerable adult, or that

1 avoids or prevents physical or mental harm or pain to a vulnerable  
2 adult; or (b) an act or omission that demonstrates a serious disregard  
3 of consequences of such a magnitude as to constitute a clear and  
4 present danger to the vulnerable adult's health, welfare, or safety.

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

8 (11) "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 (12) "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 (13) "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.

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

37 The cost of benefits and services provided to a (~~frail-elder-or~~)  
38 vulnerable adult under this chapter with state funds only does not

1 constitute an obligation or lien and is not recoverable from the  
2 recipient of the services or from the recipient's estate, whether by  
3 lien, adjustment, or any other means of recovery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30       (2) When the initial report or investigation by the department  
31 indicates that the alleged abandonment, abuse, financial exploitation,  
32 or neglect may be criminal, the department shall make an immediate  
33 report to the appropriate law enforcement agency. The department and  
34 law enforcement will coordinate in investigating reports made under  
35 this chapter. The department may provide protective services and other  
36 remedies as specified in this chapter.

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

5 (4) The department and law enforcement may share information  
6 contained in reports and findings of abandonment, abuse, financial  
7 exploitation, and neglect of vulnerable adults, consistent with RCW  
8 74.04.060, 42.17.310, and other applicable confidentiality laws.

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

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

16 (1) Where appropriate, an investigation by the department may  
17 include a private interview with the vulnerable adult regarding the  
18 alleged abandonment, abuse, financial exploitation, neglect, or self-  
19 neglect.

20 (2) In conducting the investigation, the department shall interview  
21 the complainant, unless anonymous, and shall use its best efforts to  
22 interview the vulnerable adult or adults harmed, and, consistent with  
23 the protection of the vulnerable adult shall interview facility staff,  
24 any available independent sources of relevant information, including if  
25 appropriate the family members of the vulnerable adult.

26 (3) The department may conduct ongoing case planning and  
27 consultation with: (a) Those persons or agencies required to report  
28 under this chapter or submit a report under this chapter; (b)  
29 consultants designated by the department; and (c) designated  
30 representatives of Washington Indian tribes if client information  
31 exchanged is pertinent to cases under investigation or the provision of  
32 protective services. Information considered privileged by statute and  
33 not directly related to reports required by this chapter must not be  
34 divulged without a valid written waiver of the privilege.

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



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

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

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

24 (8) 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.

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

32 ~~((In responding to reports of alleged abuse, exploitation, neglect,~~  
33 ~~or abandonment under this chapter, the department shall provide~~  
34 ~~information to the frail elder or vulnerable adult on protective~~  
35 ~~services available to the person and inform the person of the right to~~  
36 ~~refuse such services.)) The department ((shall)) may develop  
37 cooperative agreements with community-based agencies ~~((servicing the~~  
38 ~~abused elderly and)) providing services for vulnerable adults. The~~~~

1 agreements shall cover (~~such subjects as~~): (1) The appropriate roles  
2 and responsibilities of the department and community-based agencies in  
3 identifying and responding to reports of alleged abuse(~~(7)~~); (2) the  
4 provision of case-management services(~~(7)~~); (3) standardized data  
5 collection procedures(~~(7)~~); and (4) related coordination activities.

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

8 If access is denied to an employee of the department seeking to  
9 investigate an allegation of abandonment, abuse, (~~neglect~~) financial  
10 exploitation, or (~~abandonment~~) neglect of a vulnerable adult by an  
11 individual, the department may seek an injunction to prevent  
12 interference with the investigation. The court shall issue the  
13 injunction if the department shows that:

14 (1) There is reasonable cause to believe that the person is a  
15 vulnerable adult and is or has been abandoned, abused, (~~neglected~~)  
16 financially exploited, or (~~abandoned~~) neglected; and

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

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

21 An action known as a petition for an order for protection of a  
22 vulnerable adult in cases of abandonment, abuse (~~(or)~~), financial  
23 exploitation, or neglect is created.

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

27 (2) A petition shall allege that the petitioner is a vulnerable  
28 adult and that the petitioner has been abandoned, abused (~~(or)~~),  
29 financially exploited, or neglected, or is threatened with abandonment,  
30 abuse (~~(or)~~), financial exploitation, or neglect by respondent.

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

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

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

3 (6) An action under this section shall be filed in the county where  
4 the petitioner resides; except that if the petitioner has left the  
5 residence as a result of abandonment, ~~abuse ((or))~~, financial  
6 exploitation, or neglect, or in order to avoid abandonment, ~~abuse~~  
7 ~~((or))~~, financial exploitation, or neglect, the petitioner may bring an  
8 action in the county of either the previous or new residence.

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

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

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

15 (1) Restraining respondent from committing acts of abandonment,  
16 ~~abuse ((or))~~, neglect, or financial exploitation;

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

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

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

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

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

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

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

32 (1) An employee or contractor who is a whistleblower and who as a  
33 result of being a whistleblower has been subjected to workplace  
34 reprisal or retaliatory action, has the remedies provided under chapter  
35 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection  
36 to persons who communicate to government agencies, apply to complaints  
37 made under this section. The identity of a whistleblower who

1 complains, in good faith, to the department or the department of health  
2 about suspected abandonment, abuse, (~~((neglect,))~~) financial  
3 exploitation, or (~~((abandonment))~~) neglect by any person in a (~~((boarding~~  
4 ~~home))~~) facility, licensed or required to be licensed (~~((pursuant to~~  
5 ~~chapter 18.20 RCW or a veterans' home pursuant to chapter 72.36 RCW))~~),  
6 or care provided in a (~~((boarding home or a veterans' home))~~) facility or  
7 in a home setting, by any person associated with a hospice, home care,  
8 or home health agency licensed under chapter 70.127 RCW or other in-  
9 home provider, may remain confidential if requested. The identity of  
10 the whistleblower shall subsequently remain confidential unless the  
11 department determines that the complaint was not made in good faith.

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

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

24 (c) The presumption is rebutted by a (~~((functional assessment))~~)  
25 review conducted by the department that shows that the resident or  
26 consumer's needs cannot be met by the reasonable accommodations of the  
27 facility due to the increased needs of the resident.

28 (3) For the purposes of this section:

29 (a) "Whistleblower" means a resident or a person with a mandatory  
30 duty to report under this chapter, or any person licensed under Title  
31 18 RCW, who in good faith reports alleged abandonment, abuse,  
32 (~~((neglect,))~~) financial exploitation, or (~~((abandonment))~~) neglect to the  
33 department, or the department of health, or to a law enforcement  
34 agency;

35 (b) "Workplace reprisal or retaliatory action" means, but is not  
36 limited to: Denial of adequate staff to perform duties; frequent staff  
37 changes; frequent and undesirable office changes; refusal to assign  
38 meaningful work; unwarranted and unsubstantiated report of misconduct  
39 under Title 18 RCW; letters of reprimand or unsatisfactory performance

1 evaluations; demotion; denial of employment; or a supervisor or  
2 superior encouraging coworkers to behave in a hostile manner toward the  
3 whistleblower. The protections provided to whistleblowers under this  
4 chapter shall not prevent a (~~nursing home, state hospital, boarding~~  
5 ~~home, or adult family home~~) facility or an agency licensed under  
6 chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining  
7 a whistleblower for other lawful purposes; or (ii) for facilities  
8 licensed under chapter 70.128 RCW, reducing the hours of employment or  
9 terminating employment as a result of the demonstrated inability to  
10 meet payroll requirements. The department shall determine if the  
11 facility cannot meet payroll in cases in which a whistleblower has been  
12 terminated or had hours of employment reduced because of the inability  
13 of a facility to meet payroll; 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 (~~boarding home or veterans'~~  
20 ~~home~~) facility or an agency licensed under chapter 70.127 RCW from  
21 exercising its authority to terminate, suspend, or discipline any  
22 employee who engages in workplace reprisal or retaliatory action  
23 against a whistleblower.

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

27 (~~No frail elder or~~) (a) Any vulnerable (~~person~~) adult who  
28 relies upon and is being provided spiritual treatment in lieu of  
29 medical treatment in accordance with the tenets and practices of a  
30 well-recognized religious denomination (~~shall~~) may not for that  
31 reason alone be considered abandoned, abused, or neglected(~~, nor shall~~  
32 ~~anything in this chapter be construed to authorize, permit, or require~~  
33 ~~medical treatment contrary to the stated or clearly implied objection~~  
34 ~~of such a person~~)).

35 (b) Any vulnerable adult may not be considered abandoned, abused,  
36 or neglected under this chapter by any health care provider, facility,  
37 facility employee, agency, agency employee, or individual provider who  
38 participates in good faith in the withholding or withdrawing of life-  
39 sustaining treatment from a vulnerable adult under chapter 70.122 RCW,

1 or who acts in accordance with chapter 7.70 RCW or other state laws to  
2 withhold or withdraw treatment, goods, or services.

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

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

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

27 (2) It is the intent of the legislature, however, that where there  
28 is a dispute about the care or treatment of a (~~frail elder or~~)  
29 vulnerable adult, the parties should use the least formal means  
30 available to try to resolve the dispute. Where feasible, parties are  
31 encouraged but not mandated to employ direct discussion with the health  
32 care provider, use of the long-term care ombudsman or other  
33 intermediaries, and, when necessary, recourse through licensing or  
34 other regulatory authorities.

35 (3) In an action brought under this section, a prevailing plaintiff  
36 shall be awarded his or her actual damages, together with the costs of  
37 the suit, including a reasonable attorney's fee. The term "costs"  
38 includes, but is not limited to, the reasonable fees for a guardian,

1 guardian ad litem, and experts, if any, that may be necessary to the  
2 litigation of a claim brought under this section.

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

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

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

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

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

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

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

24 (c) All files, reports, records, communications, and working papers  
25 used or developed in the investigation or provision of protective  
26 services.

27 (2) Information considered confidential may be disclosed only for  
28 a purpose consistent with this chapter or as authorized by chapter  
29 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care  
30 ombudsman programs under federal law or state law, chapter 43.190 RCW.

31 (3) A court or presiding officer in an administrative proceeding  
32 may order disclosure of confidential information only if the court  
33 determines that disclosure is essential to the administration of  
34 justice and will not endanger the life or safety of the vulnerable  
35 adult or individual who made the report. The court or presiding  
36 officer in an administrative hearing may place restrictions on such  
37 disclosure as the court or presiding officer deems proper.

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

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

6        NEW SECTION.    **Sec. 19.**    The department of social and health  
7 services shall conduct a feasibility study to determine the need, use,  
8 role of due process, and cost of developing and maintaining a registry  
9 relating to incidents of abuse, neglect, abandonment, and financial  
10 exploitation of vulnerable adults. The results of the study are due by  
11 November 30, 1999.

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

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

23        (2) It is the intent of the legislature that: (a) As a result of  
24 such reports, protective services shall be made available in an effort  
25 to prevent further abuses, and to safeguard the general welfare of the  
26 patients; and (b) such reports shall be maintained and disseminated  
27 with strictest regard for the privacy of the subjects of such reports  
28 and so as to safeguard against arbitrary, malicious, or erroneous  
29 information or actions.

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

32        Unless the context requires otherwise, the definitions in this  
33 section apply throughout this chapter.

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

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



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

12 (4) "Department" means the state department of social and health  
13 services.

14 (5) (~~"Nursing home" has the meaning prescribed by RCW 18.51.010.~~  
15 ~~(6)~~) "Social worker" means anyone engaged in a professional  
16 capacity during the regular course of employment in encouraging or  
17 promoting the health, welfare, support, or education of (~~nursing~~  
18 ~~home~~) patients, or providing social services to (~~nursing home~~)  
19 patients, whether in an individual capacity or as an employee or agent  
20 of any public or private organization or institution.

21 (~~(7)~~) (6) "Psychologist" means any person licensed to practice  
22 psychology under chapter 18.83 RCW, whether acting in an individual  
23 capacity or as an employee or agent of any public or private  
24 organization or institution.

25 (~~(8)~~) (7) "Pharmacist" means any registered pharmacist under  
26 chapter 18.64 RCW, whether acting in an individual capacity or as an  
27 employee or agent of any public or private organization or institution.

28 (~~(9)~~) (8) "Abuse or neglect" or "patient abuse or neglect" means  
29 the nonaccidental physical injury or condition, sexual abuse, or  
30 negligent treatment of a (~~nursing home or~~) state hospital patient  
31 under circumstances which indicate that the patient's health, welfare,  
32 or safety is harmed thereby.

33 (~~(10)~~) (9) "Negligent treatment" means an act or omission which  
34 evinces a serious disregard of consequences of such magnitude as to  
35 constitute a clear and present danger to the patient's health, welfare,  
36 or safety.

37 (~~(11)~~) (10) "State hospital" means any hospital operated and  
38 maintained by the state for the care of the mentally ill under chapter  
39 72.23 RCW.

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

3       (1) When any practitioner, social worker, psychologist, pharmacist,  
4 (~~employee of a nursing home,~~) employee of a state hospital, or  
5 employee of the department has reasonable cause to believe that a  
6 (~~nursing home or~~) state hospital patient has suffered abuse or  
7 neglect, the person shall report such incident, or cause a report to be  
8 made, to either a law enforcement agency or to the department as  
9 provided in RCW 70.124.040.

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

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

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

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

- 27       (a) The name and address of the person making the report;
- 28       (b) The name and address of the (~~nursing home or~~) state hospital  
29 patient;
- 30       (c) The name and address of the patient's relatives having  
31 responsibility for the patient;
- 32       (d) The nature and extent of the alleged injury or injuries;
- 33       (e) The nature and extent of the alleged neglect;
- 34       (f) The nature and extent of the alleged sexual abuse;
- 35       (g) Any evidence of previous injuries, including their nature and  
36 extent; and

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

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

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

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

27 (2) Conduct conforming with the reporting requirements of this  
28 chapter (~~shall~~) is not (~~be deemed~~) a violation of the confidential  
29 communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110.  
30 Nothing in this chapter (~~shall be construed as to~~) supersedes or  
31 abridges remedies provided in chapter 4.92 RCW.

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

34 In the adoption of rules under the authority of this chapter, the  
35 department shall provide for the publication and dissemination to  
36 (~~nursing homes,~~) state hospitals(~~, and nursing home~~) and state  
37 hospital employees and the posting where appropriate by (~~nursing homes~~

1 and)) state hospitals of informational, educational, or training  
2 materials calculated to aid and assist in achieving the objectives of  
3 this chapter.

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

6 (1) An employee who is a whistleblower and who as a result of being  
7 a whistleblower has been subjected to workplace reprisal or retaliatory  
8 action, has the remedies provided under chapter 49.60 RCW. RCW  
9 4.24.500 through 4.24.520, providing certain protection to persons who  
10 communicate to government agencies, apply to complaints made under this  
11 section. The identity of a whistleblower who complains, in good faith,  
12 to the department about suspected abuse, neglect, financial  
13 exploitation, or abandonment by any person in a ((~~nursing home~~)) state  
14 hospital((~~, or adult family home~~)) may remain confidential if  
15 requested. The identity of the whistleblower shall subsequently remain  
16 confidential unless the department determines that the complaint was  
17 not made in good faith.

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

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

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

32 (3) For the purposes of this section:

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

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

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

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

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

30 (6) No (~~frail elder or vulnerable person~~) resident who relies  
31 upon and is being provided spiritual treatment in lieu of medical  
32 treatment in accordance with the tenets and practices of a well-  
33 recognized religious denomination shall for that reason alone be  
34 considered abandoned, abused, or neglected, nor shall anything in this  
35 chapter be construed to authorize, permit, or require medical treatment  
36 contrary to the stated or clearly implied objection of such a person.

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

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

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

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

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

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

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

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

1       (~~((4) A person reporting alleged injury, abuse, or neglect to an~~  
2 ~~adult dependent person shall not suffer negative consequences if the~~  
3 ~~person reporting believes in good faith that the adult dependent person~~  
4 ~~has been found legally incompetent or disabled.))~~)

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

7       (~~For the purpose of and as used in~~) The definitions in this  
8 section apply throughout this chapter((+)) unless the context clearly  
9 requires otherwise.

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

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

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

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

27       (5) "Department" means the state department of social and health  
28 services.

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

31       (7) "Professional school personnel" (~~shall~~) include, but are not  
32 (~~be~~) limited to, teachers, counselors, administrators, child care  
33 facility personnel, and school nurses.

34       (8) "Social service counselor" (~~shall~~) means anyone engaged in a  
35 professional capacity during the regular course of employment in  
36 encouraging or promoting the health, welfare, support or education of  
37 children, or providing social services to adults or families, including  
38 mental health, drug and alcohol treatment, and domestic violence

1 programs, whether in an individual capacity, or as an employee or agent  
2 of any public or private organization or institution.

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

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

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

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

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

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

27 (~~(15)~~) "Sexual exploitation" includes: (a) Allowing, permitting,  
28 or encouraging a child to engage in prostitution by any person; or (b)  
29 allowing, permitting, encouraging, or engaging in the obscene or  
30 pornographic photographing, filming, or depicting of a child by any  
31 person.

32 (~~(16)~~) (15) "Negligent treatment or maltreatment" means an act or  
33 omission (~~(which)~~) that evidences a serious disregard of consequences  
34 of such magnitude as to constitute a clear and present danger to the  
35 child's health, welfare, and safety. The fact that siblings share a  
36 bedroom is not, in and of itself, (~~(is)~~) negligent treatment or  
37 maltreatment. (~~(is)~~

38 (~~(17)~~) "~~Developmentally disabled person~~" means a person who has a  
39 disability defined in RCW 71A.10.020.



1       ~~(18))~~ (16) "Child protective services" means those services  
2 provided by the department designed to protect children from child  
3 abuse and neglect and safeguard such children from future abuse and  
4 neglect, and conduct investigations of child abuse and neglect reports.  
5 Investigations may be conducted regardless of the location of the  
6 alleged abuse or neglect. Child protective services includes referral  
7 to services to ameliorate conditions (~~(which)~~) that endanger the  
8 welfare of children, the coordination of necessary programs and  
9 services relevant to the prevention, intervention, and treatment of  
10 child abuse and neglect, and services to children to ensure that each  
11 child has a permanent home. In determining whether protective services  
12 should be provided, the department shall not decline to provide such  
13 services solely because of the child's unwillingness or developmental  
14 inability to describe the nature and severity of the abuse or neglect.

15       ~~((19))~~ (17) "Malice" or "maliciously" means an evil intent, wish,  
16 or design to vex, annoy, or injure another person. Such malice may be  
17 inferred from an act done in willful disregard of the rights of  
18 another, or an act wrongfully done without just cause or excuse, or an  
19 act or omission of duty betraying a willful disregard of social duty.

20       ~~((20))~~ (18) "Sexually aggressive youth" means a child who is  
21 defined in RCW 74.13.075(1)(b) as being a (~~(a)~~)sexually aggressive  
22 youth.~~((a~~

23       ~~(21))~~ (19) "Unfounded" means available information indicates that,  
24 more likely than not, child abuse or neglect did not occur.

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

27       (1)(a) When any practitioner, county coroner or medical examiner,  
28 law enforcement officer, professional school personnel, registered or  
29 licensed nurse, social service counselor, psychologist, pharmacist,  
30 licensed or certified child care providers or their employees, employee  
31 of the department, juvenile probation officer, or state family and  
32 children's ombudsman or any volunteer in the ombudsman's office has  
33 reasonable cause to believe that a child (~~(or adult dependent or~~  
34 ~~developmentally disabled person,~~) has suffered abuse or neglect, he or  
35 she shall report such incident, or cause a report to be made, to the  
36 proper law enforcement agency or to the department as provided in RCW  
37 26.44.040.

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

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

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

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

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

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

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

33 (6) Any county prosecutor or city attorney receiving a report under  
34 subsection (5) of this section shall notify the victim, any persons the  
35 victim requests, and the local office of the department, of the  
36 decision to charge or decline to charge a crime, within five days of  
37 making the decision.

38 (7) The department may conduct ongoing case planning and  
39 consultation with those persons or agencies required to report under

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

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

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

30 (10) Upon receiving reports of alleged abuse or neglect, the  
31 department or law enforcement agency may interview children. The  
32 interviews may be conducted on school premises, at day-care facilities,  
33 at the child's home, or at other suitable locations outside of the  
34 presence of parents. Parental notification of the interview (~~shall~~)  
35 must occur at the earliest possible point in the investigation that  
36 will not jeopardize the safety or protection of the child or the course  
37 of the investigation. Prior to commencing the interview the department  
38 or law enforcement agency shall determine whether the child wishes a  
39 third party to be present for the interview and, if so, shall make

1 reasonable efforts to accommodate the child's wishes. Unless the child  
2 objects, the department or law enforcement agency shall make reasonable  
3 efforts to include a third party in any interview so long as the  
4 presence of the third party will not jeopardize the course of the  
5 investigation.

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

10 (12) The department shall maintain investigation records and  
11 conduct timely and periodic reviews of all cases constituting abuse and  
12 neglect. The department shall maintain a log of screened-out  
13 nonabusive cases.

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

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

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

27 (15) The department shall make reasonable efforts to learn the  
28 name, address, and telephone number of each person making a report of  
29 abuse or neglect under this section. The department shall provide  
30 assurances of appropriate confidentiality of the identification of  
31 persons reporting under this section. If the department is unable to  
32 learn the information required under this subsection, the department  
33 shall only investigate cases in which: (a) The department believes  
34 there is a serious threat of substantial harm to the child; (b) the  
35 report indicates conduct involving a criminal offense that has, or is  
36 about to occur, in which the child is the victim; or (c) the department  
37 has, after investigation, a report of abuse or neglect that has been  
38 founded with regard to a member of the household within three years of  
39 receipt of the referral.

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

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

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

12       An immediate oral report (~~((shall))~~) must be made by telephone or  
13 otherwise to the proper law enforcement agency or the department of  
14 social and health services and, upon request, (~~((shall))~~) must be  
15 followed by a report in writing. Such reports (~~((shall))~~) must contain  
16 the following information, if known:

17       (1) The name, address, and age of the child (~~((or adult dependent or  
18 developmentally disabled person))~~);

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

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

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

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

25       (6) Any evidence of previous injuries, including their nature and  
26 extent; and

27       (7) Any other information (~~((which))~~) that may be helpful in  
28 establishing the cause of the child's (~~((or adult dependent or  
29 developmentally disabled person's))~~) death, injury, or injuries and the  
30 identity of the alleged perpetrator or perpetrators.

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

33       Upon the receipt of a report concerning the possible occurrence of  
34 abuse or neglect, (~~((it shall be the duty of))~~) the law enforcement  
35 agency or the department of social and health services (~~((to))~~) must  
36 investigate and provide the protective services section with a report

1 in accordance with (~~the provision of~~) chapter 74.13 RCW, and where  
2 necessary to refer such report to the court.

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

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

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

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

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

31 (4) The aging and adult services administration shall refer  
32 complaints to appropriate state agencies, law enforcement agencies, the  
33 attorney general, the long-term care ombudsman, or other entities if  
34 the department lacks authority to investigate or if its investigation  
35 reveals that a follow-up referral to one or more of these entities is  
36 appropriate.

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

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

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

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

24 (d) Substantiated complaints involving harm to a resident, if an  
25 applicable law or ~~((regulation))~~ rule has been violated, shall be  
26 subject to one or more of the actions provided in RCW 74.39A.080 or  
27 70.128.160. Whenever appropriate, the department shall also give  
28 consultation and technical assistance to the provider.

29 (e) In the best practices of total quality management and  
30 continuous quality improvement, after a department finding of a  
31 violation that is serious, recurring, or uncorrected following a  
32 previous citation, the department shall make an on-site revisit of the  
33 facility to ensure correction of the violation, except for license or  
34 contract suspensions or revocations.

35 (f) Substantiated complaints of neglect, abuse, exploitation, or  
36 abandonment of residents, or suspected criminal violations, shall also  
37 be referred by the department to the appropriate law enforcement  
38 agencies, the attorney general, and appropriate professional  
39 disciplining authority.



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

19 (7) The resident has the right to be free of interference,  
20 coercion, discrimination, and reprisal from a facility in exercising  
21 his or her rights, including the right to voice grievances about  
22 treatment furnished or not furnished. A facility that provides long-  
23 term care services shall not discriminate or retaliate in any manner  
24 against a resident, employee, or any other person on the basis or for  
25 the reason that such resident or any other person made a complaint to  
26 the department, the attorney general, law enforcement agencies, or the  
27 long-term care ombudsman, provided information, or otherwise cooperated  
28 with the investigation of such a complaint. Any attempt to discharge  
29 a resident against the resident's wishes, or any type of retaliatory  
30 treatment of a resident by whom or upon whose behalf a complaint  
31 substantiated by the department has been made to the department, the  
32 attorney general, law enforcement agencies, or the long-term care  
33 ombudsman, within one year of the filing of the complaint, raises a  
34 rebuttable presumption that such action was in retaliation for the  
35 filing of the complaint. "Retaliatory treatment" means, but is not  
36 limited to, monitoring a resident's phone, mail, or visits; involuntary  
37 seclusion or isolation; transferring a resident to a different room  
38 unless requested or based upon legitimate management reasons;  
39 withholding or threatening to withhold food or treatment unless

1 authorized by a terminally ill resident or his or her representative  
2 pursuant to law; or persistently delaying responses to a resident's  
3 request for service or assistance. A facility that provides long-term  
4 care services shall not willfully interfere with the performance of  
5 official duties by a long-term care ombudsman. The department shall  
6 sanction and may impose a civil penalty of not more than three thousand  
7 dollars for a violation of this subsection.

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

10 (1) RCW 74.34.010 (Legislative findings--Intent) and 1997 c 392 s  
11 303, 1995 1st sp.s. c 18 s 82, & 1984 c 97 s 7;

12 (2) RCW 74.34.015 (Protection of frail elders and vulnerable  
13 adults--Legislative findings and intent) and 1995 1st sp.s. c 18 s 83  
14 & 1986 c 187 s 4;

15 (3) RCW 74.34.030 (Reports--Duty to make) and 1995 1st sp.s. c 18  
16 s 88, 1986 c 187 s 1, & 1984 c 97 s 9;

17 (4) RCW 74.34.055 (Failure to report is gross misdemeanor) and 1997  
18 c 392 s 522; and

19 (5) RCW 74.34.060 (Response to reports--Services--Consent) and 1984  
20 c 97 s 12.

21 NEW SECTION. **Sec. 36.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 37.** If any part of this act is found to be in  
26 conflict with federal requirements that are a prescribed condition to  
27 the allocation of federal funds to the state, the conflicting part of  
28 this act is inoperative solely to the extent of the conflict and with  
29 respect to the agencies directly affected, and this finding does not  
30 affect the operation of the remainder of this act in its application to  
31 the agencies concerned. Rules adopted under this act must meet federal  
32 requirements that are a necessary condition to the receipt of federal  
33 funds by the state.

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