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**HOUSE BILL 1620**

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**State of Washington****56th Legislature****1999 Regular Session**

**By** Representatives Conway, Parlette, Cody, Miloscia, Poulsen, Hatfield and Keiser; by request of Department of Social and Health Services

Read first time 02/01/1999. Referred to Committee on Health Care.

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, and 26.44.040; reenacting and amending RCW  
6 70.124.040 and 26.44.050; adding new sections to chapter 74.34 RCW;  
7 creating new sections; and repealing RCW 74.34.010, 74.34.015,  
8 74.34.030, 74.34.055, and 74.34.060.

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

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

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

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

5 The legislature finds and declares that:

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

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

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

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

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

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

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

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

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

32 (2) "Abuse" means (~~a nonaccidental act of physical or mental~~  
33 ~~mistreatment or injury, or sexual mistreatment, which harms a person~~  
34 ~~through action or inaction by another individual~~) the negligent or  
35 willful infliction of injury, unreasonable confinement, intimidation,  
36 or punishment by another individual, regardless of the vulnerable  
37 adults' mental status, and is presumed to cause physical harm, pain, or

1 mental anguish. Abuse includes sexual abuse, mental abuse, physical  
2 abuse, and exploitation of a vulnerable adult, which have the following  
3 meanings:

4 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
5 including but not limited to unwanted or inappropriate touching, rape,  
6 sodomy, coerced nudity, sexual explicit photographing, and sexual  
7 harassment. Sexual abuse includes any sexual contact between a staff  
8 person of a facility and a vulnerable adult living in that facility,  
9 whether or not it is consensual.

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

15 (c) "Mental abuse" means any negligent or willful act of mental or  
16 verbal abuse that results in pain or distress through action or  
17 inaction by another individual. Mental abuse includes, but is not  
18 limited to, coercion, harassment, treating an adult like a child,  
19 isolating from family, friends, or regular activity, use of silence to  
20 control behavior, and verbal assault that includes ridiculing,  
21 intimidating, yelling, or swearing.

22 (d) "Exploitation of a vulnerable adult" means an act of forcing,  
23 compelling, or enticing a vulnerable adult to perform services or to  
24 act in a way to benefit another.

25 (3) "Consent" means express written consent granted after the  
26 ((person)) vulnerable adult has been fully informed of the nature of  
27 the services to be offered and that the receipt of services is  
28 voluntary.

29 (4) "Department" means the department of social and health  
30 services.

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

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

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

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

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

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

23       (7) "Mandated reporter" is an employee of the department; law  
24 enforcement officer; social worker; professional school personnel;  
25 individual provider as defined by rule; an employee or operator of a  
26 facility; an employee of a social service, welfare, mental health,  
27 adult day health, adult day care, home health, home care, or hospice  
28 agency; county coroner or medical examiner; Christian Science  
29 practitioner; or health care provider listed under Title 18 RCW,  
30 including but not limited to, a physician, physician's assistant,  
31 registered nurse, licensed practical nurse, psychologist, employee of  
32 an emergency medical care and transportation service, pharmacist,  
33 podiatrist, chiropractor, dentist, osteopath, physical therapist,  
34 nursing assistant, and counselor.

35       (8) "Neglect" means the failure of a person or entity with a duty  
36 of care to provide the goods and services that maintain physical or  
37 mental health of a vulnerable adult, or that avoids or prevents  
38 physical or mental harm or pain to a vulnerable adult. Neglect  
39 includes self-neglect, which means when the vulnerable adult lacks the

1 mental status to provide for himself or herself the goods and services  
2 that maintain physical or mental health.

3 (9) "Negligent treatment" means an act or omission that  
4 demonstrates a serious disregard of consequences of such a magnitude as  
5 to constitute a clear and present danger to the vulnerable adult's  
6 health, welfare, or safety.

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

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

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

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

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

21 (c) Who has a developmental disability as defined under RCW  
22 71A.10.020; or

23 (d) Admitted to any facility; or

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

27 (f) Receiving services from a client individual provider under  
28 contract with the department to provide in-home services through RCW  
29 74.39A.030 (COPES), 74.09.520 (MPC), or 74.39A.110 (chore).

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

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

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

3        (1) When there is reasonable cause to believe that abandonment,  
4 abuse, financial exploitation, or neglect of a vulnerable adult has  
5 occurred, mandated reporters shall immediately report to the  
6 department.    If there is reason to suspect criminal activity has  
7 occurred, mandated reporters shall immediately report to the  
8 appropriate law enforcement agency and to the department.

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

13        (3) No facility or agency licensed or required to be licensed by  
14 the department or under contract with the department to provide care  
15 for vulnerable adults may develop policies or procedures that interfere  
16 with the reporting requirements of this chapter.

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

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

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

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

24        (d) The nature and extent of the abandonment, abuse, financial  
25 exploitation, or neglect;

26        (e) Any history of previous abandonment, abuse, financial  
27 exploitation, or neglect;

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

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

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

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

37        (1) A person participating in good faith in making a report under  
38 this chapter or testifying about alleged abuse, neglect, abandonment,

1 or financial exploitation of a vulnerable adult in a judicial or  
2 administrative proceeding under this chapter is immune from liability  
3 resulting from the report or testimony. ((The making of permissive  
4 reports as allowed in RCW 74.34.030 does not create any duty to report  
5 and no civil liability shall attach for any failure to make a  
6 permissive report under RCW 74.34.030)).

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

11 NEW SECTION. Sec. 7. A new section is added to chapter 74.34 RCW  
12 to read as follows:

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

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

19 NEW SECTION. Sec. 8. A new section is added to chapter 74.34 RCW  
20 to read as follows:

21 (1) The department shall initiate a response to a report no later  
22 than twenty-four hours of knowledge of the report of suspected  
23 abandonment, abuse, financial exploitation, or neglect of a vulnerable  
24 adult.

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

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

1 (4) The department and law enforcement are required to share  
2 information contained in reports and findings of abandonment, abuse,  
3 financial exploitation, and neglect of vulnerable adults.

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

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

11 (1) Where appropriate, an investigation by the department may  
12 include a private interview with the vulnerable adult regarding the  
13 alleged abandonment, abuse, financial exploitation, or neglect.

14 (2) An investigation may include an interview with persons thought  
15 to have knowledge of the circumstances.

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

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

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

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



1 vulnerable adult has the right to withdraw or refuse protective  
2 services.

3 (7) The department or law enforcement agencies may photograph a  
4 vulnerable adult or their environment for the purpose of providing  
5 documentary evidence of the physical condition of the vulnerable adult  
6 or his or her environment.

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

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

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

23 If access is denied to an employee of the department seeking to  
24 investigate an allegation of abandonment, abuse, ~~((neglect7))~~ financial  
25 exploitation, or ~~((abandonment))~~ neglect of a vulnerable adult by an  
26 individual, the department may seek an injunction to prevent  
27 interference with the investigation. The court shall issue the  
28 injunction if the department shows that:

29 (1) There is reasonable cause to believe that the person is a  
30 vulnerable adult and is or has been abandoned, abused, ~~((neglected7))~~  
31 financially exploited, or ~~((abandoned))~~ neglected; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2)(a) An attempt to expel a resident from a ~~((boarding home or~~  
28 ~~veterans' home))~~ facility, or any type of discriminatory treatment of  
29 a resident who is a consumer of hospice, home health, home care  
30 services, or other in-home services by whom, or upon whose behalf, a  
31 complaint substantiated or unsubstantiated by the department or the  
32 department of health has been submitted to the department or any  
33 proceeding instituted under or related to this chapter within one year  
34 of the filing of the complaint or the institution of the action, raises  
35 a rebuttable presumption that the action was in retaliation for the  
36 filing of the complaint.

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

1 (c) The presumption is rebutted by a functional assessment  
2 conducted by the department that shows that the resident or consumer's  
3 needs cannot be met by the reasonable accommodations of the facility  
4 due to the increased needs of the resident.

5 (3) For the purposes of this section:

6 (a) "Whistleblower" means a resident or a person with a mandatory  
7 duty to report under this chapter, or any person licensed under Title  
8 18 RCW, who in good faith reports alleged abandonment, abuse,  
9 (~~neglect,~~) financial exploitation, or (~~abandonment~~) neglect to the  
10 department, or the department of health, or to a law enforcement  
11 agency;

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

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

34 (4) This section does not prohibit a (~~boarding home or veterans'~~  
35 ~~home~~) facility from exercising its authority to terminate, suspend, or  
36 discipline any employee who engages in workplace reprisal or  
37 retaliatory action against a whistleblower.

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

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

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

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

17 (1) In addition to other remedies available under the law, a  
18 (~~frail-elder-or~~) vulnerable adult (~~or a person age eighteen or~~  
19 ~~elder~~) who has been subjected to abandonment, abuse, (~~neglect,~~)  
20 financial exploitation, or (~~abandonment~~) neglect either while  
21 residing in a (~~long-term-care~~) facility or in the case of a person in  
22 the care of a home health, hospice, or home care agency, residing at  
23 home, shall have a cause of action for damages on account of his or her  
24 injuries, pain and suffering, and loss of property sustained thereby.  
25 This action shall be available where the defendant is or was a  
26 corporation, trust, unincorporated association, partnership,  
27 administrator, employee, agent, officer, partner, or director of a  
28 (~~long-term-care~~) facility, (~~such as a nursing home or boarding home,~~  
29 ~~that is licensed or required to be licensed under chapter 18.20, 18.51,~~  
30 ~~72.36, or 70.128 RCW,~~) or of a home health, hospice, or home care  
31 agency licensed or required to be licensed under chapter 70.127 RCW, as  
32 now or subsequently designated, or a client individual provider  
33 providing care under RCW 74.39A.030, 74.09.520, or 74.35A.110.

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

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

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

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

12 No vulnerable adult who relies upon and is being provided spiritual  
13 treatment in lieu of medical treatment in accordance with the tenets  
14 and practices of a well-recognized religious denomination may for that  
15 reason alone be considered abandoned, abused, or neglected, nor does  
16 anything in this chapter authorize, permit, or require medical  
17 treatment contrary to the stated and clearly implied objectives of such  
18 a person.

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

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

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

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

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

29 (2) Information considered confidential may be disclosed only for  
30 a purpose consistent with this chapter or as authorized by chapter  
31 18.20, 18.51, or 74.39A RCW.

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

1 officer in an administrative hearing may place restrictions on such  
2 disclosure as the court or presiding officer deems proper.

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

5 The department may adopt rules relating to the investigation and  
6 provision of protective services, consistent with the objectives of  
7 this chapter.

8 NEW SECTION. **Sec. 19.** The department of social and health  
9 services shall conduct a feasibility study to determine the need, use,  
10 and cost of developing and maintaining an adult abuse registry. The  
11 results of the study are due by 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.

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

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

14           (4) "Department" means the state department of social and health  
15 services.

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

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

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

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

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



1       (~~(11)~~) (10) "State hospital" means any hospital operated and  
2 maintained by the state for the care of the mentally ill under chapter  
3 72.23 RCW.

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

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

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

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

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

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

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

31       (b) The name and address of the (~~nursing home or~~) state hospital  
32 patient;

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

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

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

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

1 (g) Any evidence of previous injuries, including their nature and  
2 extent; and

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

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

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

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

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

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

36 In the adoption of rules under the authority of this chapter, the  
37 department shall provide for the publication and dissemination to

1 ((~~nursing homes~~)) state hospitals(~~(, and nursing home)~~) and state  
2 hospital employees and the posting where appropriate by ((~~nursing homes~~  
3 ~~and~~)) state hospitals of informational, educational, or training  
4 materials calculated to aid and assist in achieving the objectives of  
5 this chapter.

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

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

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

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

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

34 (3) For the purposes of this section:

35 (a) "Whistleblower" means a resident or employee of a ((~~nursing~~  
36 ~~home~~)) state hospital(~~(, or adult family home)~~) or any person  
37 licensed under Title 18 RCW, who in good faith reports alleged abuse,

1 neglect, financial exploitation, or abandonment to the department or to  
2 a law enforcement agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) "Department" means the state department of social and health  
31 services.

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

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

37 (8) "Social service counselor" ~~((shall))~~ means anyone engaged in a  
38 professional capacity during the regular course of employment in

1 encouraging or promoting the health, welfare, support or education of  
2 children, or providing social services to adults or families, including  
3 mental health, drug and alcohol treatment, and domestic violence  
4 programs, whether in an individual capacity, or as an employee or agent  
5 of any public or private organization or institution.

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

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

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

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

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

27 (~~14~~) (~~"Adult dependent persons" shall be defined as those persons~~  
28 ~~over the age of eighteen years who have been found to be legally~~  
29 ~~incompetent or disabled pursuant to chapter 11.88 RCW.~~

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

35 (~~16~~) (~~15~~) "Negligent treatment or maltreatment" means an act or  
36 omission (~~which~~) that evidences a serious disregard of consequences  
37 of such magnitude as to constitute a clear and present danger to the  
38 child's health, welfare, and safety. The fact that siblings share a

1 bedroom is not, in and of itself, ((~~the~~)) negligent treatment or  
2 maltreatment. ((~~the~~

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

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

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

24 ((~~(20))~~) (18) "Sexually aggressive youth" means a child who is  
25 defined in RCW 74.13.075(1)(b) as being a ((~~the~~)) sexually aggressive  
26 youth. ((~~the~~

27 ~~(21))~~ (19) "Unfounded" means available information indicates that,  
28 more likely than not, child abuse or neglect did not occur.

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

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



1 she shall report such incident, or cause a report to be made, to the  
2 proper law enforcement agency or to the department as provided in RCW  
3 26.44.040.

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

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

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

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

38 (3) Any other person who has reasonable cause to believe that a  
39 child (~~or adult dependent or developmentally disabled person~~) has

1 suffered abuse or neglect may report such incident to the proper law  
2 enforcement agency or to the department of social and health services  
3 as provided in RCW 26.44.040.

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

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

36 (6) Any county prosecutor or city attorney receiving a report under  
37 subsection (5) of this section shall notify the victim, any persons the  
38 victim requests, and the local office of the department, of the

1 decision to charge or decline to charge a crime, within five days of  
2 making the decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17        NEW SECTION.    **Sec. 34.**    The following acts or parts of acts are  
18 each repealed:

- 19        (1) RCW 74.34.010 and 1997 c 392 s 303, 1995 1st sp.s. c 18 s 82,  
20 & 1984 c 97 s 7;  
21        (2) RCW 74.34.015 and 1995 1st sp.s. c 18 s 83 & 1986 c 187 s 4;  
22        (3) RCW 74.34.030 and 1995 1st sp.s. c 18 s 88, 1986 c 187 s 1, &  
23 1984 c 97 s 9;  
24        (4) RCW 74.34.055 and 1997 c 392 s 522; and  
25        (5) RCW 74.34.060 and 1984 c 97 s 12.

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