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HOUSE BILL 2683

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State of Washington

56th Legislature

2000 Regular Session

By Representatives Conway, Cody, Haigh and O'Brien; by request of Department of Social and Health Services

Read first time 01/18/2000. Referred to Committee on Health Care.

1 AN ACT Relating to the protection of patients in state hospitals;  
2 amending RCW 72.23.010, 72.23.020, 70.124.060, 70.124.070, 70.124.090,  
3 and 70.124.100; amending 1992 c 230 s 3 (uncodified); adding new  
4 sections to chapter 72.23 RCW; recodifying RCW 70.124.060, 70.124.070,  
5 70.124.090, 70.124.100, and 70.124.900; and repealing RCW 70.124.010,  
6 70.124.020, 70.124.030, 70.124.040, 70.124.050, and 70.124.080.

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

8 **Sec. 1.** RCW 72.23.010 and 1981 c 136 s 99 are each amended to read  
9 as follows:

10 ~~((As used in this chapter, the following terms shall have the~~  
11 ~~following meanings:))~~ Unless the context requires otherwise, the  
12 definitions in this section apply throughout this chapter.

13 (1) "Abandonment" means action or inaction by a person or entity  
14 with a duty of care for a patient that leaves the patient without the  
15 means or ability to obtain necessary food, clothing, shelter, or health  
16 care.

17 (2) "Abuse" means a willful action or inaction that inflicts  
18 injury, unreasonable confinement, intimidation, or punishment on a  
19 patient. In instances of abuse of a patient who is unable to express

1 or demonstrate physical harm, pain, or mental anguish, the abuse is  
2 presumed to cause physical harm, pain, or mental anguish. Abuse  
3 includes sexual abuse, mental abuse, physical abuse, and exploitation  
4 of a patient, which have the following meanings:

5 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
6 including but not limited to unwanted or inappropriate touching, rape,  
7 sodomy, sexual coercion, sexually explicit photography, and sexual  
8 harassment. Sexual abuse includes any sexual contact between a staff  
9 person and a patient, whether or not it is consensual.

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

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

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

26 (3) "Court" means the superior court of the state of Washington.

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

29 (5) "Financial exploitation" means the illegal or improper use of  
30 the property, income, resources, or trust funds of the patient by any  
31 person for any person's profit or advantage.

32 (6) "Law enforcement agency" means the police department, the  
33 director of public safety, or the office of the sheriff.

34 (7) "Licensed physician" means an individual licensed to practice  
35 as a physician under chapter 18.57 or 18.71 RCW, or a medical officer,  
36 similarly qualified, of the government of the United States while in  
37 this state in performance of his or her official duties.

1       (8) "Mandated reporter" is an employee of the department or a  
2 hospital, a law enforcement officer, or any person who is  
3 professionally licensed, certified, or registered under Title 18 RCW.

4       (9) "Mentally ill person" ((shall)) means any person who,  
5 ((pursuant to the definitions contained in RCW 71.05.020,)) as a result  
6 of a mental disorder presents a likelihood of serious harm to others or  
7 himself or herself, or is gravely disabled, as these terms are defined  
8 in RCW 71.05.020.

9       (10) "Neglect" means (a) a pattern of conduct or inaction by a  
10 person or entity with a duty of care to provide the goods and services  
11 that maintain physical or mental health of a patient, or that avoids or  
12 prevents physical or mental harm or pain to a patient, or (b) an act or  
13 omission by such person or entity that demonstrates a serious disregard  
14 of consequences of such a magnitude as to constitute a clear and  
15 present danger to the patient's health, welfare, or safety.

16       (11) "Patient" ((shall)) means a person under observation, care, or  
17 treatment in a state hospital, or a person found mentally ill by the  
18 court, and not discharged from a state hospital, or other facility, to  
19 which such a person had been ordered hospitalized.

20       (( "Licensed physician" shall mean an individual permitted to  
21 practice as a physician under the laws of the state, or a medical  
22 officer, similarly qualified, of the government of the United States  
23 while in this state in performance of his official duties.))

24       (12) "Permissive reporter" means any person, employee of a  
25 financial institution, attorney, or volunteer in a facility or program  
26 providing services for patients.

27       (13) "Protective mechanisms" means any interventions provided by  
28 the department to a patient with the consent of the patient, or the  
29 legal representative of the patient, who has been abandoned, abused,  
30 financially exploited, or neglected. These interventions may include,  
31 but are not limited to patient transfer, staff transfer, arranging for  
32 medical assessments or evaluations, psychological evaluations, or  
33 referral for legal assistance.

34       (14) "Restraint" means either a physical restraint or a drug that  
35 is being used as a restraint. A physical restraint is any manual  
36 method or physical or mechanical device, material, or equipment  
37 attached or adjacent to the patient's body. A drug used as a restraint  
38 is a prescribed medication used to control behavior or to restrict the

1 patient's freedom of movement and is not a standard treatment for the  
2 patient's medical or psychiatric condition.

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

4 (16) "State hospital" (~~shall~~) means any hospital operated and  
5 maintained by the state of Washington for the care of the mentally ill.

6 (17) "Superintendent" (~~shall~~) means the superintendent or chief  
7 executive officer of a state hospital.

8 (~~"Court" shall mean the superior court of the state of Washington.~~

9 ~~"Resident" shall mean a resident of the state of Washington.~~

10 ~~Wherever used in this chapter, the masculine shall include the~~  
11 ~~feminine and the singular shall include the plural.)~~

12 **Sec. 2.** RCW 72.23.020 and 1959 c 28 s 72.23.020 are each amended  
13 to read as follows:

14 There are hereby permanently located and established the following  
15 state hospitals: Western state hospital at Fort Steilacoom, Pierce  
16 county; and eastern state hospital at Medical Lake, Spokane county(~~+~~  
17 ~~and northern state hospital near Sedro Woolley, Skagit county~~)).

18 **Sec. 3.** 1992 c 230 s 3 (uncodified) is amended to read as follows:

19 It is the intent of this (~~act~~) chapter to:

20 (1) Focus, restate, and emphasize the legislature's commitment to  
21 the mental health reform embodied in chapter (~~111-205~~) 205, Laws of  
22 1989 (~~(+SB-5400)~~);

23 (2) Eliminate, or schedule for repeal, statutes that are no longer  
24 relevant to the regulation of the state's mental health program;  
25 (~~and~~)

26 (3) Reaffirm the state's commitment to provide incentives that  
27 reduce reliance on inappropriate state hospital or other inpatient  
28 care; and

29 (4) Reaffirm the intent of the legislature to (a) provide a  
30 reporting system to protect patients from abuse, (b) make protective  
31 mechanisms available, and (c) maintain the strictest regard for the  
32 privacy of the subjects of the reports.

33 **Sec. 4.** RCW 70.124.060 and 1999 c 176 s 24 are each amended to  
34 read as follows:

35 (1) (~~A person other than a person alleged to have committed the~~  
36 ~~abuse or neglect participating in good faith in the making of a report~~

1 ~~pursuant to this chapter, or testifying as to alleged patient abuse or~~  
2 ~~neglect in a judicial proceeding, is, in so doing, immune from any~~  
3 ~~liability, civil or criminal, arising out of such reporting or~~  
4 ~~testifying under any law of this state or its political subdivisions,~~  
5 ~~and if such person is an employee of a state hospital it is an unfair~~  
6 ~~practice under chapter 49.60 RCW for the employer to discharge, expel,~~  
7 ~~or otherwise discriminate against the employee for such reporting~~  
8 ~~activity.)) A person who makes a good faith report as required or  
9 permitted by this chapter is immune from any civil or criminal  
10 liability that could result from reporting or testifying about what  
11 they believe to be patient abandonment, abuse, financial exploitation,  
12 or neglect. If the person is a state employee it is an unfair practice  
13 under chapter 49.60 RCW for the employer to discharge, expel, or  
14 otherwise discriminate against the employee.~~

15 (2) Conduct conforming with the reporting requirements of this  
16 chapter is not a violation of the confidential communication privilege  
17 of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter  
18 supersedes or abridges remedies provided in chapter 4.92 RCW.

19 **Sec. 5.** RCW 70.124.070 and 1997 c 392 s 521 are each amended to  
20 read as follows:

21 A person who is required to make a report or ~~((to))~~ cause ~~((to be~~  
22 ~~made))~~ a report ~~((pursuant to RCW 70.124.030 or 70.124.040))~~ to be made  
23 under this chapter and who knowingly fails to make such report or fails  
24 to cause such report to be made is guilty of a gross misdemeanor.

25 **Sec. 6.** RCW 70.124.090 and 1999 c 176 s 25 are each amended to  
26 read as follows:

27 ~~((In the adoption of rules under the authority of this chapter, the~~  
28 ~~department shall provide for the publication and dissemination to state~~  
29 ~~hospitals and state hospital employees and the posting where~~  
30 ~~appropriate by state hospitals of informational, educational, or~~  
31 ~~training materials calculated to aid and assist in achieving the~~  
32 ~~objectives of this chapter.)) The department shall aid and assist the  
33 achievement of the objectives of this chapter by publishing and  
34 distributing informational, educational, and training materials on  
35 preventing and reporting patient abandonment, abuse, financial  
36 exploitation, and neglect. These materials shall be made available to~~

1 state hospitals and state hospital employees and posted where  
2 appropriate.

3 **Sec. 7.** RCW 70.124.100 and 1999 c 176 s 26 are each amended to  
4 read as follows:

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

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

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

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

29 ~~(3) For the purposes of this section:~~

30 ~~(a) "Whistleblower" means a resident or employee of a state~~  
31 ~~hospital or any person licensed under Title 18 RCW, who in good faith~~  
32 ~~reports alleged abuse, neglect, financial exploitation, or abandonment~~  
33 ~~to the department or to a law enforcement agency;~~

34 ~~(b) "Workplace reprisal or retaliatory action" means, but is not~~  
35 ~~limited to: Denial of adequate staff to perform duties; frequent staff~~  
36 ~~changes; frequent and undesirable office changes; refusal to assign~~  
37 ~~meaningful work; unwarranted and unsubstantiated report of misconduct~~  
38 ~~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; and

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

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

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

24 (6) No resident who relies upon and is being provided spiritual  
25 treatment in lieu of medical treatment in accordance with the tenets  
26 and practices of a well-recognized religious denomination shall for  
27 that reason alone be considered abandoned, abused, or neglected, nor  
28 shall anything in this chapter be construed to authorize, permit, or  
29 require medical treatment contrary to the stated or clearly implied  
30 objection of such a person.

31 (7) The department shall adopt rules designed to discourage  
32 whistleblower complaints made in bad faith or for retaliatory  
33 purposes.)) (1) An employee who is subjected to workplace reprisal or  
34 retaliatory action as the result of making a report under this chapter  
35 has remedies under chapter 49.60 RCW. The protections provided in RCW  
36 4.24.500 through 4.24.520 apply to complaints made under this section.

37 (2) The identity of an employee who makes a report in good faith  
38 may remain confidential if requested. It will remain confidential

1 unless the department determines the complaint was not made in good  
2 faith.

3 (3) An attempt to discharge a patient, move them to a more  
4 restrictive environment, or any type of discriminatory treatment of a  
5 patient by whom, or on behalf of whom a complaint was filed, raises a  
6 rebuttable presumption that the action was in retaliation for the  
7 filing of the complaint. The attempt or discriminatory action must  
8 take place within one year of the filing of the complaint or the  
9 institution of the action to raise the presumption.

10 (4) The presumption of retaliatory action is rebutted by:

11 (a) Credible evidence establishing that the alleged retaliatory  
12 action was initiated prior to the complaint;

13 (b) A functional assessment conducted by the department that shows  
14 that the patient's needs cannot be met by reasonable accommodations of  
15 the less restrictive environment due to the increased needs of the  
16 patient; or

17 (c) Medical or legal determinations that the patient no longer  
18 meets the standard for inpatient treatment.

19 (5) For the purposes of this section:

20 (a) "Workplace reprisal or retaliatory action" means, but is not  
21 limited to:

22 (i) Denial of adequate staff to perform duties;

23 (ii) Frequent staff changes;

24 (iii) Frequent and undesirable office changes;

25 (iv) Refusal to assign meaningful work;

26 (v) Unwarranted and unsubstantiated report of misconduct under  
27 Title 18 RCW;

28 (vi) Letter of reprimand or an unsatisfactory performance  
29 evaluation;

30 (vii) Demotion;

31 (viii) Denial of employment; or

32 (ix) A supervisor encouraging a coworker to behave in a hostile  
33 manner to the employee.

34 (b) "Reasonable accommodation" by a state hospital to the needs of  
35 a prospective or current patient has the meaning given to this term  
36 under the federal Americans with disabilities act of 1990, 42 U.S.C.  
37 Sec. 12101 et seq. and other applicable federal or state  
38 antidiscrimination laws and regulations.



1       (6) This section does not prohibit a state hospital from exercising  
2 its authority to terminate, suspend, or discipline an employee who  
3 engages in workplace reprisal or retaliatory action against a state  
4 employee.

5       (7) The protection provided to reporters under this chapter does  
6 not prevent the state hospital from terminating, suspending, or  
7 disciplining a reporter for other lawful purposes.

8       (8) A patient who relies upon and is provided spiritual treatment  
9 in lieu of medical treatment in accordance with the tenets and  
10 practices of a well-recognized religious denomination is not for that  
11 reason alone considered abandoned, abused, or neglected. This chapter  
12 does not authorize, permit, or require medical treatment contrary to  
13 the stated or clearly implied objection of such a person.

14       (9) The department shall maintain a policy and procedure to protect  
15 state employees who in good faith report suspected abandonment, abuse,  
16 financial exploitation, or neglect as defined in this chapter. It  
17 shall also have a policy and procedure that discourages complaints made  
18 in bad faith or for retaliatory purposes.

19       NEW SECTION. Sec. 8. A new section is added to chapter 72.23 RCW  
20 to read as follows:

21       (1) When there is reasonable cause to believe that abandonment,  
22 abuse, financial exploitation, or neglect of a patient has occurred,  
23 mandated reporters shall immediately report to the department. If  
24 there is reason to suspect that sexual or physical assault has  
25 occurred, mandated reporters shall immediately report to the  
26 appropriate law enforcement agency and to the department.

27       (2) Permissive reporters may report to the department or a law  
28 enforcement agency when there is reasonable cause to believe that a  
29 patient is being or has been abandoned, abused, financially exploited,  
30 or neglected.

31       (3) Each report, oral or written, must contain as much as possible  
32 of the following information:

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

34       (b) The name and address of the patient and the name of the state  
35 hospital providing care;

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

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

3 (e) Any history of previous abandonment, abuse, financial  
4 exploitation, or neglect;

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

6 (g) Other information that may be helpful in establishing the  
7 extent of abandonment, abuse, financial exploitation, neglect, or the  
8 cause of death of the deceased patient.

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

12 NEW SECTION. **Sec. 9.** A new section is added to chapter 72.23 RCW  
13 to read as follows:

14 (1) The department shall initiate a response to a report, no later  
15 than twenty-four hours after knowledge of the report, of suspected  
16 abandonment, abuse, financial exploitation, or neglect of a patient.

17 (2) When the initial report or investigation by the department  
18 indicates that the alleged abandonment, abuse, financial exploitation,  
19 or neglect may be criminal, the department shall make an immediate  
20 report to the appropriate law enforcement agency. The department and  
21 law enforcement shall coordinate in investigating reports made under  
22 this chapter. The department may provide protective mechanisms as  
23 needed.

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

28 (4) The department and law enforcement may share information  
29 contained in reports and findings of abandonment, abuse, financial  
30 exploitation, or neglect of a patient, consistent with RCW 74.04.060  
31 and 42.17.310 and chapters 71.05, 71.34, and 70.02 RCW and other  
32 applicable confidentiality laws.

33 (5) The department shall notify the proper licensing authority  
34 concerning any report received under this chapter that alleges that a  
35 person who is professionally licensed, certified, or registered under  
36 Title 18 RCW has abandoned, abused, financially exploited, or neglected  
37 a patient.

1        NEW SECTION. Sec. 10. A new section is added to chapter 72.23 RCW  
2 to read as follows:

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

6        (2) In conducting the investigation, the department shall interview  
7 the person who complained, unless anonymous, and shall use its best  
8 efforts to interview the patient or patients harmed. The department  
9 shall also interview hospital staff and any available independent  
10 sources including appropriate family members of the patient.

11        (3) The department may conduct ongoing case planning and  
12 consultation with:

13        (a) Designated regional support network staff;

14        (b) Consultants designated by the department;

15        (c) Designated representatives of Washington Indian tribes if  
16 patient information exchanged is pertinent to cases under investigation  
17 or the provision of protective services.

18        Information considered privileged by statute and not directly  
19 related to reports required by this chapter may not be divulged without  
20 a valid written waiver of the privilege.

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

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

29        (6) The department may photograph a patient or their environment to  
30 provide documentary evidence, if the patient or their legal  
31 representative agrees. Consent from the legal representative is not  
32 necessary if he or she is the alleged abuser.

33        NEW SECTION. Sec. 11. RCW 70.124.060 (as amended by this act),  
34 70.124.070 (as amended by this act), 70.124.090 (as amended by this  
35 act), 70.124.100 (as amended by this act), and 70.124.900 are each  
36 recodified as sections in chapter 72.23 RCW.

1        NEW SECTION.    **Sec. 12.**    Section 3 of this act is added to chapter  
2 72.23 RCW.

3        NEW SECTION.    **Sec. 13.**    The following acts or parts of acts are  
4 each repealed:

5            (1) RCW 70.124.010 (Legislative findings) and 1999 c 176 s 20, 1981  
6 c 174 s 1, & 1979 ex.s. c 228 s 1;

7            (2) RCW 70.124.020 (Definitions) and 1999 c 176 s 21, 1997 c 392 s  
8 519, 1996 c 178 s 24, 1981 c 174 s 2, & 1979 ex.s. c 228 s 2;

9            (3) RCW 70.124.030 (Reports of abuse or neglect) and 1999 c 176 s  
10 22, 1981 c 174 s 3, & 1979 ex.s. c 228 s 3;

11           (4) RCW 70.124.040 (Reports to department or law enforcement  
12 agency--Action required) and 1999 c 176 s 23;

13           (5) RCW 70.124.050 (Investigations required--Seeking restraining  
14 orders authorized) and 1983 1st ex.s. c 41 s 24 & 1979 ex.s. c 228 s 5;  
15 and

16           (6) RCW 70.124.080 (Department reports of abused or neglected  
17 patients) and 1979 ex.s. c 228 s 8.

18        NEW SECTION.    **Sec. 14.**    If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

--- END ---