

HOUSE BILL REPORT

HB 2343

As Reported by House Committee On: Judiciary

Title: An act relating to defining willful in chapter 74.34 RCW regarding abuse of vulnerable adults.

Brief Description: Defining "willful" in the chapter regarding abuse of vulnerable adults.

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

Brief History:

Committee Activity:

Judiciary: 1/9/18, 1/23/18 [DP].

Brief Summary of Bill

- Defines "willful" as it relates to the abuse of vulnerable adults as a deliberate action, regardless of whether injury or harm is intended.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Shea and Valdez.

Staff: Ingrid Lewis (786-7289).

Background:

State law provides protections for vulnerable adults, including authorizing the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, self-neglect, or neglect of vulnerable adults.

Individuals found to have abused a vulnerable adult are prohibited from being employed in the care of vulnerable adults. In addition, a vulnerable adult, interested person on behalf of a

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vulnerable adult, or the DSHS may file a petition for an order for protection of a vulnerable adult who has been abandoned, abused, financially exploited, neglected, or is threatened with such.

"Vulnerable adult" means: (1) a person 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; (2) a person who is found incapacitated under the guardianship laws; (3) a person who has a developmental disability; (4) a person who is admitted to a facility; (5) a person who is receiving services from home health, hospice, or home care agencies licensed or required to be licensed; (6) a person who is receiving services from certain individual providers; or (7) a person who self-directs his or her own care and receives services from a personal aide.

"Abuse," as it pertains to the mistreatment of vulnerable adults, is defined as willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult.

"Mental abuse" is defined as willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

"Physical abuse" is defined as the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

"Willful" is not defined in the statute relating to vulnerable adults. Washington courts have defined an action as "willful" if a person acts knowingly with respect to the material elements of an offense. Under the common law definition, an alleged perpetrator of abuse must knowingly inflict injury, unreasonable confinement, intimidation, or punishment. Relevant administrative code recently defined "willful" as a nonaccidental action or inaction by an alleged perpetrator who knew or reasonably should have known could cause harm, injury, or a negative outcome. In a recent Division Three Court of Appeals (Court) decision, *Crosswhite v. DSHS*, 197 Wn. App. 539, the Court held that the administrative rule exceeded the scope of legislative intent and invalidated the definition. Lastly, as it relates to abuse, the Code of Federal Regulations governing long term care facilities, which includes nursing facilities, defines "willful" as the deliberate actions of an individual regardless of whether the individual intended to inflict harm or injury.

Summary of Bill:

"Willful" is defined as the deliberate inflicting of injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult, regardless of whether the intent was to harm or injure.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Adult Protective Services statute does not define willful or what it means to willfully abuse. Until 2016 the Department of Social and Health Services (DSHS) defined willful in the administrative code. A recent court decision invalidated the definition, and the agency has subsequently repealed it. The impact of the rule invalidation is that the DSHS, in addition to needing to show evidence of harm, also has to look at the intent of a perpetrator, which is arbitrary and subjective. In the current legal landscape, when the DSHS substantiates a finding, those findings are overturned in the administrative hearing process, because the alleged perpetrator only has to say that harm was not intended.

To protect vulnerable adults, the DSHS is adopting the federal definition of willful as it applies to vulnerable adults living in nursing facilities. This will be more protective of vulnerable adults, because it will protect them from deliberate actions that cause harm whether or not that harm was intended. It is important policy to have a consistent definition of willful across all long term care settings.

The interpretation of willful is problematic, because it is ambiguous. Any proposed definition needs to include the word "intentional." This would provide a line of demarcation when determining when an action is willful, as distinguished from accidental or involuntary.

(Opposed) None.

Persons Testifying: Representative Valdez, prime sponsor; Bea Rector, Department of Social and Health Services; and Gary Beagle, Washington Association of Professional Guardians.

Persons Signed In To Testify But Not Testifying: None.