**1320-S2 AMH GOOD H1178.1 - NOT FOR FLOOR USE**

**2SHB 1320** - H AMD **224**

By Representative Goodman

**ADOPTED 03/01/2021**

Beginning on page 8, line 16, strike all of section 2 and insert the following:

"NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Abuse," for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

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

(b) "Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

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

(d) "Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

(e) "Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not the sexual conduct is consensual.

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

(4) "Coercive control" means a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty and is used to cause another to suffer physical or psychological harm. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

(a) Making threats of harm, dependence, isolation, intimidation, and/or physical forms of violence;

(b) Isolating the other party from friends, relatives, or other sources of support;

(c) Depriving the other party of basic necessities or committing other forms of economic abuse;

(d) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services;

(e) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status such as threats to contact federal agencies, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage;

(f) Using technology, including, but not limited to, cyberstalking, monitoring, surveillance, impersonation, or distribution of intimate images, to harass, stalk, or abuse;

(g) Engaging in vexatious or abusive litigation against a petitioner to harass, coerce, or control the petitioner; to diminish or exhaust the petitioner's financial resources; or to compromise the petitioner's employment or housing;

(h) Engaging in psychological aggression; and

(i) Frightening, humiliating, degrading, or punishing the other party.

(5) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(6)(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

(i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:

(A) Protect property or liberty interests;

(B) Enforce the law; or

(C) Meet specific statutory duties or requirements;

(v) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or

(vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(7) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(8) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(9) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

(10) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.

(11) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(12) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.

(13) "Family or household members" means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

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

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

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

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

(15) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

(16) "Full hearing" means a hearing where the court determines whether to issue a full protection order.

(17) "Full protection order" means a protection order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full protection order" includes a protection order entered by the court by agreement of the parties to resolve the petition for a protection order without a full hearing.

(18) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

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

(20) "Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

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

(i) Acts that prevent a person from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

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

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

(22) "Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

(23) "Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(24) "Minor" means a person who is under 18 years of age.

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

(26) "Nonconsensual" means a lack of freely given consent.

(27) "Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, and contact through third parties.

(28) "Petitioner" means any named petitioner or any other person identified in the petition on whose behalf the petition is brought.

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

(30) "Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

(31) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

(32) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or

(f) Any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(33) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(34) "Stalking" means any of the following:

(a) Any act of stalking as defined under RCW 9A.46.110;

(b) Any act of cyberstalking as defined under RCW 9.61.260; or

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:

(i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.

(35) "Temporary protection order" means a protection order that is issued before the court has decided whether to issue a full protection order. "Temporary protection order" includes ex parte temporary protection orders, as well as temporary protection orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full protection order. An "ex parte temporary protection order" means a temporary protection order that is issued without prior notice to the respondent.

(36) "Unlawful harassment" means:

(a) A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW 9A.36.080(1)(c); or (ii) the presence of a firearm or other weapon.

(37) "Vulnerable adult" includes a person:

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

(b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

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

(d) Admitted to any facility; or

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

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW; or

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

On page 31, beginning on line 2, after "(1)" strike all material through "develop" on line 4 and insert "By June 30, 2022, the administrative office of the courts shall:

(a) Develop"

On page 31, line 20, after "(b)" strike all material through "develop" and insert "Develop"

On page 32, line 28, after "(ii)" strike all material through "in" and insert "In"

On page 33, beginning on line 34, after "develop" strike all material through "matters" on line 35 and insert "for the courts"

Beginning on page 50, line 1, strike all of section 28 and insert the following:

"NEW SECTION. **Sec.**  VULNERABLE ADULT PROTECTION ORDER HEARINGS. For vulnerable adult protection order hearings, the following also apply.

(1) When a petition for a vulnerable adult protection order is filed by someone other than the vulnerable adult or the vulnerable adult's guardian, conservator, or person acting under a protective arrangement, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that the vulnerable adult does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any existing vulnerable adult protection order, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary protection order of the vulnerable adult pending a decision after the evidentiary hearing.

(2) Pursuant to subsection (1) of this section, an evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, must be held within 14 days of entry of the temporary protection order. If the court did not enter a temporary protection order, the evidentiary hearing must be held within 14 days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing must be served upon the vulnerable adult and the respondent not less than five judicial days before the hearing. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be subject to a guardianship, conservatorship, or other protective arrangement under chapter 11.130 RCW. If a hearing is scheduled under this subsection, the protection order must remain in effect pending the court's decision at the subsequent hearing.

(3) At the hearing held pursuant to subsection (1) of this section, the court shall give the vulnerable adult, the respondent, the petitioner, and, in the court's discretion, other interested persons, the opportunity to testify and submit relevant evidence.

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the vulnerable adult continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the vulnerable adult continues to need protection, the court shall order relief consistent with this chapter as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order is governed by the legislative findings contained in section 1 of this act."

On page 88, beginning on line 26, strike all of section 63 and insert the following:

"NEW SECTION. **Sec.**  MODIFICATION OR TERMINATION OF VULNERABLE ADULT PROTECTION ORDERS. This section applies to the modification or termination of vulnerable adult protection orders.

(1) Any vulnerable adult who is subject to a limited guardianship, limited conservatorship, or other protective arrangement under chapter 11.130 RCW, or the vulnerable adult's guardian, conservator, or person acting on behalf of the vulnerable adult under a protective arrangement, may, at any time subsequent to the entry of a permanent protection order under this chapter, file a motion to modify or terminate the protection order.

(2) In a hearing on a motion to modify or terminate the protection order, the court shall grant such relief consistent with section 39 of this act as it deems necessary for the protection of the vulnerable adult, including modification or termination of the protection order."

Beginning on page 91, line 26, strike all of sections 72 through 74

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

On page 124, line 18, after "**EFFECTIVE DATE**" strike "**AND EXPIRATION DATE**"

On page 124, line 19, after "**90.**" strike all material through "take" and insert "This act takes"

On page 124, beginning on line 21, strike all of section 91

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

Beginning on page 230, line 34, strike all of section 129

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

Beginning on page 310, line 29, strike all of section 167

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

On page 322, beginning on line 7, strike all of sections 170 and 171

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

EFFECT: (1) Delays the effective date of the act until January 1, 2022. Delays the time period for implementation of various duties imposed on the Administrative Office of the Courts (AOC) until June 30, 2022, and removes a requirement for the AOC to report to the Legislature regarding standards for filing evidence and requirements for private vendors.

(2) As a result of delaying the effective date of the act until January 1, 2022, makes technical changes to replace three provisions of the bill that were set to expire on January 1, 2022, with the contents of three companion provisions of the bill that were set to take effect on January 1, 2022, and to remove other provisions that expire on January 1, 2022.