
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0049.1/19

ATTY/TYPIST: AF:eab

BRIEF DESCRIPTION: Concerning protection of vulnerable adults.

1 AN ACT Relating to protection of vulnerable adults; and amending
2 RCW 74.34.110 and 74.34.020.

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

4 **Sec. 1.** RCW 74.34.110 and 2007 c 312 s 3 are each amended to
5 read as follows:

6 An action known as a petition for an order for protection of a
7 vulnerable adult in cases of abandonment, abuse, financial
8 exploitation, ~~((~~o~~))~~ neglect, or stalking conduct is created.

9 (1) A vulnerable adult, or interested person on behalf of the
10 vulnerable adult, may seek relief from abandonment, abuse, financial
11 exploitation, ~~((~~o~~))~~ neglect, stalking conduct, or the threat
12 thereof, by filing a petition for an order for protection in superior
13 court.

14 (2) A petition shall allege that the petitioner, or person on
15 whose behalf the petition is brought, is a vulnerable adult and that
16 the petitioner, or person on whose behalf the petition is brought,
17 has been abandoned, abused, financially exploited, ~~((~~o~~))~~ neglected,
18 or stalked, or is threatened with abandonment, abuse, financial
19 exploitation, ~~((~~o~~))~~ neglect, or stalking conduct by respondent.

20 (3) A petition shall be accompanied by affidavit made under oath,
21 or a declaration signed under penalty of perjury, stating the

1 specific facts and circumstances which demonstrate the need for the
2 relief sought. If the petition is filed by an interested person, the
3 affidavit or declaration must also include a statement of why the
4 petitioner qualifies as an interested person.

5 (4) A petition for an order may be made whether or not there is a
6 pending lawsuit, complaint, petition, or other action pending that
7 relates to the issues presented in the petition for an order for
8 protection.

9 (5) Within ninety days of receipt of the master copy from the
10 administrative office of the courts, all court clerk's offices shall
11 make available the standardized forms and instructions required by
12 RCW 74.34.115.

13 (6) Any assistance or information provided by any person,
14 including, but not limited to, court clerks, employees of the
15 department, and other court facilitators, to another to complete the
16 forms provided by the court in subsection (5) of this section does
17 not constitute the practice of law.

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

20 (8) An action under this section shall be filed in the county
21 where the vulnerable adult resides; except that if the vulnerable
22 adult has left or been removed from the residence as a result of
23 abandonment, abuse, financial exploitation, ~~((or))~~ neglect, or
24 stalking conduct, or in order to avoid abandonment, abuse, financial
25 exploitation, ~~((or))~~ neglect, or stalking conduct, the petitioner may
26 bring an action in the county of either the vulnerable adult's
27 previous or new residence.

28 (9) No filing fee may be charged to the petitioner for
29 proceedings under this section. Standard forms and written
30 instructions shall be provided free of charge.

31 **Sec. 2.** RCW 74.34.020 and 2018 c 201 s 9016 are each amended to
32 read as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

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

1 (2) "Abuse" means the willful action or inaction that inflicts
2 injury, unreasonable confinement, intimidation, or punishment on a
3 vulnerable adult. In instances of abuse of a vulnerable adult who is
4 unable to express or demonstrate physical harm, pain, or mental
5 anguish, the abuse is presumed to cause physical harm, pain, or
6 mental anguish. Abuse includes sexual abuse, mental abuse, physical
7 abuse, and personal exploitation of a vulnerable adult, and improper
8 use of restraint against a vulnerable adult which have the following
9 meanings:

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

19 (b) "Physical abuse" means the willful action of inflicting
20 bodily injury or physical mistreatment. Physical abuse includes, but
21 is not limited to, striking with or without an object, slapping,
22 pinching, choking, kicking, shoving, or prodding.

23 (c) "Mental abuse" means a willful verbal or nonverbal action
24 that threatens, humiliates, harasses, coerces, intimidates, isolates,
25 unreasonably confines, or punishes a vulnerable adult. Mental abuse
26 may include ridiculing, yelling, or swearing.

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

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

39 (3) "Chemical restraint" means the administration of any drug to
40 manage a vulnerable adult's behavior in a way that reduces the safety

1 risk to the vulnerable adult or others, has the temporary effect of
2 restricting the vulnerable adult's freedom of movement, and is not
3 standard treatment for the vulnerable adult's medical or psychiatric
4 condition.

5 (4) "Consent" means express written consent granted after the
6 vulnerable adult or his or her legal representative has been fully
7 informed of the nature of the services to be offered and that the
8 receipt of services is voluntary.

9 (5) "Department" means the department of social and health
10 services.

11 (6) "Facility" means a residence licensed or required to be
12 licensed under chapter 18.20 RCW, assisted living facilities; chapter
13 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
14 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW,
15 residential habilitation centers; or any other facility licensed or
16 certified by the department or the department of health.

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

23 (a) The use of deception, intimidation, or undue influence by a
24 person or entity in a position of trust and confidence with a
25 vulnerable adult to obtain or use the property, income, resources, or
26 trust funds of the vulnerable adult for the benefit of a person or
27 entity other than the vulnerable adult;

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

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

39 (8) "Financial institution" has the same meaning as in RCW
40 30A.22.040 and 30A.22.041. For purposes of this chapter only,

1 "financial institution" also means a "broker-dealer" or "investment
2 adviser" as defined in RCW 21.20.005.

3 (9) "Hospital" means a facility licensed under chapter 70.41 or
4 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any
5 employee, agent, officer, director, or independent contractor
6 thereof.

7 (10) "Incapacitated person" means a person who is at a
8 significant risk of personal or financial harm under RCW 11.88.010(1)
9 (a), (b), (c), or (d).

10 (11) "Individual provider" means a person under contract with the
11 department to provide services in the home under chapter 74.09 or
12 74.39A RCW.

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

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

23 (i) Acts that prevent a vulnerable adult from sending, making, or
24 receiving his or her personal mail, electronic communications, or
25 telephone calls; or

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

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

36 (14) "Mandated reporter" is an employee of the department; law
37 enforcement officer; social worker; professional school personnel;
38 individual provider; an employee of a facility; an operator of a
39 facility; an employee of a social service, welfare, mental health,
40 adult day health, adult day care, home health, home care, or hospice

1 agency; county coroner or medical examiner; Christian Science
2 practitioner; or health care provider subject to chapter 18.130 RCW.

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

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

20 (17) "Permissive reporter" means any person, including, but not
21 limited to, an employee of a financial institution, attorney, or
22 volunteer in a facility or program providing services for vulnerable
23 adults.

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

31 (19) "Protective services" means any services provided by the
32 department to a vulnerable adult with the consent of the vulnerable
33 adult, or the legal representative of the vulnerable adult, who has
34 been abandoned, abused, financially exploited, neglected, or in a
35 state of self-neglect. These services may include, but are not
36 limited to case management, social casework, home care, placement,
37 arranging for medical evaluations, psychological evaluations, day
38 care, or referral for legal assistance.

39 (20) "Self-neglect" means the failure of a vulnerable adult, not
40 living in a facility, to provide for himself or herself the goods and

1 services necessary for the vulnerable adult's physical or mental
2 health, and the absence of which impairs or threatens the vulnerable
3 adult's well-being. This definition may include a vulnerable adult
4 who is receiving services through home health, hospice, or a home
5 care agency, or an individual provider when the neglect is not a
6 result of inaction by that agency or individual provider.

7 (21) "Social worker" means:

8 (a) A social worker as defined in RCW 18.320.010(2); or

9 (b) Anyone engaged in a professional capacity during the regular
10 course of employment in encouraging or promoting the health, welfare,
11 support, or education of vulnerable adults, or providing social
12 services to vulnerable adults, whether in an individual capacity or
13 as an employee or agent of any public or private organization or
14 institution.

15 (22) "Stalking conduct" means any of the following:

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

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

18 (c) Any course of conduct involving repeated or continuing
19 contacts, attempts to contact, monitoring, tracking, keeping under
20 observation, or following of another that:

21 (i) Would cause a reasonable person to feel intimidated,
22 frightened, or threatened and that actually causes such a feeling;

23 (ii) Serves no lawful purpose; and

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

27 (23) "Vulnerable adult" includes a person:

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

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

31 (c) Who has a developmental disability as defined under RCW
32 71A.10.020; or

33 (d) Admitted to any facility; or

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

37 (f) Receiving services from an individual provider; or

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

1 (~~(23)~~) (24) "Vulnerable adult advocacy team" means a team of
2 three or more persons who coordinate a multidisciplinary process, in
3 compliance with chapter 266, Laws of 2017 and the protocol governed
4 by RCW 74.34.320, for preventing, identifying, investigating,
5 prosecuting, and providing services related to abuse, neglect, or
6 financial exploitation of vulnerable adults.

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