

CERTIFICATION OF ENROLLMENT

SENATE BILL 5510

63rd Legislature
2013 Regular Session

Passed by the Senate April 27, 2013
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 25, 2013
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5510** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5510

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Becker, Keiser, Kohl-Welles, McAuliffe, and Conway; by request of Department of Social and Health Services

Read first time 02/01/13. Referred to Committee on Health Care .

1 AN ACT Relating to abuse of vulnerable adults; and amending RCW
2 74.34.020, 74.34.035, and 74.34.067.

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

4 **Sec. 1.** RCW 74.34.020 and 2012 c 10 s 62 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

12 (2) "Abuse" means the willful action or inaction that inflicts
13 injury, unreasonable confinement, intimidation, or punishment on a
14 vulnerable adult. In instances of abuse of a vulnerable adult who is
15 unable to express or demonstrate physical harm, pain, or mental
16 anguish, the abuse is presumed to cause physical harm, pain, or mental
17 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
18 and exploitation of a vulnerable adult, which have the following
19 meanings:

1 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
2 including but not limited to unwanted or inappropriate touching, rape,
3 sodomy, sexual coercion, sexually explicit photographing, and sexual
4 harassment. Sexual abuse includes any sexual contact between a staff
5 person, who is not also a resident or client, of a facility or a staff
6 person of a program authorized under chapter 71A.12 RCW, and a
7 vulnerable adult living in that facility or receiving service from a
8 program authorized under chapter 71A.12 RCW, whether or not it is
9 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
15 licensing requirements, and includes restraints that are otherwise
16 being used 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 vulnerable adult from
20 family, friends, or regular activity, and verbal assault that includes
21 ridiculing, intimidating, yelling, or swearing.

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

27 (3) "Consent" means express written consent granted after the
28 vulnerable adult or his or her legal representative has been fully
29 informed of the nature of the services to be offered and that the
30 receipt of services is voluntary.

31 (4) "Department" means the department of social and health
32 services.

33 (5) "Facility" means a residence licensed or required to be
34 licensed under chapter 18.20 RCW, assisted living facilities; chapter
35 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
36 chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential
37 habilitation centers; or any other facility licensed or certified by
38 the department.

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

7 (a) The use of deception, intimidation, or undue influence by a
8 person or entity in a position of trust and confidence with a
9 vulnerable adult to obtain or use the property, income, resources, or
10 trust funds of the vulnerable adult for the benefit of a person or
11 entity other than the vulnerable adult;

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

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

23 (7) "Financial institution" has the same meaning as in RCW
24 30.22.040 and 30.22.041. For purposes of this chapter only, "financial
25 institution" also means a "broker-dealer" or "investment adviser" as
26 defined in RCW 21.20.005.

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

30 (9) "Individual provider" means a person under contract with the
31 department to provide services in the home under chapter 74.09 or
32 74.39A RCW.

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

1 (11) "Mandated reporter" is an employee of the department; law
2 enforcement officer; social worker; professional school personnel;
3 individual provider; an employee of a facility; an operator of a
4 facility; an employee of a social service, welfare, mental health,
5 adult day health, adult day care, home health, home care, or hospice
6 agency; county coroner or medical examiner; Christian Science
7 practitioner; or health care provider subject to chapter 18.130 RCW.

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

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

21 (14) "Protective services" means any services provided by the
22 department to a vulnerable adult with the consent of the vulnerable
23 adult, or the legal representative of the vulnerable adult, who has
24 been abandoned, abused, financially exploited, neglected, or in a state
25 of self-neglect. These services may include, but are not limited to
26 case management, social casework, home care, placement, arranging for
27 medical evaluations, psychological evaluations, day care, or referral
28 for legal assistance.

29 (15) "Self-neglect" means the failure of a vulnerable adult, not
30 living in a facility, to provide for himself or herself the goods and
31 services necessary for the vulnerable adult's physical or mental
32 health, and the absence of which impairs or threatens the vulnerable
33 adult's well-being. This definition may include a vulnerable adult who
34 is receiving services through home health, hospice, or a home care
35 agency, or an individual provider when the neglect is not a result of
36 inaction by that agency or individual provider.

37 (16) "Social worker" means:

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

1 (b) Anyone engaged in a professional capacity during the regular
2 course of employment in encouraging or promoting the health, welfare,
3 support, or education of vulnerable adults, or providing social
4 services to vulnerable adults, whether in an individual capacity or as
5 an employee or agent of any public or private organization or
6 institution.

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

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

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

11 (c) Who has a developmental disability as defined under RCW
12 71A.10.020; or

13 (d) Admitted to any facility; or

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

16 or

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

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

20 **Sec. 2.** RCW 74.34.035 and 2010 c 133 s 4 are each amended to read
21 as follows:

22 (1) When there is reasonable cause to believe that abandonment,
23 abuse, financial exploitation, or neglect of a vulnerable adult has
24 occurred, mandated reporters shall immediately report to the
25 department.

26 (2) When there is reason to suspect that sexual assault has
27 occurred, mandated reporters shall immediately report to the
28 appropriate law enforcement agency and to the department.

29 (3) When there is reason to suspect that physical assault has
30 occurred or there is reasonable cause to believe that an act has caused
31 fear of imminent harm:

32 (a) Mandated reporters shall immediately report to the department;
33 and

34 (b) Mandated reporters shall immediately report to the appropriate
35 law enforcement agency, except as provided in subsection (4) of this
36 section.

1 (4) A mandated reporter is not required to report to a law
2 enforcement agency, unless requested by the injured vulnerable adult or
3 his or her legal representative or family member, an incident of
4 physical assault between vulnerable adults that causes minor bodily
5 injury and does not require more than basic first aid, unless:

6 (a) The injury appears on the back, face, head, neck, chest,
7 breasts, groin, inner thigh, buttock, genital, or anal area;

8 (b) There is a fracture;

9 (c) There is a pattern of physical assault between the same
10 vulnerable adults or involving the same vulnerable adults; or

11 (d) There is an attempt to choke a vulnerable adult.

12 (5) When there is reason to suspect that the death of a vulnerable
13 adult was caused by abuse, neglect, or abandonment by another person,
14 mandated reporters shall, pursuant to RCW 68.50.020, report the death
15 to the medical examiner or coroner having jurisdiction, as well as the
16 department and local law enforcement, in the most expeditious manner
17 possible. A mandated reporter is not relieved from the reporting
18 requirement provisions of this subsection by the existence of a
19 previously signed death certificate. If abuse, neglect, or abandonment
20 caused or contributed to the death of a vulnerable adult, the death is
21 a death caused by unnatural or unlawful means, and the body shall be
22 the jurisdiction of the coroner or medical examiner pursuant to RCW
23 68.50.010.

24 (6) Permissive reporters may report to the department or a law
25 enforcement agency when there is reasonable cause to believe that a
26 vulnerable adult is being or has been abandoned, abused, financially
27 exploited, or neglected.

28 (7) No facility, as defined by this chapter, agency licensed or
29 required to be licensed under chapter 70.127 RCW, or facility or agency
30 under contract with the department to provide care for vulnerable
31 adults may develop policies or procedures that interfere with the
32 reporting requirements of this chapter.

33 (8) Each report, oral or written, must contain as much as possible
34 of the following information:

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

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

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

3 (d) The nature and extent of the abandonment, abuse, financial
4 exploitation, neglect, or self-neglect;

5 (e) Any history of previous abandonment, abuse, financial
6 exploitation, neglect, or self-neglect;

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

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

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

14 (10) In conducting an investigation of abandonment, abuse,
15 financial exploitation, self-neglect, or neglect, the department or law
16 enforcement, upon request, must have access to all relevant records
17 related to the vulnerable adult that are in the possession of mandated
18 reporters and their employees, unless otherwise prohibited by law.
19 Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200,
20 70.230.080, and 74.42.640 shall not be subject to the requirements of
21 this subsection. Providing access to records relevant to an
22 investigation by the department or law enforcement under this provision
23 may not be deemed a violation of any confidential communication
24 privilege. Access to any records that would violate attorney-client
25 privilege shall not be provided without a court order unless otherwise
26 required by court rule or caselaw.

27 **Sec. 3.** RCW 74.34.067 and 2011 c 170 s 2 are each amended to read
28 as follows:

29 (1) Where appropriate, an investigation by the department may
30 include a private interview with the vulnerable adult regarding the
31 alleged abandonment, abuse, financial exploitation, neglect, or self-
32 neglect.

33 (2) In conducting the investigation, the department shall interview
34 the complainant, unless anonymous, and shall use its best efforts to
35 interview the vulnerable adult or adults harmed, and, consistent with
36 the protection of the vulnerable adult shall interview facility staff,

1 any available independent sources of relevant information, including if
2 appropriate the family members of the vulnerable adult.

3 (3) The department may conduct ongoing case planning and
4 consultation with: (a) Those persons or agencies required to report
5 under this chapter or submit a report under this chapter; (b)
6 consultants designated by the department; and (c) designated
7 representatives of Washington Indian tribes if client information
8 exchanged is pertinent to cases under investigation or the provision of
9 protective services. Information considered privileged by statute and
10 not directly related to reports required by this chapter must not be
11 divulged without a valid written waiver of the privilege.

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

15 (5) If the department has reason to believe that the vulnerable
16 adult has suffered from abandonment, abuse, financial exploitation,
17 neglect, or self-neglect, and lacks the ability or capacity to consent,
18 and needs the protection of a guardian, the department may bring a
19 guardianship action under chapter 11.88 RCW.

20 (6) For purposes consistent with this chapter, the department, the
21 certified professional guardian board, and the office of public
22 guardianship may share information contained in reports and
23 investigations of the abuse, abandonment, neglect, self-neglect, and
24 financial exploitation of vulnerable adults. This information may be
25 used solely for (a) recruiting or appointing appropriate guardians and
26 (b) monitoring, or when appropriate, disciplining certified
27 professional or public guardians. Reports of abuse, abandonment,
28 neglect, self-neglect, and financial exploitation are confidential
29 under RCW 74.34.095 and other laws, and secondary disclosure of
30 information shared under this section is prohibited.

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

1 ((+7)) (8) The department's adult protective services division may
2 enter into agreements with federally recognized tribes to investigate
3 reports of abandonment, abuse, financial exploitation, neglect, or
4 self-neglect of vulnerable adults on property over which a federally
5 recognized tribe has exclusive jurisdiction. If the department has
6 information that abandonment, abuse, financial exploitation, or neglect
7 is criminal or is placing a vulnerable adult on tribal property at
8 potential risk of personal or financial harm, the department may notify
9 tribal law enforcement or another tribal representative specified by
10 the tribe. Upon receipt of the notification, the tribe may assume
11 jurisdiction of the matter. Neither the department nor its employees
12 may participate in the investigation after the tribe assumes
13 jurisdiction. The department, its officers, and its employees are not
14 liable for any action or inaction of the tribe or for any harm to the
15 alleged victim, the person against whom the allegations were made, or
16 other parties that occurs after the tribe assumes jurisdiction.
17 Nothing in this section limits the department's jurisdiction and
18 authority over facilities or entities that the department licenses or
19 certifies under federal or state law.

20 ((+8)) (9) The department may photograph a vulnerable adult or
21 their environment for the purpose of providing documentary evidence of
22 the physical condition of the vulnerable adult or his or her
23 environment. When photographing the vulnerable adult, the department
24 shall obtain permission from the vulnerable adult or his or her legal
25 representative unless immediate photographing is necessary to preserve
26 evidence. However, if the legal representative is alleged to have
27 abused, neglected, abandoned, or exploited the vulnerable adult,
28 consent from the legal representative is not necessary. No such
29 consent is necessary when photographing the physical environment.

30 ((+9)) (10) When the investigation is complete and the department
31 determines that the incident of abandonment, abuse, financial
32 exploitation, or neglect has occurred, the department shall inform the
33 facility in which the incident occurred, consistent with
34 confidentiality requirements concerning the vulnerable adult,
35 witnesses, and complainants.

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