
SUBSTITUTE SENATE BILL 5338

State of Washington

66th Legislature

2019 Regular Session

By Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Darneille, Rivers, Conway, Keiser, Van De Wege, and Kuderer; by request of Department of Social and Health Services)

READ FIRST TIME 02/07/19.

1 AN ACT Relating to the protection of vulnerable adults; amending
2 RCW 74.34.020, 74.34.063, 74.34.095, 74.34.110, 74.34.300,
3 74.39A.056, 13.50.010, and 68.50.105; adding a new section to chapter
4 74.34 RCW; and providing an effective date.

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

6 **Sec. 1.** RCW 74.34.020 and 2018 c 201 s 9016 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

14 (2) "Abuse" means (~~the willful~~) an intentional, knowing, or
15 reckless action or inaction that inflicts injury, unreasonable
16 confinement, intimidation, or punishment on a vulnerable adult.
17 Accidental actions that result in injury are not abuse. Actions
18 reasonable to protect a person from an immediate and substantial risk
19 of injury are not physical abuse, mental abuse, or improper use of
20 restraint. In instances of abuse of a vulnerable adult who is unable

1 to express or demonstrate physical harm, pain, or mental anguish, the
2 abuse is presumed to cause physical harm, pain, or mental anguish.

3 (a) For the purpose of this subsection, the following definitions
4 apply:

5 (i) INTENTIONAL. A person acts with intent or intentionally when
6 he or she acts with the objective or purpose to inflict injury,
7 unreasonable confinement, intimidation, or punishment on a vulnerable
8 adult.

9 (ii) KNOWING. A person knows, or acts knowingly or with
10 knowledge, when he or she is aware that his or her actions would
11 inflict injury, unreasonable confinement, intimidation, or punishment
12 on a vulnerable adult.

13 (iii) RECKLESS. A person is reckless or acts recklessly when he
14 or she knows of and disregards a substantial risk that his or her
15 action is likely to inflict injury, unreasonable confinement,
16 intimidation, or punishment on a vulnerable adult, and his or her
17 disregard of such substantial risk is a gross deviation from conduct
18 that a reasonable person would exercise in the same situation.

19 (b) Abuse includes sexual abuse, mental abuse, physical abuse,
20 ((and)) personal exploitation of a vulnerable adult, and improper use
21 of restraint against a vulnerable adult which have the following
22 meanings:

23 ((a)) (i) "Sexual abuse" means any form of nonconsensual sexual
24 conduct, including but not limited to unwanted or inappropriate
25 touching, rape, sodomy, sexual coercion, sexually explicit
26 photographing, and sexual harassment. Sexual abuse also includes any
27 sexual conduct between a staff person, who is not also a resident or
28 client, of a facility or a staff person of a program authorized under
29 chapter 71A.12 RCW, and a vulnerable adult living in that facility or
30 receiving service from a program authorized under chapter 71A.12 RCW,
31 whether or not it is consensual.

32 ((b)) (ii) "Physical abuse" means the ((willful)) action of
33 intentionally, knowingly, or recklessly inflicting bodily injury or
34 physical mistreatment. Physical abuse includes, but is not limited
35 to, striking with or without an object, slapping, pinching, choking,
36 kicking, shoving, or prodding.

37 ((c)) (iii) "Mental abuse" means a ((willful)) verbal or
38 nonverbal action that intentionally, knowingly, or recklessly
39 threatens, humiliates, harasses, coerces, intimidates, isolates,

1 unreasonably confines, or punishes a vulnerable adult. Mental abuse
2 may include ridiculing, yelling, or swearing.

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

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

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

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

25 (5) "Department" means the department of social and health
26 services.

27 (6) "Facility" means a residence licensed or required to be
28 licensed under chapter 18.20 RCW, assisted living facilities; chapter
29 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
30 chapter 72.36 RCW, soldiers' homes; chapter 70.97 RCW, enhanced
31 services facilities; or chapter 71A.20 RCW, residential habilitation
32 centers; or any other facility licensed or certified by the
33 department ~~((or the department of health))~~.

34 (7) "Financial exploitation" means the illegal or improper use,
35 control over, or withholding of the property, income, resources, or
36 trust funds of the vulnerable adult by any person or entity for any
37 person's or entity's profit or advantage other than for the
38 vulnerable adult's profit or advantage.

39 "Financial exploitation" includes, but is not limited to:

1 (a) The use of deception, intimidation, or undue influence by a
2 person or entity in a position of trust and confidence with a
3 vulnerable adult to obtain or use the property, income, resources, or
4 trust funds of the vulnerable adult for the benefit of a person or
5 entity other than the vulnerable adult;

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

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

17 (8) "Financial institution" has the same meaning as in RCW
18 30A.22.040 and 30A.22.041. For purposes of this chapter only,
19 "financial institution" also means a "broker-dealer" or "investment
20 adviser" as defined in RCW 21.20.005.

21 (9) "Hospital" means a facility licensed under chapter 70.41 or
22 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any
23 employee, agent, officer, director, or independent contractor
24 thereof.

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

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

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

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

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

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

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

14 (14) "Mandated reporter" is an employee of the department or the
15 department of children, youth, and families; law enforcement officer;
16 social worker; professional school personnel; individual provider;
17 (~~(an employee of a facility)~~) an operator of a facility or a
18 certified residential services and supports agency under chapter
19 71A.12 RCW; an employee of a facility; an employee of a social
20 service, welfare, mental health, adult day health, adult day care,
21 home health, home care, (~~(or)~~) hospice, or certified residential
22 services and supports agency; county coroner or medical examiner;
23 Christian Science practitioner; or health care provider subject to
24 chapter 18.130 RCW.

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

33 (16) "Misappropriation of resident property" has the same meaning
34 as defined in 42 C.F.R. Sec. 483.5 as it existed on the effective
35 date of this section.

36 (17) "Neglect" means (a) a pattern of conduct or inaction by a
37 person or entity with a duty of care that fails to provide the goods
38 and services that maintain physical or mental health of a vulnerable
39 adult, or that fails to avoid or prevent physical or mental harm or
40 pain to a vulnerable adult; or (b) an act or omission by a person or

1 entity with a duty of care that demonstrates a serious disregard of
2 consequences of such a magnitude as to constitute a clear and present
3 danger to the vulnerable adult's health, welfare, or safety,
4 including but not limited to conduct prohibited under RCW 9A.42.100.

5 ~~((17))~~ (18) "Permissive reporter" means any person, including,
6 but not limited to, an employee of a financial institution, attorney,
7 or volunteer in a facility or program providing services for
8 vulnerable adults.

9 ~~((18))~~ (19) "Physical restraint" means the application of
10 physical force without the use of any device, for the purpose of
11 restraining the free movement of a vulnerable adult's body. "Physical
12 restraint" does not include (a) briefly holding without undue force a
13 vulnerable adult in order to calm or comfort him or her, or (b)
14 holding a vulnerable adult's hand to safely escort him or her from
15 one area to another.

16 ~~((19))~~ (20) "Protective services" means any services provided
17 by the department to a vulnerable adult with the consent of the
18 vulnerable adult, or the legal representative of the vulnerable
19 adult, who has been abandoned, abused, financially exploited,
20 neglected, or in a state of self-neglect. These services may include,
21 but are not limited to, case management, social casework, home care,
22 placement, arranging for medical evaluations, psychological
23 evaluations, day care, or referral for legal assistance.

24 ~~((20))~~ (21) "Self-neglect" means the failure of a vulnerable
25 adult, not living in a facility, to provide for himself or herself
26 the goods and services necessary for the vulnerable adult's physical
27 or mental health, and the absence of which impairs or threatens the
28 vulnerable adult's well-being. This definition may include a
29 vulnerable adult who is receiving services through home health,
30 hospice, or a home care agency, or an individual provider when the
31 neglect is not a result of inaction by that agency or individual
32 provider.

33 ~~((21))~~ (22) "Social worker" means:

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

35 (b) Anyone engaged in a professional capacity during the regular
36 course of employment in encouraging or promoting the health, welfare,
37 support, or education of vulnerable adults, or providing social
38 services to vulnerable adults, whether in an individual capacity or
39 as an employee or agent of any public or private organization or
40 institution.

1 (~~(22)~~) (23) "Vulnerable adult" includes a person:
2 (a) Sixty years of age or older who has the functional, mental,
3 or physical inability to care for himself or herself; or
4 (b) Found incapacitated under chapter 11.88 RCW; or
5 (c) Who has a developmental disability as defined under RCW
6 71A.10.020; or
7 (d) Admitted to any facility; or
8 (e) Receiving services from home health, hospice, or home care
9 agencies licensed or required to be licensed under chapter 70.127
10 RCW; or
11 (f) Receiving services from an individual provider; or
12 (g) Who self-directs his or her own care and receives services
13 from a personal aide under chapter 74.39 RCW.
14 (~~(23)~~) (24) "Vulnerable adult abuse registry" means a list of
15 individuals who have a final substantiated finding by the department
16 of abuse, abandonment, neglect, or financial exploitation of a
17 vulnerable adult.
18 (25) "Vulnerable adult advocacy team" means a team of three or
19 more persons who coordinate a multidisciplinary process, in
20 compliance with chapter 266, Laws of 2017 and the protocol governed
21 by RCW 74.34.320, for preventing, identifying, investigating,
22 prosecuting, and providing services related to abuse, neglect, or
23 financial exploitation of vulnerable adults.

24 **Sec. 2.** RCW 74.34.063 and 2017 3rd sp.s. c 6 s 818 are each
25 amended to read as follows:

26 (1) The department shall initiate a response to a report, no
27 later than twenty-four hours after knowledge of the report, of
28 suspected abandonment, abuse, financial exploitation, neglect, or
29 self-neglect of a vulnerable adult.

30 (2) When the initial report or investigation by the department
31 indicates that the alleged abandonment, abuse, financial
32 exploitation, or neglect may be criminal, the department shall make
33 an immediate report to the appropriate law enforcement agency. The
34 department and law enforcement will coordinate in investigating
35 reports made under this chapter. The department may provide
36 protective services and other remedies as specified in this chapter.

37 (3) The law enforcement agency or the department shall report the
38 incident in writing to the proper county prosecutor or city attorney

1 for appropriate action whenever the investigation reveals that a
2 crime may have been committed.

3 (4) Upon request, the department and law enforcement ((may)) must
4 share information contained in reports and findings of abandonment,
5 abuse, financial exploitation, and neglect of vulnerable adults with
6 each other, consistent with RCW 74.04.060 ((, chapter 42.56 RCW,)) and
7 other applicable confidentiality laws. The information contained in
8 reports and findings may not be further disseminated and is not
9 subject to disclosure under chapter 42.56 RCW.

10 (5) ~~((Unless prohibited by federal law, the department of social~~
11 ~~and health services may share with the department of children, youth,~~
12 ~~and families information contained in reports and findings of~~
13 ~~abandonment, abuse, financial exploitation, and neglect of vulnerable~~
14 ~~adults.)) (a) The investigation of alleged abandonment, abuse,
15 financial exploitation, neglect or self-neglect of a vulnerable
16 adult, or misappropriation of resident property is a legitimate state
17 purpose. Upon request, the department and the department of children,
18 youth, and families must share information with each other contained
19 in reports and findings of: (i) Abandonment, abuse, financial
20 exploitation, neglect or self-neglect of vulnerable adults, and
21 misappropriation of resident property; and (ii) abuse and neglect of
22 children but only for the purposes set forth in (b) of this
23 subsection.~~

24 (b) Upon request, the department and the department of children,
25 youth, and families may only share information with each other to the
26 extent that such information pertains to or may assist with (i)
27 investigating or preventing child abuse or neglect; (ii) providing
28 for the health and well-being of children in foster care; or (iii)
29 investigating or preventing the abandonment, abuse, financial
30 exploitation, neglect or self-neglect of a vulnerable adult, or
31 misappropriation of resident property.

32 (c) This information sharing is required for purposes of the
33 federal health insurance portability and accountability act of 1996.
34 The information contained in reports and findings retains its
35 confidentiality under federal and state law and may not be further
36 disseminated except as authorized by law. This information is not
37 subject to public disclosure under chapter 42.56 RCW.

38 (6) The department shall notify the proper licensing authority
39 concerning any report received under this chapter that alleges that a
40 person who is professionally licensed, certified, or registered under

1 Title 18 RCW has abandoned, abused, financially exploited, or
2 neglected a vulnerable adult.

3 **Sec. 3.** RCW 74.34.095 and 2013 c 23 s 218 are each amended to
4 read as follows:

5 (1) The following information is confidential and not subject to
6 disclosure, except as provided in this section:

7 (a) A report of abandonment, abuse, financial exploitation, or
8 neglect made under this chapter;

9 (b) The identity of the person making the report; and

10 (c) All files, reports, records, communications, and working
11 papers used or developed in the investigation or provision of
12 protective services.

13 (2) Information considered confidential may be disclosed only for
14 a purpose consistent with this chapter, or as authorized by chapter
15 18.20, 18.51, or 74.39A RCW(~~(, or as authorized by)~~); the long-term
16 care ombuds programs under federal law or state law, chapter 43.190
17 RCW; or the office of the developmental disabilities ombuds program
18 under chapter 43.382 RCW.

19 (3) A court or presiding officer in an administrative proceeding
20 may order disclosure of confidential information only if the court,
21 or presiding officer in an administrative proceeding, determines that
22 disclosure is essential to the administration of justice and will not
23 endanger the life or safety of the vulnerable adult or individual who
24 made the report. The court or presiding officer in an administrative
25 hearing may place restrictions on such disclosure as the court or
26 presiding officer deems proper.

27 (4) (a) Except as provided in (b) of this subsection, upon a
28 request for information regarding a specifically named vulnerable
29 adult, the department may disclose only the following information:

30 (i) Whether or not a report was received;

31 (ii) The status of the report; and

32 (iii) The outcome of an investigation.

33 (b) The department may not disclose any information regarding a
34 specifically named vulnerable adult if any of the following
35 circumstances apply:

36 (i) The information concerns a vulnerable adult residing in or
37 receiving services from a department licensed or certified facility
38 or provider where an unannounced investigation in response to the
39 report has not been initiated;

- 1 (ii) The requester is the alleged perpetrator;
2 (iii) The department has a reasonable belief that disclosure may
3 compromise any investigation by a law enforcement agency,
4 disciplinary authority, the department, or the department of
5 children, youth, and families; or
6 (iv) The department has a reasonable belief that the information
7 may endanger any person.

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

10 (1) An action known as a petition for an order for protection of
11 a vulnerable adult in cases of abandonment, abuse, financial
12 exploitation, or neglect is created.

13 ~~((1))~~ (a) A vulnerable adult, or interested person on behalf of
14 the vulnerable adult, may seek relief from abandonment, abuse,
15 financial exploitation, or neglect, or the threat thereof, by filing
16 a petition for an order for protection in superior court.

17 ~~((2))~~ (b) A petition shall allege that the petitioner, or
18 person on whose behalf the petition is brought, is a vulnerable adult
19 and that the petitioner, or person on whose behalf the petition is
20 brought, has been abandoned, abused, financially exploited, or
21 neglected, or is threatened with abandonment, abuse, financial
22 exploitation, or neglect by respondent.

23 ~~((3))~~ (c) A petition shall be accompanied by affidavit made
24 under oath, or a declaration signed under penalty of perjury, stating
25 the specific facts and circumstances which demonstrate the need for
26 the relief sought. If the petition is filed by an interested person,
27 the affidavit or declaration must also include a statement of why the
28 petitioner qualifies as an interested person.

29 ~~((4))~~ (d) A petition for an order may be made whether or not
30 there is a pending lawsuit, complaint, petition, or other action
31 pending that relates to the issues presented in the petition for an
32 order for protection.

33 ~~((5))~~ (e) Within ninety days of receipt of the master copy from
34 the administrative office of the courts, all court clerk's offices
35 shall make available the standardized forms and instructions required
36 by RCW 74.34.115.

37 ~~((6))~~ (f) Any assistance or information provided by any person,
38 including, but not limited to, court clerks, employees of the
39 department, and other court facilitators, to another to complete the

1 forms provided by the court in (e) of this subsection (~~((5) of this~~
2 ~~section))~~) does not constitute the practice of law.

3 ~~((7))~~ (g) A petitioner is not required to post bond to obtain
4 relief in any proceeding under this section.

5 ~~((8))~~ (h) An action under this section shall be filed in the
6 county where the vulnerable adult resides; except that if the
7 vulnerable adult has left or been removed from the residence as a
8 result of abandonment, abuse, financial exploitation, or neglect, or
9 in order to avoid abandonment, abuse, financial exploitation, or
10 neglect, the petitioner may bring an action in the county of either
11 the vulnerable adult's previous or new residence.

12 ~~((9))~~ (i) No filing fee may be charged to the petitioner for
13 proceedings under this section. Standard forms and written
14 instructions shall be provided free of charge.

15 (2) A vulnerable adult who is the victim of stalking, or an
16 interested person on behalf of the vulnerable adult, may apply for a
17 stalking protection order under RCW 7.92.040.

18 **Sec. 5.** RCW 74.34.300 and 2016 c 172 s 4 are each amended to
19 read as follows:

20 (1) The department shall conduct quality assurance reviews to
21 monitor processes related to the receipt of and timely response to
22 reports of vulnerable adult abuse, abandonment, neglect, self-
23 neglect, financial exploitation, or misappropriation of resident
24 property; quality of investigations; and implementation of protective
25 services.

26 (a) As part of the quality assurance process, the department
27 shall conduct a vulnerable adult fatality review in the event of a
28 death of a vulnerable adult when the department has reason to believe
29 that the death of the vulnerable adult may be related to the abuse,
30 abandonment, financial exploitation, or neglect of the vulnerable
31 adult, or may be related to the vulnerable adult's self-neglect, and
32 the vulnerable adult was:

33 ~~((a))~~ (i) Receiving home and community-based services in his or
34 her own home or licensed or certified settings, described under
35 chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty
36 days preceding his or her death; or

37 ~~((b))~~ (ii) Living in his or her own home or licensed or
38 certified settings described under chapters 74.39, 74.39A, 18.20,
39 70.128, and 71A.12 RCW and was the subject of a report under this

1 chapter received by the department within twelve months preceding his
2 or her death.

3 ~~((2))~~ (b) When conducting a vulnerable adult fatality review of
4 a person who had been receiving hospice care services before the
5 person's death, the review shall provide particular consideration to
6 the similarities between the signs and symptoms of abuse and those of
7 many patients receiving hospice care services.

8 (2)(a) Quality assurance reviews completed pursuant to this
9 section are not subject to discovery in a civil or administrative
10 proceeding and may not be admitted into evidence or otherwise used in
11 a civil or administrative proceeding except pursuant to this section.

12 (b) A department employee responsible for conducting quality
13 assurance reviews, or a member of a quality assurance team, may not
14 be examined in a civil or administrative proceeding regarding (i) the
15 work of the quality assurance review or quality assurance team, (ii)
16 the incident under review, (iii) his or her statements,
17 deliberations, thoughts, analyses, or impressions relating to the
18 work of the quality assurance review or the incident under review, or
19 (iv) the statements, deliberations, thoughts, analyses, or
20 impressions of any other member of the quality assurance review or
21 quality assurance team, or any person who provided information to the
22 quality assurance review or quality assurance team, relating to the
23 work of the quality assurance review or the incident under review.

24 (c) Documents prepared by or for a quality assurance review or
25 quality assurance team are inadmissible and may not be used in a
26 civil or administrative proceeding, except that any document that
27 exists before its use or consideration in a quality assurance review,
28 or that is created independently of such review, does not become
29 inadmissible merely because it is reviewed or used by a quality
30 assurance team. A person is not unavailable as a witness merely
31 because the person has been interviewed by or has provided a
32 statement for a quality assurance review, but if called as a witness,
33 a person may not be examined regarding the person's interactions with
34 the quality assurance review including, without limitation, whether
35 the person was interviewed during such review, the questions that
36 were asked during such review, and the answers that the person
37 provided during such review. This section does not restrict the
38 person from testifying fully in any proceeding regarding his or her
39 knowledge of the incident under review.

1 (3) (~~All files, reports, records, communications, and working~~
2 ~~papers used or developed for purposes of a fatality review are~~
3 ~~confidential and not subject to disclosure pursuant to RCW 74.34.095.~~

4 (4)) The department may adopt rules to implement this section.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.34
6 RCW to read as follows:

7 (1) The department shall maintain a vulnerable adult abuse
8 registry. Upon request of any person, the department may disclose the
9 identity of a person who has been entered on the registry with a
10 final substantiated finding of abandonment, abuse, financial
11 exploitation, or neglect of a vulnerable adult.

12 (2) The department must develop a process in rule by which the
13 department may remove individuals from the vulnerable adult abuse
14 registry. The process must not allow a removal that would conflict
15 with federal law.

16 (3) Except as described in subsection (4) of this section, a
17 person who is on the vulnerable adult abuse registry may petition the
18 department, in writing, for removal from the registry after three
19 years have elapsed from the date on which the final substantiated
20 finding is entered on the registry.

21 (4) A person may not petition the department to be removed from
22 the registry if:

23 (a) The final substantiated finding that the person abused,
24 abandoned, neglected, or financially exploited a vulnerable adult
25 included information that:

26 (i) The person sexually abused a vulnerable adult;

27 (ii) The abuse or neglect caused a vulnerable adult to suffer
28 great bodily harm or death;

29 (iii) The person financially exploited a vulnerable adult of
30 property, resources, or services exceeding five thousand dollars; or

31 (iv) The abuse involved a lethal weapon;

32 (b) The person has a conviction for a disqualifying crime under
33 RCW 43.43.842;

34 (c) The person has more than one final substantiated finding of
35 abuse, abandonment, neglect, financial exploitation of a vulnerable
36 adult, or misappropriation of resident property; or has a final
37 substantiated finding involving more than one vulnerable adult
38 victim; or has a final substantiated finding involving multiple
39 instances of misconduct against a single vulnerable adult victim; or

1 (d) The person is a nursing assistant whose name is on the
2 registry for conduct committed while working as a certified nursing
3 assistant in a nursing facility, unless the removal from the registry
4 maintained by the department under 42 C.F.R. Sec. 483.156 would be
5 authorized under 42 U.S.C. Sec. 1396r(g) (1) (D).

6 (5) A person may petition the department for removal from the
7 vulnerable adult abuse registry a maximum of three times and may only
8 file one petition in any twelve-month period.

9 (6) If the petition is granted, the individual is removed from
10 the vulnerable adult abuse registry and the individual is no longer
11 disqualified from employment under RCW 74.39A.056 or 18.20.125 by
12 reason of the final substantiated finding. Nothing in this subsection
13 affects a finding against the individual that is on the vulnerable
14 adult abuse registry maintained by the department under 42 C.F.R.
15 Sec. 483.156 unless removal from that registry is permitted by 42
16 U.S.C. Sec. 1396r(g) (1) (D).

17 (7) If the department removes an individual from the vulnerable
18 adult abuse registry, the department shall maintain a record of the
19 individual and the underlying finding. These records are exempt from
20 disclosure under subsection (1) of this section and chapter 42.56
21 RCW.

22 (8) (a) The state of Washington and its officers, employees,
23 contractors, agents, and agencies, including the department, are
24 immune from suit in law, equity, or any action under the
25 administrative procedure act, chapter 34.05 RCW, based on the
26 exercise of discretion to remove an individual from the vulnerable
27 adult abuse registry, except as specified in (b) of this subsection.
28 This section does not modify an applicant's right to seek review of
29 an agency's licensing or certification decision under the
30 administrative procedure act, chapter 34.05 RCW, or other applicable
31 statute or agency rule.

32 (b) A person denied removal from the vulnerable adult abuse
33 registry has the right to an adjudicative proceeding, and to judicial
34 review of that adjudicative proceeding, to challenge the denial
35 pursuant to chapter 34.05 RCW. In any such proceeding, it is the
36 appellant's burden to prove that the appellant should be removed from
37 the registry.

38 (9) (a) Except as provided in (b) of this subsection, the
39 following information is inadmissible and may not be used against the
40 department or its employees in any civil or administrative action

1 related to the hiring of a person who is or was on the vulnerable
2 adult abuse registry:

3 (i) Documents prepared by department staff during the
4 department's review and consideration of a petition for removal of a
5 registry finding; and

6 (ii) Facts related to the underlying finding, including the
7 underlying finding itself.

8 (b) Any documents that existed before a petition for removal was
9 filed or that were created independently of the department's review
10 and consideration of such petition do not become inadmissible merely
11 because they were used during the department's review process.

12 (10) An individual's removal from the vulnerable adult abuse
13 registry does not require an employer to use that individual for the
14 care of, or allow that individual unsupervised access to, vulnerable
15 adults.

16 (11) The department shall adopt rules necessary to implement this
17 section.

18 (12) Nothing in this section limits any rights or remedies
19 available under federal law, including the removal of a name from the
20 nurse aide registry under 42 U.S.C. Sec. 1395i-3(g)(1)(D).

21 (13) This section does not create a protected class; private
22 right of action; any right, privilege, or duty; or change any right,
23 privilege, or duty existing under law.

24 **Sec. 7.** RCW 74.39A.056 and 2018 c 278 s 8 are each amended to
25 read as follows:

26 (1)(a) All long-term care workers shall be screened through state
27 and federal background checks in a uniform and timely manner to
28 verify that they do not have a history that would disqualify them
29 from working with vulnerable persons. The department must process
30 background checks for long-term care workers and make the information
31 available to employers, prospective employers, and others as
32 authorized by law.

33 (b)(i) Except as provided in (b)(ii) of this subsection, for
34 long-term care workers hired on or after January 7, 2012, the
35 background checks required under this section shall include checking
36 against the federal bureau of investigation fingerprint
37 identification records system and against the national sex offenders
38 registry or their successor programs. The department shall require
39 these long-term care workers to submit fingerprints for the purpose

1 of investigating conviction records through both the Washington state
2 patrol and the federal bureau of investigation. The department shall
3 not pass on the cost of these criminal background checks to the
4 workers or their employers.

5 (ii) This subsection does not apply to long-term care workers
6 employed by community residential service businesses until January 1,
7 2016.

8 (c) The department shall share state and federal background check
9 results with the department of health in accordance with RCW
10 18.88B.080.

11 (d) Background check screening required under this section and
12 department rules is not required for an employee of a consumer
13 directed employer if all of the following circumstances apply:

14 (i) The individual has an individual provider contract with the
15 department;

16 (ii) The last background check on the contracted individual
17 provider is still valid under department rules and did not disqualify
18 the individual from providing personal care services;

19 (iii) Employment by the consumer directed employer is the only
20 reason a new background check would be required; and

21 (iv) The department's background check results have been shared
22 with the consumer directed employer.

23 (2) ~~((No provider, or its staff, or long-term care worker, or
24 prospective provider or long-term care worker, with a stipulated
25 finding of fact, conclusion of law, an agreed order, or finding of
26 fact, conclusion of law, or final order issued by a disciplining
27 authority or a court of law or entered into a state registry with a
28 final substantiated finding of abuse, neglect, exploitation, or
29 abandonment of a minor or a vulnerable adult as defined in chapter
30 74.34 RCW shall be employed in the care of and have unsupervised
31 access to vulnerable adults.))~~ A provider may not be employed in the
32 care of and have unsupervised access to vulnerable adults if:

33 (a) The provider is on the vulnerable adult abuse registry as
34 defined in RCW 74.34.020 or on any other registry based upon a
35 finding of abuse, abandonment, neglect, financial exploitation, or
36 misappropriation of resident property;

37 (b) On or after October 1, 1998, the department of children,
38 youth, and families, or its predecessor agency, has made a founded
39 finding of abuse or neglect of a child against the provider;

1 (c) A disciplining authority, including the department of health,
2 has made a finding of abuse, abandonment, neglect, financial
3 exploitation, or misappropriation of resident property of a minor or
4 a vulnerable adult against the provider; or

5 (d) A court has issued an order that includes a finding of fact
6 or conclusion of law that the provider has committed abuse,
7 abandonment, neglect, financial exploitation, or misappropriation of
8 resident property of a minor or vulnerable adult.

9 ~~(3) ((The department shall establish, by rule, a state registry~~
10 ~~which contains identifying information about long-term care workers~~
11 ~~identified under this chapter who have final substantiated findings~~
12 ~~of abuse, neglect, financial exploitation, or abandonment of a~~
13 ~~vulnerable adult as defined in RCW 74.34.020. The rule must include~~
14 ~~disclosure, disposition of findings, notification, findings of fact,~~
15 ~~appeal rights, and fair hearing requirements. The department shall~~
16 ~~disclose, upon request, final substantiated findings of abuse,~~
17 ~~neglect, financial exploitation, or abandonment to any person so~~
18 ~~requesting this information. This information must also be shared~~
19 ~~with the department of health to advance the purposes of chapter~~
20 ~~18.88B RCW.))~~ For the purposes of this section, "provider" means:

21 (a) An individual provider as defined in RCW 74.39A.240;

22 (b) An employee, licensee, or contractor of any of the following:
23 A home care agency licensed under chapter 70.127 RCW, a nursing home
24 under chapter 18.51 RCW, an assisted living facility under chapter
25 18.20 RCW, an enhanced services facility under chapter 70.97 RCW, a
26 certified residential services and supports agency licensed or
27 certified under chapter 71A.12 RCW, an adult family home under
28 chapter 70.128 RCW, or any other long-term care facility certified to
29 provide medicaid or medicare services; and

30 (c) Any contractor of the department who may have unsupervised
31 access to vulnerable adults.

32 (4) The department shall adopt rules to implement this section.

33 **Sec. 8.** RCW 13.50.010 and 2018 c 58 s 78 are each amended to
34 read as follows:

35 (1) For purposes of this chapter:

36 (a) "Good faith effort to pay" means a juvenile offender has
37 either (i) paid the principal amount in full; (ii) made at least
38 eighty percent of the value of full monthly payments within the
39 period from disposition or deferred disposition until the time the

1 amount of restitution owed is under review; or (iii) can show good
2 cause why he or she paid an amount less than eighty percent of the
3 value of full monthly payments;

4 (b) "Juvenile justice or care agency" means any of the following:
5 Police, diversion units, court, prosecuting attorney, defense
6 attorney, detention center, attorney general, the oversight board for
7 children, youth, and families, the office of the family and
8 children's ombuds, the department of social and health services and
9 its contracting agencies, the department of children, youth, and
10 families and its contracting agencies, schools; persons or public or
11 private agencies having children committed to their custody; and any
12 placement oversight committee created under RCW 72.05.415;

13 (c) "Official juvenile court file" means the legal file of the
14 juvenile court containing the petition or information, motions,
15 memorandums, briefs, notices of hearing or appearance, service
16 documents, witness and exhibit lists, findings of the court and court
17 orders, agreements, judgments, decrees, notices of appeal, as well as
18 documents prepared by the clerk, including court minutes, letters,
19 warrants, waivers, affidavits, declarations, invoices, and the index
20 to clerk papers;

21 (d) "Records" means the official juvenile court file, the social
22 file, and records of any other juvenile justice or care agency in the
23 case;

24 (e) "Social file" means the juvenile court file containing the
25 records and reports of the probation counselor.

26 (2) Each petition or information filed with the court may include
27 only one juvenile and each petition or information shall be filed
28 under a separate docket number. The social file shall be filed
29 separately from the official juvenile court file.

30 (3) It is the duty of any juvenile justice or care agency to
31 maintain accurate records. To this end:

32 (a) The agency may never knowingly record inaccurate information.
33 Any information in records maintained by the department of social and
34 health services or the department of children, youth, and families
35 relating to a petition filed pursuant to chapter 13.34 RCW that is
36 found by the court to be false or inaccurate shall be corrected or
37 expunged from such records by the agency;

38 (b) An agency shall take reasonable steps to assure the security
39 of its records and prevent tampering with them; and

1 (c) An agency shall make reasonable efforts to insure the
2 completeness of its records, including action taken by other agencies
3 with respect to matters in its files.

4 (4) Each juvenile justice or care agency shall implement
5 procedures consistent with the provisions of this chapter to
6 facilitate inquiries concerning records.

7 (5) Any person who has reasonable cause to believe information
8 concerning that person is included in the records of a juvenile
9 justice or care agency and who has been denied access to those
10 records by the agency may make a motion to the court for an order
11 authorizing that person to inspect the juvenile justice or care
12 agency record concerning that person. The court shall grant the
13 motion to examine records unless it finds that in the interests of
14 justice or in the best interests of the juvenile the records or parts
15 of them should remain confidential.

16 (6) A juvenile, or his or her parents, or any person who has
17 reasonable cause to believe information concerning that person is
18 included in the records of a juvenile justice or care agency may make
19 a motion to the court challenging the accuracy of any information
20 concerning the moving party in the record or challenging the
21 continued possession of the record by the agency. If the court grants
22 the motion, it shall order the record or information to be corrected
23 or destroyed.

24 (7) The person making a motion under subsection (5) or (6) of
25 this section shall give reasonable notice of the motion to all
26 parties to the original action and to any agency whose records will
27 be affected by the motion.

28 (8) The court may permit inspection of records by, or release of
29 information to, any clinic, hospital, or agency which has the subject
30 person under care or treatment. The court may also permit inspection
31 by or release to individuals or agencies, including juvenile justice
32 advisory committees of county law and justice councils, engaged in
33 legitimate research for educational, scientific, or public purposes.
34 Each person granted permission to inspect juvenile justice or care
35 agency records for research purposes shall present a notarized
36 statement to the court stating that the names of juveniles and
37 parents will remain confidential.

38 (9) The court shall release to the caseload forecast council the
39 records needed for its research and data-gathering functions. Access
40 to caseload forecast data may be permitted by the council for

1 research purposes only if the anonymity of all persons mentioned in
2 the records or information will be preserved.

3 (10) Juvenile detention facilities shall release records to the
4 caseload forecast council upon request. The commission shall not
5 disclose the names of any juveniles or parents mentioned in the
6 records without the named individual's written permission.

7 (11) Requirements in this chapter relating to the court's
8 authority to compel disclosure shall not apply to the oversight board
9 for children, youth, and families or the office of the family and
10 children's ombuds.

11 (12) For the purpose of research only, the administrative office
12 of the courts shall maintain an electronic research copy of all
13 records in the judicial information system related to juveniles.
14 Access to the research copy is restricted to the administrative
15 office of the courts for research purposes as authorized by the
16 supreme court or by state statute. The administrative office of the
17 courts shall maintain the confidentiality of all confidential records
18 and shall preserve the anonymity of all persons identified in the
19 research copy. Data contained in the research copy may be shared with
20 other governmental agencies as authorized by state statute, pursuant
21 to data-sharing and research agreements, and consistent with
22 applicable security and confidentiality requirements. The research
23 copy may not be subject to any records retention schedule and must
24 include records destroyed or removed from the judicial information
25 system pursuant to RCW 13.50.270 and 13.50.100(3).

26 (13) The court shall release to the Washington state office of
27 public defense records needed to implement the agency's oversight,
28 technical assistance, and other functions as required by RCW
29 2.70.020. Access to the records used as a basis for oversight,
30 technical assistance, or other agency functions is restricted to the
31 Washington state office of public defense. The Washington state
32 office of public defense shall maintain the confidentiality of all
33 confidential information included in the records.

34 (14) The court shall release to the Washington state office of
35 civil legal aid records needed to implement the agency's oversight,
36 technical assistance, and other functions as required by RCW
37 2.53.045. Access to the records used as a basis for oversight,
38 technical assistance, or other agency functions is restricted to the
39 Washington state office of civil legal aid. The Washington state
40 office of civil legal aid shall maintain the confidentiality of all

1 confidential information included in the records, and shall, as soon
2 as possible, destroy any retained notes or records obtained under
3 this section that are not necessary for its functions related to RCW
4 2.53.045.

5 (15) For purposes of providing for the educational success of
6 youth in foster care, the department of children, youth, and families
7 may disclose only those confidential child welfare records that
8 pertain to or may assist with meeting the educational needs of foster
9 youth to another state agency or state agency's contracted provider
10 responsible under state law or contract for assisting foster youth to
11 attain educational success. The records retain their confidentiality
12 pursuant to this chapter and federal law and cannot be further
13 disclosed except as allowed under this chapter and federal law.

14 (16) For the purpose of ensuring the safety and welfare of the
15 youth who are in foster care, the department of children, youth, and
16 families may disclose to the department of commerce and its
17 contracted providers responsible under state law or contract for
18 providing services to youth, only those confidential child welfare
19 records that pertain to ensuring the safety and welfare of the youth
20 who are in foster care who are admitted to crisis residential centers
21 or HOPE centers under contract with the office of homeless youth
22 prevention and protection. Records disclosed under this subsection
23 retain their confidentiality pursuant to this chapter and federal law
24 and may not be further disclosed except as permitted by this chapter
25 and federal law.

26 (17) Except as provided in subsection (18) of this section, for
27 purposes of investigating and preventing child abuse and neglect, and
28 providing for the health care coordination and the well-being of
29 children in foster care, the department of children, youth, and
30 families may disclose only those confidential child welfare records
31 that pertain to or may assist with investigation and prevention of
32 child abuse and neglect, or may assist with providing for the health
33 and well-being of children in foster care to the department of social
34 and health services, the health care authority, or their contracting
35 agencies. For purposes of investigating and preventing child abuse
36 and neglect, and to provide for the coordination of health care and
37 the well-being of children in foster care, the department of social
38 and health services and the health care authority may disclose only
39 those confidential child welfare records that pertain to or may
40 assist with investigation and prevention of child abuse and neglect,

1 or may assist with providing for the health care coordination and the
2 well-being of children in foster care to the department of children,
3 youth, and families, or its contracting agencies. The records retain
4 their confidentiality pursuant to this chapter and federal law and
5 cannot be further disclosed except as allowed under this chapter and
6 federal law.

7 (18)(a) Upon request, the department and the department of social
8 and health services must share information with each other contained
9 in reports and findings of: (i) Abandonment, abuse, financial
10 exploitation, self-neglect and neglect of vulnerable adults, or
11 misappropriation of resident property; and (ii) abuse and neglect of
12 children.

13 (b) Upon request, the department and the department of social and
14 health services must share information with each other to the extent
15 that such information pertains to or may assist with (i)
16 investigating or preventing child abuse or neglect; (ii) providing
17 for the health and well-being of children in foster care; or (iii)
18 investigating or preventing the abandonment, abuse, financial
19 exploitation, self-neglect and neglect of a vulnerable adult, or
20 misappropriation of resident property.

21 (c) This information sharing is required for purposes of the
22 federal health insurance portability and accountability act of 1996.
23 The information contained in reports and findings retains its
24 confidentiality under federal and state law and may not be further
25 disseminated except as authorized by law. This information is not
26 subject to public disclosure under chapter 42.56 RCW.

27 **Sec. 9.** RCW 68.50.105 and 2013 c 295 s 1 are each amended to
28 read as follows:

29 (1) Reports and records of autopsies or postmortems shall be
30 confidential, except that the following persons may examine and
31 obtain copies of any such report or record: The personal
32 representative of the decedent as defined in RCW 11.02.005, any
33 family member, the attending physician or advanced registered nurse
34 practitioner, the prosecuting attorney or law enforcement agencies
35 having jurisdiction, public health officials, the department of labor
36 and industries in cases in which it has an interest under RCW
37 68.50.103, or the secretary of the department of social and health
38 services or his or her designee in cases being reviewed under RCW
39 74.13.640 and chapter 74.34 RCW.

1 (2) (a) Notwithstanding the restrictions contained in this section
2 regarding the dissemination of records and reports of autopsies or
3 postmortems, nor the exemptions referenced under RCW 42.56.240(1),
4 nothing in this chapter prohibits a coroner, medical examiner, or his
5 or her designee, from publicly discussing his or her findings as to
6 any death subject to the jurisdiction of his or her office where
7 actions of a law enforcement officer or corrections officer have been
8 determined to be a proximate cause of the death, except as provided
9 in (b) of this subsection.

10 (b) A coroner, medical examiner, or his or her designee may not
11 publicly discuss his or her findings outside of formal court or
12 inquest proceedings if there is a pending or active criminal
13 investigation, or a criminal or civil action, concerning a death that
14 has commenced prior to January 1, 2014.

15 (3) The coroner, the medical examiner, or the attending physician
16 shall, upon request, meet with the family of the decedent to discuss
17 the findings of the autopsy or postmortem. For the purposes of this
18 section, the term "family" means the surviving spouse, state
19 registered domestic partner, or any child, parent, grandparent,
20 grandchild, brother, or sister of the decedent, or any person who was
21 guardian of the decedent at the time of death.

22 NEW SECTION. **Sec. 10.** Section 6 of this act takes effect
23 January 1, 2020.

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