

2 **ESHB 1471** - S COMM AMD

3 By Committee on Health & Long-Term Care

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.42 RCW
8 to read as follows:

9 The legislature finds that there is a significant need to protect
10 children and dependent persons, including frail elder and vulnerable
11 adults, from abuse and neglect by their parents, by persons entrusted
12 with their physical custody, or by persons employed to provide them
13 with the basic necessities of life. The legislature further finds that
14 such abuse and neglect often takes the forms of either withholding from
15 them the basic necessities of life, including food, water, shelter,
16 clothing, and health care, or abandoning them, or both. Therefore, it
17 is the intent of the legislature that criminal penalties be imposed on
18 those guilty of such abuse or neglect. It is the intent of the
19 legislature that a person who, in good faith, is furnished Christian
20 Science treatment by a duly accredited Christian Science practitioner
21 in lieu of medical care is not considered deprived of medically
22 necessary health care or abandoned. Prosecutions under this chapter
23 shall be consistent with the rules of evidence, including hearsay,
24 under law.

25 **Sec. 2.** RCW 9A.42.010 and 1996 c 302 s 1 are each amended to read
26 as follows:

27 As used in this chapter:

28 (1) "Basic necessities of life" means food, water, shelter,
29 clothing, and medically necessary health care, including but not
30 limited to health-related treatment or activities, hygiene, oxygen, and
31 medication.

32 (2)(a) "Bodily injury" means physical pain or injury, illness, or
33 an impairment of physical condition;

34 (b) "Substantial bodily harm" means bodily injury which involves a
35 temporary but substantial disfigurement, or which causes a temporary

1 but substantial loss or impairment of the function of any bodily part
2 or organ, or which causes a fracture of any bodily part;

3 (c) "Great bodily harm" means bodily injury which creates a high
4 probability of death, or which causes serious permanent disfigurement,
5 or which causes a permanent or protracted loss or impairment of the
6 function of any bodily part or organ.

7 (3) "Child" means a person under eighteen years of age.

8 (4) "Dependent person" means a person who, because of physical or
9 mental disability, or because of extreme advanced age, is dependent
10 upon another person to provide the basic necessities of life. A
11 resident of a nursing home, as defined in RCW 18.51.010, a resident of
12 an adult family home, as defined in RCW 70.128.010, and a frail elder
13 or vulnerable adult, as defined in RCW 74.34.020(8), is presumed to be
14 a dependent person for purposes of this chapter.

15 (5) "Employed" means hired by a dependent person, another person
16 acting on behalf of a dependent person, or by an organization or
17 governmental entity, to provide to a dependent person any of the basic
18 necessities of life. A person may be "employed" regardless of whether
19 the person is paid for the services or, if paid, regardless of who pays
20 for the person's services.

21 (6) "Parent" has its ordinary meaning and also includes a guardian
22 and the authorized agent of a parent or guardian.

23 (7) "Abandons" means leaving a child or other dependent person
24 without the means or ability to obtain one or more of the basic
25 necessities of life.

26 **Sec. 3.** RCW 9A.42.050 and 1986 c 250 s 5 are each amended to read
27 as follows:

28 In any prosecution for criminal mistreatment, it shall be a defense
29 that the withholding of the basic necessities of life is due to
30 financial inability only if the person charged has made a reasonable
31 effort to obtain adequate assistance. This defense is available to a
32 person employed to provide the basic necessities of life only when the
33 agreed-upon payment has not been made.

34 **Sec. 4.** RCW 9A.42.020 and 1986 c 250 s 2 are each amended to read
35 as follows:

36 (1) A parent of a child ((~~or~~)), the person entrusted with the
37 physical custody of a child or dependent person, or a person employed

1 to provide to the child or dependent person the basic necessities of
2 life is guilty of criminal mistreatment in the first degree if he or
3 she recklessly, as defined in RCW 9A.08.010, causes great bodily harm
4 to a child or dependent person by withholding any of the basic
5 necessities of life.

6 (2) Criminal mistreatment in the first degree is a class B felony.

7 **Sec. 5.** RCW 9A.42.030 and 1986 c 250 s 3 are each amended to read
8 as follows:

9 (1) A parent of a child ((~~or~~)), the person entrusted with the
10 physical custody of a child or dependent person, or a person employed
11 to provide to the child or dependent person the basic necessities of
12 life is guilty of criminal mistreatment in the second degree if he or
13 she recklessly, as defined in RCW 9A.08.010, either (a) creates an
14 imminent and substantial risk of death or great bodily harm, or (b)
15 causes substantial bodily harm by withholding any of the basic
16 necessities of life.

17 (2) Criminal mistreatment in the second degree is a class C felony.

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 9A.42 RCW
19 to read as follows:

20 (1) A person is guilty of the crime of criminal mistreatment in the
21 third degree if the person is the parent of a child, a person entrusted
22 with the physical custody of a child or other dependent person, or a
23 person employed to provide to the child or other dependent person any
24 of the basic necessities of life, and:

25 (a) With criminal negligence, as defined in RCW 9A.08.010, the
26 person creates an imminent and substantial risk of bodily injury to a
27 child or dependent person by withholding any of the basic necessities
28 of life; or

29 (b) With criminal negligence, as defined in RCW 9A.08.010, the
30 person causes bodily injury to a child or dependent person by
31 withholding any of the basic necessities of life.

32 (2) Criminal mistreatment in the third degree is a gross
33 misdemeanor.

34 **Sec. 7.** RCW 9A.42.040 and 1986 c 250 s 4 are each amended to read
35 as follows:

1 RCW 9A.42.020 ((and)), 9A.42.030, and section 6 of this act do not
2 apply to a decision to withdraw life support systems made in accordance
3 with law by a health care professional and family members or others
4 with a legal duty to care for the patient.

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 9A.42 RCW
6 to read as follows:

7 RCW 9A.42.020, 9A.42.030, and section 6 of this act do not apply
8 when a terminally ill person or his or her designee requests palliative
9 care and the person receives palliative care from a licensed home
10 health agency, hospice agency, nursing home, or hospital who is
11 providing care under the medical direction of a physician.

12 **Sec. 9.** RCW 9A.44.010 and 1994 c 271 s 302 are each amended to
13 read as follows:

14 As used in this chapter:

15 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
16 upon any penetration, however slight, and

17 (b) Also means any penetration of the vagina or anus however
18 slight, by an object, when committed on one person by another, whether
19 such persons are of the same or opposite sex, except when such
20 penetration is accomplished for medically recognized treatment or
21 diagnostic purposes, and

22 (c) Also means any act of sexual contact between persons involving
23 the sex organs of one person and the mouth or anus of another whether
24 such persons are of the same or opposite sex.

25 (2) "Sexual contact" means any touching of the sexual or other
26 intimate parts of a person done for the purpose of gratifying sexual
27 desire of either party or a third party.

28 (3) "Married" means one who is legally married to another, but does
29 not include a person who is living separate and apart from his or her
30 spouse and who has filed in an appropriate court for legal separation
31 or for dissolution of his or her marriage.

32 (4) "Mental incapacity" is that condition existing at the time of
33 the offense which prevents a person from understanding the nature or
34 consequences of the act of sexual intercourse whether that condition is
35 produced by illness, defect, the influence of a substance or from some
36 other cause.

1 (5) "Physically helpless" means a person who is unconscious or for
2 any other reason is physically unable to communicate unwillingness to
3 an act.

4 (6) "Forcible compulsion" means physical force which overcomes
5 resistance, or a threat, express or implied, that places a person in
6 fear of death or physical injury to herself or himself or another
7 person, or in fear that she or he or another person will be kidnapped.

8 (7) "Consent" means that at the time of the act of sexual
9 intercourse or sexual contact there are actual words or conduct
10 indicating freely given agreement to have sexual intercourse or sexual
11 contact.

12 (8) "Significant relationship" means a situation in which the
13 perpetrator is:

14 (a) A person who undertakes the responsibility, professionally or
15 voluntarily, to provide education, health, welfare, or organized
16 recreational activities principally for minors; ((or))

17 (b) A person who in the course of his or her employment supervises
18 minors; or

19 (c) A person who provides welfare, health or residential
20 assistance, personal care, or organized recreational activities to
21 frail elders or vulnerable adults, including a provider, employee,
22 temporary employee, volunteer, or independent contractor who supplies
23 services to long-term care facilities licensed or required to be
24 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
25 health, hospice, or home care agencies licensed or required to be
26 licensed under chapter 70.127 RCW, but not including a consensual
27 sexual partner.

28 (9) "Abuse of a supervisory position" means a direct or indirect
29 threat or promise to use authority to the detriment or benefit of a
30 minor.

31 (10) "Developmentally disabled," for purposes of RCW
32 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
33 developmental disability as defined in RCW 71A.10.020.

34 (11) "Person with supervisory authority," for purposes of RCW
35 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
36 proprietor or employee of any public or private care or treatment
37 facility who directly supervises developmentally disabled, mentally
38 disordered, or chemically dependent persons at the facility.

1 (12) "Mentally disordered person" for the purposes of RCW
2 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
3 disorder" as defined in RCW 71.05.020(2).

4 (13) "Chemically dependent person" for purposes of RCW
5 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
6 dependent" as defined in RCW 70.96A.020(4).

7 (14) "Health care provider" for purposes of RCW 9A.44.050 and
8 9A.44.100 means a person who is, holds himself or herself out to be, or
9 provides services as if he or she were: (a) A member of a health care
10 profession under chapter 18.130 RCW; or (b) registered or certified
11 under chapter 18.19 RCW, regardless of whether the health care provider
12 is licensed, certified, or registered by the state.

13 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
14 the active delivery of professional services by a health care provider
15 which the health care provider holds himself or herself out to be
16 qualified to provide.

17 (16) "Frail elder or vulnerable adult" means a person sixty years
18 of age or older who has the functional, mental, or physical inability
19 to care for himself or herself. "Frail elder or vulnerable adult" also
20 includes a person found incapacitated under chapter 11.88 RCW, a person
21 over eighteen years of age who has a developmental disability under
22 chapter 71A.10 RCW, a person admitted to a long-term care facility that
23 is licensed or required to be licensed under chapter 18.20, 18.51,
24 72.36, or 70.128 RCW, and a person receiving services from a home
25 health, hospice, or home care agency licensed or required to be
26 licensed under chapter 70.127 RCW.

27 **Sec. 10.** RCW 9A.44.050 and 1993 c 477 s 2 are each amended to read
28 as follows:

29 (1) A person is guilty of rape in the second degree when, under
30 circumstances not constituting rape in the first degree, the person
31 engages in sexual intercourse with another person:

32 (a) By forcible compulsion;

33 (b) When the victim is incapable of consent by reason of being
34 physically helpless or mentally incapacitated;

35 (c) When the victim is developmentally disabled and the perpetrator
36 is a person who is not married to the victim and who has supervisory
37 authority over the victim;

1 (d) When the perpetrator is a health care provider, the victim is
2 a client or patient, and the sexual intercourse occurs during a
3 treatment session, consultation, interview, or examination. It is an
4 affirmative defense that the defendant must prove by a preponderance of
5 the evidence that the client or patient consented to the sexual
6 intercourse with the knowledge that the sexual intercourse was not for
7 the purpose of treatment; ((~~or~~))

8 (e) When the victim is a resident of a facility for mentally
9 disordered or chemically dependent persons and the perpetrator is a
10 person who is not married to the victim and has supervisory authority
11 over the victim; or

12 (f) When the victim is a frail elder or vulnerable adult and the
13 perpetrator is a person who is not married to the victim and who has a
14 significant relationship with the victim.

15 (2) Rape in the second degree is a class A felony.

16 **Sec. 11.** RCW 9A.44.100 and 1993 c 477 s 3 are each amended to read
17 as follows:

18 (1) A person is guilty of indecent liberties when he knowingly
19 causes another person who is not his spouse to have sexual contact with
20 him or another:

21 (a) By forcible compulsion; ((~~or~~))

22 (b) When the other person is incapable of consent by reason of
23 being mentally defective, mentally incapacitated, or physically
24 helpless;

25 (c) When the victim is developmentally disabled and the perpetrator
26 is a person who is not married to the victim and who has supervisory
27 authority over the victim;

28 (d) When the perpetrator is a health care provider, the victim is
29 a client or patient, and the sexual contact occurs during a treatment
30 session, consultation, interview, or examination. It is an affirmative
31 defense that the defendant must prove by a preponderance of the
32 evidence that the client or patient consented to the sexual contact
33 with the knowledge that the sexual contact was not for the purpose of
34 treatment; ((~~or~~))

35 (e) When the victim is a resident of a facility for mentally
36 disordered or chemically dependent persons and the perpetrator is a
37 person who is not married to the victim and has supervisory authority
38 over the victim; or

1 (f) When the victim is a frail elder or vulnerable adult and the
2 perpetrator is a person who is not married to the victim and who has a
3 significant relationship with the victim.

4 (2) Indecent liberties is a class B felony.

5 **Sec. 12.** RCW 18.130.040 and 1996 c 200 s 32 and 1996 c 81 s 5 are
6 each reenacted and amended to read as follows:

7 (1) This chapter applies only to the secretary and the boards and
8 commissions having jurisdiction in relation to the professions licensed
9 under the chapters specified in this section. This chapter does not
10 apply to any business or profession not licensed under the chapters
11 specified in this section.

12 (2)(a) The secretary has authority under this chapter in relation
13 to the following professions:

14 (i) Dispensing opticians licensed under chapter 18.34 RCW;

15 (ii) Naturopaths licensed under chapter 18.36A RCW;

16 (iii) Midwives licensed under chapter 18.50 RCW;

17 (iv) Ocularists licensed under chapter 18.55 RCW;

18 (v) Massage operators and businesses licensed under chapter 18.108
19 RCW;

20 (vi) Dental hygienists licensed under chapter 18.29 RCW;

21 (vii) Acupuncturists licensed under chapter 18.06 RCW;

22 (viii) Radiologic technologists certified and X-ray technicians
23 registered under chapter 18.84 RCW;

24 (ix) Respiratory care practitioners certified under chapter 18.89
25 RCW;

26 (x) Persons registered or certified under chapter 18.19 RCW;

27 (xi) Persons registered as nursing pool operators under chapter
28 18.52C RCW;

29 (xii) Nursing assistants registered or certified under chapter
30 ~~((18.79))~~ 18.88A RCW;

31 (xiii) Health care assistants certified under chapter 18.135 RCW;

32 (xiv) Dietitians and nutritionists certified under chapter 18.138
33 RCW;

34 (xv) Sex offender treatment providers certified under chapter
35 18.155 RCW;

36 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
37 18.71.205;

1 (xvii) Persons registered as adult family home providers and
2 resident managers under RCW 18.48.020; and
3 (xviii) Denturists licensed under chapter 18.30 RCW.
4 (b) The boards and commissions having authority under this chapter
5 are as follows:
6 (i) The podiatric medical board as established in chapter 18.22
7 RCW;
8 (ii) The chiropractic quality assurance commission as established
9 in chapter 18.25 RCW;
10 (iii) The dental quality assurance commission as established in
11 chapter 18.32 RCW;
12 (iv) The board of hearing and speech as established in chapter
13 18.35 RCW;
14 (v) The board of examiners for nursing home administrators as
15 established in chapter 18.52 RCW;
16 (vi) The optometry board as established in chapter 18.54 RCW
17 governing licenses issued under chapter 18.53 RCW;
18 (vii) The board of osteopathic medicine and surgery as established
19 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
20 18.57A RCW;
21 (viii) The board of pharmacy as established in chapter 18.64 RCW
22 governing licenses issued under chapters 18.64 and 18.64A RCW;
23 (ix) The medical quality assurance commission as established in
24 chapter 18.71 RCW governing licenses and registrations issued under
25 chapters 18.71 and 18.71A RCW;
26 (x) The board of physical therapy as established in chapter 18.74
27 RCW;
28 (xi) The board of occupational therapy practice as established in
29 chapter 18.59 RCW;
30 (xii) The nursing care quality assurance commission as established
31 in chapter 18.79 RCW governing licenses issued under that chapter;
32 (xiii) The examining board of psychology and its disciplinary
33 committee as established in chapter 18.83 RCW; and
34 (xiv) The veterinary board of governors as established in chapter
35 18.92 RCW.
36 (3) In addition to the authority to discipline license holders, the
37 disciplining authority has the authority to grant or deny licenses
38 based on the conditions and criteria established in this chapter and
39 the chapters specified in subsection (2) of this section. This chapter

1 also governs any investigation, hearing, or proceeding relating to
2 denial of licensure or issuance of a license conditioned on the
3 applicant's compliance with an order entered pursuant to RCW 18.130.160
4 by the disciplining authority.

5 (4) All disciplining authorities shall adopt procedures to ensure
6 substantially consistent application of this chapter, the Uniform
7 Disciplinary Act, among the disciplining authorities listed in
8 subsection (2) of this section.

9 **Sec. 13.** RCW 18.130.200 and 1986 c 259 s 12 are each amended to
10 read as follows:

11 A person who attempts to obtain ~~((or))~~, obtains, or attempts to
12 maintain a license by willful misrepresentation or fraudulent
13 representation is guilty of a gross misdemeanor.

14 **Sec. 14.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read
15 as follows:

16 (1)~~(a)~~ The secretary of social and health services and the
17 secretary of health shall adopt additional requirements for the
18 licensure or relicensure of agencies ~~((or))~~, facilities ~~((which))~~, and
19 licensed individuals who provide care and treatment to vulnerable
20 adults. These additional requirements shall ensure that any person
21 associated with a licensed agency or facility having ~~((direct contact))~~
22 unsupervised access with a vulnerable adult shall not have been:
23 ~~((+a))~~ (i) Convicted of a crime against persons as defined in RCW
24 43.43.830, except as provided in this section; ~~((+b))~~ (ii) convicted
25 of crimes relating to financial exploitation as defined in RCW
26 43.43.830, except as provided in this section; ~~((+c))~~ (iii) found in
27 any disciplinary board final decision to have abused a vulnerable adult
28 under RCW 43.43.830; or ~~((+d))~~ (iv) the subject in a protective
29 proceeding under chapter 74.34 RCW.

30 (b) A person associated with a licensed agency or facility who has
31 unsupervised access with a vulnerable adult shall make the disclosures
32 specified in RCW 43.43.834(2). The person shall make the disclosures
33 in writing, sign, and swear to the contents under penalty of perjury.
34 The person shall, in the disclosures, specify all crimes against
35 children or other persons, and all crimes relating to financial
36 exploitation as defined in RCW 43.43.830, committed by the person.

1 (2) The rules adopted under this section shall permit the licensee
2 to consider the criminal history of an applicant for employment in a
3 licensed facility when the applicant has one or more convictions for a
4 past offense and:

5 (a) The offense was simple assault, assault in the fourth degree,
6 or the same offense as it may be renamed, and three or more years have
7 passed between the most recent conviction and the date of application
8 for employment;

9 (b) The offense was prostitution, or the same offense as it may be
10 renamed, and three or more years have passed between the most recent
11 conviction and the date of application for employment;

12 (c) The offense was theft in the third degree, or the same offense
13 as it may be renamed, and three or more years have passed between the
14 most recent conviction and the date of application for employment;

15 (d) The offense was theft in the second degree, or the same offense
16 as it may be renamed, and five or more years have passed between the
17 most recent conviction and the date of application for employment;

18 (e) The offense was forgery, or the same offense as it may be
19 renamed, and five or more years have passed between the most recent
20 conviction and the date of application for employment.

21 The offenses set forth in (a) through (e) of this subsection do not
22 automatically disqualify an applicant from employment by a licensee.
23 Nothing in this section may be construed to require the employment of
24 any person against a licensee's judgment.

25 In consultation with law enforcement personnel, the secretary of
26 social and health services and the secretary of health shall
27 investigate the conviction record and the protection proceeding record
28 information under this chapter (~~(43.43 RCW)~~) of each agency or facility
29 and its staff under their respective jurisdictions seeking licensure or
30 relicensure. An individual responding to a criminal background inquiry
31 request from his or her employer or potential employer shall disclose
32 the information about his or her criminal history under penalty of
33 perjury. The secretaries shall use the information solely for the
34 purpose of determining eligibility for licensure or relicensure.
35 Criminal justice agencies shall provide the secretaries such
36 information as they may have and that the secretaries may require for
37 such purpose.

1 **Sec. 15.** RCW 70.124.020 and 1996 c 178 s 24 are each amended to
2 read as follows:

3 Unless the context requires otherwise, the definitions in this
4 section apply throughout this chapter.

5 (1) "Court" means the superior court of the state of Washington.

6 (2) "Law enforcement agency" means the police department, the
7 director of public safety, or the office of the sheriff.

8 (3) "Practitioner of the healing arts" or "practitioner" means a
9 person licensed by this state to practice podiatric medicine and
10 surgery, optometry, pharmacy, physical therapy, chiropractic, nursing,
11 dentistry, osteopathic medicine and surgery, or medicine and surgery.
12 The term "practitioner" shall include a nurses aide, a nursing home
13 administrator licensed under chapter 18.52 RCW, and a duly accredited
14 Christian Science practitioner: PROVIDED, HOWEVER, That a nursing home
15 patient who is being furnished Christian Science treatment by a duly
16 accredited Christian Science practitioner shall not be considered, for
17 that reason alone, a neglected patient for the purposes of this
18 chapter.

19 (4) "Department" means the state department of social and health
20 services.

21 (5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

22 (6) "Social worker" means anyone engaged in a professional capacity
23 during the regular course of employment in encouraging or promoting the
24 health, welfare, support, or education of nursing home patients, or
25 providing social services to nursing home patients, whether in an
26 individual capacity or as an employee or agent of any public or private
27 organization or institution.

28 (7) "Psychologist" means any person licensed to practice psychology
29 under chapter 18.83 RCW, whether acting in an individual capacity or as
30 an employee or agent of any public or private organization or
31 institution.

32 (8) "Pharmacist" means any registered pharmacist under chapter
33 18.64 RCW, whether acting in an individual capacity or as an employee
34 or agent of any public or private organization or institution.

35 (9) "Abuse or neglect" or "patient abuse or neglect" means the
36 nonaccidental physical injury or condition, sexual abuse, or negligent
37 treatment of a nursing home or state hospital patient under
38 circumstances which indicate that the patient's health, welfare,
39 ((and)) or safety is harmed thereby.

1 (10) "Negligent treatment" means an act or omission which evinces
2 a serious disregard of consequences of such magnitude as to constitute
3 a clear and present danger to the patient's health, welfare, ~~((and))~~ or
4 safety.

5 (11) "State hospital" means any hospital operated and maintained by
6 the state for the care of the mentally ill under chapter 72.23 RCW.

7 **Sec. 16.** RCW 70.124.040 and 1981 c 174 s 4 are each amended to
8 read as follows:

9 (1) Where a report is ~~((deemed warranted))~~ required under RCW
10 70.124.030, an immediate oral report shall be made by telephone or
11 otherwise to either a law enforcement agency or to the department and,
12 upon request, shall be followed by a report in writing. The reports
13 shall contain the following information, if known:

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

15 (b) The name and address of the nursing home or state hospital
16 patient;

17 (c) The name and address of the patient's relatives having
18 responsibility for the patient;

19 (d) The nature and extent of the injury or injuries;

20 (e) The nature and extent of the neglect;

21 (f) The nature and extent of the sexual abuse;

22 (g) Any evidence of previous injuries, including their nature and
23 extent; and

24 (h) Any other information which may be helpful in establishing the
25 cause of the patient's death, injury, or injuries, and the identity of
26 the perpetrator or perpetrators.

27 (2) Each law enforcement agency receiving such a report shall, in
28 addition to taking the action required by RCW 70.124.050, immediately
29 relay the report to the department, and to other law enforcement
30 agencies, including the medicaid fraud control unit of the office of
31 the attorney general, as appropriate. For any report it receives, the
32 department shall likewise take the required action and in addition
33 relay the report to the appropriate law enforcement agency or agencies.
34 The appropriate law enforcement agency or agencies shall receive
35 immediate notification when the department, upon receipt of such
36 report, has reasonable cause to believe that a criminal act has been
37 committed.

1 **Sec. 17.** RCW 70.124.070 and 1979 ex.s. c 228 s 7 are each amended
2 to read as follows:

3 A person who is required to make or to cause to be made a report
4 pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to
5 make such report or fails to cause such report to be made is guilty of
6 a gross misdemeanor.

7 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.124
8 RCW to read as follows:

9 (1) A whistleblower who as a result of being a whistleblower has
10 been subjected to any actions described in subsection (2)(a) of this
11 section or to workplace reprisal or retaliatory action, has the
12 remedies provided under chapter 49.60 RCW. RCW 4.24.500 through
13 4.24.520, providing certain protection to persons who communicate to
14 government agencies, apply to complaints made under this section. The
15 identity of a whistleblower who complains, in good faith, to the
16 department about suspected abuse, negligent treatment, financial
17 exploitation, or abandonment, as defined in RCW 74.34.020, by any
18 person in a nursing home, state hospital, or adult family home, may
19 remain confidential if requested. The identity of the whistleblower
20 shall subsequently remain confidential unless the department determines
21 that the complaint was not made in good faith.

22 (2)(a) An attempt to expel a resident from a nursing home, state
23 hospital, or adult family home, or any type of discriminatory treatment
24 of a resident by whom, or upon whose behalf, a complaint has been
25 submitted to the department or any proceeding instituted under or
26 related to this chapter within one year of the filing of the complaint
27 or the institution of the action, raises a rebuttable presumption that
28 the action was in retaliation for the filing of the complaint, if the
29 department substantiates the complaint.

30 (b) The presumption in (a) of this subsection is rebutted by
31 credible evidence establishing the alleged retaliatory action was
32 initiated before the complaint, or by a functional assessment conducted
33 by the department that shows the resident's physical or mental health
34 needs cannot be met through reasonable accommodations by the facility.

35 (3) For the purposes of this section:

36 (a) "Whistleblower" means a resident or employee of a nursing home,
37 state hospital, or adult family home, or any person licensed under

1 Title 18 RCW, who in good faith reports alleged abuse or neglect to the
2 department or to a law enforcement agency; and

3 (b) "Workplace reprisal or retaliatory action" means, but is not
4 limited to, an unwarranted or unsubstantiated: Denial of adequate
5 staff to perform duties; frequent staff changes; frequent and
6 undesirable office changes; refusal to assign meaningful work; report
7 of misconduct under Title 18 RCW; letters of reprimand or
8 unsatisfactory performance evaluations; demotion; or denial of
9 employment. It also includes a supervisor or superior encouraging
10 coworkers to behave in a hostile manner toward the whistleblower. The
11 protections provided to whistleblowers under this chapter shall not
12 prevent a nursing home, state hospital, or adult family home from: (i)
13 Terminating, suspending, or disciplining a whistleblower for other
14 lawful purposes; or (ii) for facilities with fewer than six residents,
15 reducing the hours of employment or terminating employment as a result
16 of the demonstrated inability to meet payroll requirements. The
17 department shall determine if the facility cannot meet payroll in cases
18 in which a whistleblower has been terminated or had hours of employment
19 reduced because of the inability of a facility to meet payroll.

20 (4) This section does not prohibit a nursing home, state hospital,
21 or adult family home from exercising its authority to terminate,
22 suspend, or discipline an employee who engages in workplace reprisal or
23 retaliatory action against a whistleblower. The protections provided
24 to whistleblowers under this chapter shall not prevent a nursing home,
25 state hospital, or adult family home from terminating, suspending,
26 reducing the hours of employment, or disciplining a whistleblower for
27 other lawful purposes.

28 (5) The department shall adopt rules to implement procedures for
29 filing, investigation, and resolution of whistleblower complaints that
30 are integrated with complaint procedures under this chapter.

31 (6) The department shall adopt rules designed to discourage
32 whistleblower complaints made in bad faith or for retaliatory purposes.

33 NEW SECTION. **Sec. 19.** A new section is added to chapter 74.34 RCW
34 to read as follows:

35 A person who is required to make or cause to be made a report under
36 RCW 74.34.030 or 74.34.040 and who knowingly fails to make the report
37 or fails to cause the report to be made is guilty of a gross
38 misdemeanor.

1 NEW SECTION. **Sec. 20.** A new section is added to chapter 74.34 RCW
2 to read as follows:

3 (1) A whistleblower who as a result of being a whistleblower has
4 been subjected to any actions described in subsection (2)(a) of this
5 section or to workplace reprisal or retaliatory action, has the
6 remedies provided under chapter 49.60 RCW. RCW 4.24.500 through
7 4.24.520, providing certain protection to persons who communicate to
8 government agencies, apply to complaints made under this section. The
9 identity of a whistleblower who complains, in good faith, to the
10 department about suspected abuse, neglect, exploitation, or abandonment
11 by any person in a boarding home licensed or required to be licensed
12 pursuant to chapter 18.20 RCW may remain confidential if requested.
13 The identity of the whistleblower shall subsequently remain
14 confidential unless the department determines that the complaint was
15 not made in good faith.

16 (2)(a) An attempt to expel a resident from a boarding home, or any
17 type of discriminatory treatment of a resident by whom, or upon whose
18 behalf, a complaint has been submitted to the department or any
19 proceeding instituted under or related to this chapter within one year
20 of the filing of the complaint or the institution of the action, raises
21 a rebuttable presumption that the action was in retaliation for the
22 filing of the complaint, if the department substantiates the complaint.

23 (b) The presumption in (a) of this subsection is rebutted by
24 credible evidence establishing the alleged retaliatory action was
25 initiated before the complaint, or by a functional assessment conducted
26 by the department that shows the resident's physical or mental health
27 needs cannot be met through reasonable accommodations by the facility.

28 (3) For the purposes of this section:

29 (a) "Whistleblower" means a resident or employee of a boarding
30 home, or any person licensed under Title 18 RCW, who in good faith
31 reports alleged abuse or neglect to the department or to a law
32 enforcement agency; and

33 (b) "Workplace reprisal or retaliatory action" means, but is not
34 limited to, an unwarranted or unsubstantiated: Denial of adequate
35 staff to perform duties; frequent staff changes; frequent and
36 undesirable office changes; refusal to assign meaningful work; report
37 of misconduct under Title 18 RCW; letters of reprimand or
38 unsatisfactory performance evaluations; demotion; or denial of
39 employment. It also includes a supervisor or superior encouraging

1 coworkers to behave in a hostile manner toward the whistleblower. The
2 protections provided to whistleblowers under this chapter shall not
3 prevent a boarding home from: (i) Terminating, suspending, reducing
4 the hours of employment, or disciplining a whistleblower for other
5 lawful purposes; or (ii) for facilities with fewer than six residents,
6 reducing the hours of employment or terminating employment as a result
7 of the demonstrated inability to meet payroll requirements. The
8 department shall determine if the facility cannot meet payroll in cases
9 in which a whistleblower has been terminated or had hours of employment
10 reduced because of the inability of a facility to meet payroll.

11 (4) This section does not prohibit a boarding home from exercising
12 its authority to terminate, suspend, or discipline any employee who
13 engages in workplace reprisal or retaliatory action against a
14 whistleblower.

15 (5) The department shall adopt rules to implement procedures for
16 filing, investigation, and resolution of whistleblower complaints that
17 are integrated with complaint procedures under this chapter. The
18 protections provided to whistleblowers under this chapter shall not
19 prevent a boarding home from terminating, suspending, or disciplining
20 a whistleblower for other lawful purposes.

21 (6) The department shall adopt rules designed to discourage
22 whistleblower complaints made in bad faith or for retaliatory purposes.

23 **Sec. 21.** RCW 74.34.020 and 1995 1st sp.s. c 18 s 84 are each
24 amended to read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

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

31 (2) "Abuse" means a nonaccidental act of physical or mental
32 mistreatment or injury, or sexual mistreatment, which harms a person
33 through action or inaction by another individual.

34 (3) "Consent" means express written consent granted after the
35 person has been fully informed of the nature of the services to be
36 offered and that the receipt of services is voluntary.

37 (4) "Department" means the department of social and health
38 services.

1 (5) "Exploitation" means the illegal or improper use of a frail
2 elder or vulnerable adult or that person's income or resources,
3 including trust funds, for another person's profit or advantage.

4 (6) "Neglect" means a pattern of conduct or inaction by a person or
5 entity with a duty of care for a frail elder or vulnerable adult that
6 results in the deprivation of care necessary to maintain the vulnerable
7 person's physical or mental health.

8 (7) "Secretary" means the secretary of social and health services.

9 (8) "Frail elder or vulnerable adult" means a person sixty years of
10 age or older who has the functional, mental, or physical inability to
11 care for himself or herself. "Frail elder or vulnerable adult" shall
12 include persons found incapacitated under chapter 11.88 RCW, or a
13 person who has a developmental disability under chapter 71A.10 RCW, and
14 persons admitted to any long-term care facility that is licensed or
15 required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128
16 RCW, or persons receiving services from home health, hospice, or home
17 care agencies licensed or required to be licensed under chapter 70.127
18 RCW.

19 (9) No frail elder or vulnerable person who relies upon and is
20 being provided spiritual treatment in lieu of medical treatment in
21 accordance with the tenets and practices of a well-recognized religious
22 denomination shall for that reason alone be considered abandoned,
23 abused, or neglected."

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25 By Committee on Health & Long-Term Care

26

27 On page 1, line 1 of the title, after "adults;" strike the
28 remainder of the title and insert "amending RCW 9A.42.010, 9A.42.050,
29 9A.42.020, 9A.42.030, 9A.42.040, 9A.44.010, 9A.44.050, 9A.44.100,
30 18.130.200, 43.43.842, 70.124.020, 70.124.040, 70.124.070, and
31 74.34.020; reenacting and amending RCW 18.130.040; adding new sections
32 to chapter 9A.42 RCW; adding a new section to chapter 70.124 RCW;
33 adding new sections to chapter 74.34 RCW; and prescribing penalties."

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