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HOUSE BILL 1425

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State of Washington

57th Legislature

2001 Regular Session

By Representatives Dickerson, Esser, Lantz, Edmonds, Tokuda, Kagi, O'Brien and Rockefeller; by request of Attorney General

Read first time 01/25/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to vulnerable adults' hearsay statements; and  
2 adding a new chapter to Title 74 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the number of  
5 vulnerable adults is growing because of demographics and longer  
6 life expectancies. Crimes against vulnerable adults, and neglect,  
7 exploitation, abuse, and sexual abuse of vulnerable adults are  
8 increasing. The state has a compelling interest in making it  
9 possible for the courts to adequately and fairly conduct cases  
10 involving vulnerable adult victims.

11 The legislature further finds that court proceedings involving  
12 vulnerable adults may be hindered or precluded by memory problems  
13 associated with the length of time between the act or crime and  
14 the related court proceedings, even though the vulnerable adult  
15 made a reliable statement about the crime or event shortly after  
16 it occurred. Court proceedings involving vulnerable adults may also  
17 be hindered or precluded by the unavailability of the vulnerable  
18 adults as witnesses because of their shorter life expectancy,

1 their physical or mental condition, or because their participation  
2 in the trial or proceeding has a substantial likelihood of  
3 resulting in significant emotional, mental, or physical harm.

4 The legislature intends that this chapter make admissible as  
5 evidence the reliable hearsay of vulnerable adults beyond what is  
6 currently admissible, while respecting the constitutional rights  
7 of other parties. The legislature recognizes that the courts have  
8 implemented the child hearsay statute, RCW 9A.44.120, to balance  
9 concerns about the reliability of children's hearsay statements  
10 with the public interest in facilitating court cases involving the  
11 protection of children. The legislature recognizes similar issues  
12 are present in proceedings involving vulnerable adult victims. For  
13 that reason, courts may find guidance in *State v. Ryan*, 103 Wn.2d  
14 165 (1984), while recognizing the different factors set forth in  
15 this chapter as well as other factors that may apply to vulnerable  
16 adults. The legislature intends this chapter to facilitate fair and  
17 just adjudication of criminal, juvenile, and civil cases involving  
18 vulnerable adults in this state.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply  
20 throughout this chapter unless the context clearly requires  
21 otherwise.

22 (1) "Abuse" means willfully or negligently causing any bodily  
23 injury, pain, or mental anguish to a vulnerable adult.

24 (2) "Exploitation" means:

25 (a) Obtaining, using, or attempting to obtain or use, the  
26 property or services of a vulnerable adult for the benefit of  
27 someone other than the vulnerable adult, by:

28 (i) Deception, intimidation, or the use of undue influence; or

29 (ii) A person who knows or reasonably should know that the  
30 vulnerable adult lacks the capacity to consent; or

31 (b) Forcing, compelling, or exerting undue influence over a  
32 vulnerable adult causing the vulnerable adult to perform a service  
33 or act, or to refrain from acting, in a way that benefits someone  
34 other than the vulnerable adult.

35 (3) "Neglect" means the failure by one having a duty of care to  
36 a vulnerable adult to provide the goods or services necessary to  
37 maintain the physical or mental health of a vulnerable

1 adult. Neglect may be based on either repeated conduct, or on a  
2 single incident or omission that demonstrates a serious disregard  
3 for the safety or welfare of a vulnerable adult.

4 (4) "Sexual abuse" means any form of nonconsensual sexual  
5 contact, including but not limited to indecent liberties, rape,  
6 sexual coercion, sexually explicit photographing, and sexual  
7 harassment. Sexual abuse also means any sexual contact, whether or  
8 not it is consensual, between:

9 (a) Any person and a mentally incapacitated person or  
10 physically helpless person, as both terms are defined in RCW  
11 9A.44.010; or

12 (b) A vulnerable adult living in a facility or receiving  
13 service from a program authorized under chapter 71A.12 RCW, and a  
14 staff person of the facility or employee of the program, unless  
15 the staff person is also a resident or client of the facility or  
16 program.

17 (5) "Sexual contact" means any touching of the sexual or other  
18 intimate parts of a person done for the purpose of gratifying the  
19 sexual desire of either party or a third party.

20 (6) "Unavailable" means the vulnerable adult is unavailable  
21 under ER 804 in the Washington state court rules of evidence.

22 (7) "Vulnerable adult" means a person:

23 (a) Sixty years of age or older who has the functional, mental,  
24 or physical inability to care for himself or herself, or his or  
25 her finances; or

26 (b) Who is eighteen years of age or older and has been found by  
27 a court to be incapacitated under chapter 11.88 RCW; or

28 (c) Who is eighteen years of age or older and has a  
29 developmental disability as defined under RCW 71A.10.020; or

30 (d) Who is eighteen years of age or older and a resident of a  
31 facility for adults licensed or required to be licensed by the  
32 department of social and health services, including but not  
33 limited to nursing homes, adult family homes, and boarding homes;  
34 or

35 (e) Who is eighteen years of age or older and receives services  
36 from a home health, hospice, or home care agency as defined in  
37 chapter 70.127 RCW, or receives similar services from an  
38 individual.

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2        NEW SECTION.    **Sec. 3.**    An out-of-court statement made by a  
3 vulnerable adult describing a crime committed against, or neglect,  
4 exploitation, abuse, or sexual abuse of a vulnerable adult  
5 declarant, is admissible in evidence in a civil, criminal, or  
6 juvenile offense adjudication proceeding if:

7        (1) The court finds in a hearing conducted outside the presence  
8 of the jury, if any, that the time, content, and circumstances of  
9 the statement provide sufficient indicia of reliability. In making  
10 its determination, the court may consider: (a) The reliability of  
11 the declarant; (b) the timing of the declaration; (c) whether the  
12 declarant had an apparent motive to lie; (d) the relationship of  
13 the declarant to the witness; (e) the relationship of the  
14 declarant to the actor; (f) whether the declarant made the  
15 statement to more than one person; (g) the mental and physical  
16 condition and cognitive ability of the vulnerable adult; (h) the  
17 nature and duration of the crime, neglect, abuse, sexual abuse, or  
18 exploitation; and (i) any other factor deemed appropriate; and

19        (2) The vulnerable adult either:

20        (a) Testifies; or

21        (b) The court finds the vulnerable adult is unavailable as a  
22 witness, but when the vulnerable adult is unavailable as a  
23 witness, the statement may be admitted only if there is  
24 corroborative evidence of the act.

25        NEW SECTION.    **Sec. 4.**    A statement may not be admitted under this  
26 chapter unless the proponent of the statement gives notice to the  
27 adverse party of his or her intention to offer the statement and  
28 the particulars of the statement sufficiently in advance of the  
29 proceedings to provide the adverse party with a fair opportunity  
30 to challenge the admissibility of the statement at a hearing. The  
31 court shall state the basis for its ruling by making specific  
32 findings of fact on the record.

33        NEW SECTION.    **Sec. 5.**    Sections 1 through 4 of this act  
34 constitute a new chapter in Title 74 RCW.

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