
SENATE BILL 5450

State of Washington

57th Legislature

2001 Regular Session

By Senators Long, Costa, McCaslin and Kohl-Welles; by request of Attorney General

Read first time 01/23/2001. 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.

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

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

18 (2) The vulnerable adult either:

19 (a) Testifies; or

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

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

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

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