

1 **SHB 1904 - H AMD 0168 WITHDRAWN 3-18-03**

2 By Representative Kagi

3 Strike everything after the enacting clause and insert the  
4 following:

5 "Sec. 1. RCW 74.34.020 and 1999 c 176 s 3 are each amended to  
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions  
8 in this section apply throughout this chapter.

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

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

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

30 (b) "Physical abuse" means the willful action of inflicting  
31 bodily injury or physical mistreatment. Physical abuse includes,  
32 but is not limited to, striking with or without an object,  
33 slapping, pinching, choking, kicking, shoving, prodding, or the use

1 of chemical restraints or physical restraints unless the restraints  
2 are consistent with licensing requirements, and includes restraints  
3 that are otherwise being used inappropriately.

4 (c) "Mental abuse" means any willful action or inaction of  
5 mental or verbal abuse. Mental abuse includes, but is not limited  
6 to, coercion, harassment, inappropriately isolating a vulnerable  
7 adult from family, friends, or regular activity, and verbal assault  
8 that includes ridiculing, intimidating, yelling, or swearing.

9 (d) "Exploitation" means an act of forcing, compelling, or  
10 exerting undue influence over a vulnerable adult causing the  
11 vulnerable adult to act in a way that is inconsistent with relevant  
12 past behavior, or causing the vulnerable adult to perform services  
13 for the benefit of another.

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

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

20 (5) "Facility" means a residence licensed or required to be  
21 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51  
22 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter  
23 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential  
24 habilitation centers; or any other facility licensed by the  
25 department.

26 (6) "Financial exploitation" means the illegal or improper use  
27 of the property, income, resources, or trust funds of the  
28 vulnerable adult by any person for any person's profit or  
29 advantage.

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

33 (8) "Mandated reporter" is an employee of the department; law  
34 enforcement officer; social worker; professional school personnel;  
35 individual provider; an employee of a facility; an operator of a  
36 facility; an employee of a social service, welfare, mental health,  
37 adult day health, adult day care, home health, home care, or  
38 hospice agency; county coroner or medical examiner; Christian

1 Science practitioner; or health care provider subject to chapter  
2 18.130 RCW.

3 (9) "Neglect" means (a) a pattern of conduct or inaction by a  
4 person or entity with a duty of care that fails to provide the  
5 goods and services that maintain physical or mental health of a  
6 vulnerable adult, or that fails to avoid((s)) or prevent((s))  
7 physical or mental harm or pain to a vulnerable adult; or (b) an  
8 act or omission that demonstrates a serious disregard of  
9 consequences of such a magnitude as to constitute a clear and  
10 present danger to the vulnerable adult's health, welfare, or  
11 safety.

12 (10) "Permissive reporter" means any person, employee of a  
13 financial institution, attorney, or volunteer in a facility or  
14 program providing services for vulnerable adults.

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

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

32 (13) "Vulnerable adult" includes a person:

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

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

36 (c) Who has a developmental disability as defined under RCW  
37 71A.10.020; or

38 (d) Admitted to any facility; or

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

4 (f) Receiving services from an individual provider.

5 **Sec. 2.** RCW 74.34.035 and 1999 c 176 s 5 are each amended to  
6 read as follows:

7 (1) (a) When there is reasonable cause to believe that  
8 abandonment, abuse, financial exploitation, or neglect of a  
9 vulnerable adult has occurred, mandated reporters shall immediately  
10 report to the department. ((Ff))

11 (b) When there is reason to suspect that sexual ((or physical  
12 ))assault has occurred, mandated reporters shall immediately report  
13 to the appropriate law enforcement agency and to the department.

14 (c) When there is reason to suspect that physical assault has  
15 occurred:

16 (i) Mandated reporters shall immediately report to the  
17 department; and

18 (ii) Mandated reporters shall immediately report to the  
19 appropriate law enforcement agency, except as provided in  
20 subsection (1)(d) of this section.

21 (d) A mandated reporter is not required to report to a law  
22 enforcement agency an incident of physical assault between  
23 vulnerable adults that causes minor bodily injury limited to  
24 transient physical pain or minor temporary marks, such as, but not  
25 limited to, small abrasions, lacerations, or contusions limited to  
26 the surface of the skin that do not require more than first aid,  
27 unless the incident involves: (i) A pattern of repeated assault  
28 either between the same vulnerable adults or involving the same  
29 vulnerable adult that results in minor bodily injury; (ii) an  
30 attempt to choke another person; or (iii) an act that results in  
31 the fear of imminent harm; or the injured vulnerable adult or his  
32 or her legal representative or family member requests that a report  
33 be made.

34 (2) Permissive reporters may report to the department or a law  
35 enforcement agency when there is reasonable cause to believe that  
36 a vulnerable adult is being or has been abandoned, abused,  
37 financially exploited, or neglected.

1 (3) No facility, as defined by this chapter, agency licensed or  
2 required to be licensed under chapter 70.127 RCW, or facility or  
3 agency under contract with the department to provide care for  
4 vulnerable adults may develop policies or procedures that interfere  
5 with the reporting requirements of this chapter.

6 (4) Each report, oral or written, must contain as much as  
7 possible of the following information:

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

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

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

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

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

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

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

21 (5) Unless there is a judicial proceeding or the person  
22 consents, the identity of the person making the report under this  
23 section is confidential.

24 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of  
26 the state government and its existing public institutions, and  
27 takes effect immediately."

**EFFECT:** Changes the limitation provided in the bill on the reporting requirements for mandated reporters of incidents involving vulnerable adults to specify that the incidents exempted from the reporting requirements are limited to an incident of physical assault that causes minor bodily injury limited to transient physical pain or minor temporary marks, such as, but not limited to, small abrasions, lacerations, or contusions limited to the surface of the skin that do not require more than first aid, unless the incident involves: a pattern of repeated assault either between the same vulnerable adults or involving the same vulnerable adult that results in minor bodily injury; an attempt to choke another person; or an act that results in the fear of imminent harm. Removes the definition of "harm" provided in the bill, in making the

changes to the limitation on the reporting requirements. Makes a technical change to the definition of "neglect" provided in current statute.