

ESHB 1008 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/11/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 74.34.020 and 2006 c 339 s 109 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

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

28 (b) "Physical abuse" means the willful action of inflicting bodily
29 injury or physical mistreatment. Physical abuse includes, but is not
30 limited to, striking with or without an object, slapping, pinching,

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

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

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

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

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

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

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

30 (7) "Incapacitated person" means a person who is at a significant
31 risk of personal or financial harm under RCW 11.88.010(1) (a), (b),
32 (c), or (d).

33 (8) "Individual provider" means a person under contract with the
34 department to provide services in the home under chapter 74.09 or
35 74.39A RCW.

36 ((+8+)) (9) "Interested person" means a person who demonstrates to
37 the court's satisfaction that the person is interested in the welfare
38 of the vulnerable adult, that the person has a good faith belief that

1 the court's intervention is necessary, and that the vulnerable adult is
2 unable, due to incapacity, undue influence, or duress at the time the
3 petition is filed, to protect his or her own interests.

4 (10) "Mandated reporter" is an employee of the department; law
5 enforcement officer; social worker; professional school personnel;
6 individual provider; an employee of a facility; an operator of a
7 facility; an employee of a social service, welfare, mental health,
8 adult day health, adult day care, home health, home care, or hospice
9 agency; county coroner or medical examiner; Christian Science
10 practitioner; or health care provider subject to chapter 18.130 RCW.

11 ~~((9))~~ (11) "Neglect" means (a) a pattern of conduct or inaction
12 by a person or entity with a duty of care that fails to provide the
13 goods and services that maintain physical or mental health of a
14 vulnerable adult, or that fails to avoid or prevent physical or mental
15 harm or pain to a vulnerable adult; or (b) an act or omission that
16 demonstrates a serious disregard of consequences of such a magnitude as
17 to constitute a clear and present danger to the vulnerable adult's
18 health, welfare, or safety, including but not limited to conduct
19 prohibited under RCW 9A.42.100.

20 ~~((10))~~ (12) "Permissive reporter" means any person, including,
21 but not limited to, an employee of a financial institution, attorney,
22 or volunteer in a facility or program providing services for vulnerable
23 adults.

24 ~~((11))~~ (13) "Protective services" means any services provided by
25 the department to a vulnerable adult with the consent of the vulnerable
26 adult, or the legal representative of the vulnerable adult, who has
27 been abandoned, abused, financially exploited, neglected, or in a state
28 of self-neglect. These services may include, but are not limited to
29 case management, social casework, home care, placement, arranging for
30 medical evaluations, psychological evaluations, day care, or referral
31 for legal assistance.

32 ~~((12))~~ (14) "Self-neglect" means the failure of a vulnerable
33 adult, not living in a facility, to provide for himself or herself the
34 goods and services necessary for the vulnerable adult's physical or
35 mental health, and the absence of which impairs or threatens the
36 vulnerable adult's well-being. This definition may include a
37 vulnerable adult who is receiving services through home health,

1 hospice, or a home care agency, or an individual provider when the
2 neglect is not a result of inaction by that agency or individual
3 provider.

4 ~~((13))~~ (15) "Vulnerable adult" includes a person:

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

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

8 (c) Who has a developmental disability as defined under RCW
9 71A.10.020; or

10 (d) Admitted to any facility; or

11 (e) Receiving services from home health, hospice, or home care
12 agencies licensed or required to be licensed under chapter 70.127 RCW;
13 or

14 (f) Receiving services from an individual provider.

15 **Sec. 2.** RCW 74.34.067 and 1999 c 176 s 9 are each amended to read
16 as follows:

17 (1) Where appropriate, an investigation by the department may
18 include a private interview with the vulnerable adult regarding the
19 alleged abandonment, abuse, financial exploitation, neglect, or self-
20 neglect.

21 (2) In conducting the investigation, the department shall interview
22 the complainant, unless anonymous, and shall use its best efforts to
23 interview the vulnerable adult or adults harmed, and, consistent with
24 the protection of the vulnerable adult shall interview facility staff,
25 any available independent sources of relevant information, including if
26 appropriate the family members of the vulnerable adult.

27 (3) The department may conduct ongoing case planning and
28 consultation with: (a) Those persons or agencies required to report
29 under this chapter or submit a report under this chapter; (b)
30 consultants designated by the department; and (c) designated
31 representatives of Washington Indian tribes if client information
32 exchanged is pertinent to cases under investigation or the provision of
33 protective services. Information considered privileged by statute and
34 not directly related to reports required by this chapter must not be
35 divulged without a valid written waiver of the privilege.

36 (4) The department shall prepare and keep on file a report of each

1 investigation conducted by the department for a period of time in
2 accordance with policies established by the department.

3 (5) If the department (~~(determines)~~) has reason to believe that the
4 vulnerable adult has suffered from abuse, neglect, self-neglect,
5 abandonment, or financial exploitation, and lacks the ability or
6 capacity to consent, and needs the protection of a guardian, the
7 department may bring a guardianship action under chapter 11.88 RCW (~~as~~
8 ~~an interested person~~)).

9 (6) When the investigation is completed and the department
10 determines that an incident of abandonment, abuse, financial
11 exploitation, neglect, or self-neglect has occurred, the department
12 shall inform the vulnerable adult of their right to refuse protective
13 services, and ensure that, if necessary, appropriate protective
14 services are provided to the vulnerable adult, with the consent of the
15 vulnerable adult. The vulnerable adult has the right to withdraw or
16 refuse protective services.

17 (7) The department may photograph a vulnerable adult or their
18 environment for the purpose of providing documentary evidence of the
19 physical condition of the vulnerable adult or his or her environment.
20 When photographing the vulnerable adult, the department shall obtain
21 permission from the vulnerable adult or his or her legal representative
22 unless immediate photographing is necessary to preserve evidence.
23 However, if the legal representative is alleged to have abused,
24 neglected, abandoned, or exploited the vulnerable adult, consent from
25 the legal representative is not necessary. No such consent is
26 necessary when photographing the physical environment.

27 (8) When the investigation is complete and the department
28 determines that the incident of abandonment, abuse, financial
29 exploitation, or neglect has occurred, the department shall inform the
30 facility in which the incident occurred, consistent with
31 confidentiality requirements concerning the vulnerable adult,
32 witnesses, and complainants.

33 **Sec. 3.** RCW 74.34.110 and 1999 c 176 s 12 are each amended to read
34 as follows:

35 An action known as a petition for an order for protection of a
36 vulnerable adult in cases of abandonment, abuse, financial
37 exploitation, or neglect is created.

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

5 (2) A petition shall allege that the petitioner, or person on whose
6 behalf the petition is brought, is a vulnerable adult and that the
7 petitioner, or person on whose behalf the petition is brought, has been
8 abandoned, abused, financially exploited, or neglected, or is
9 threatened with abandonment, abuse, financial exploitation, or neglect
10 by respondent.

11 (3) A petition shall be accompanied by affidavit made under oath,
12 or a declaration signed under penalty of perjury, stating the specific
13 facts and circumstances which demonstrate the need for the relief
14 sought. If the petition is filed by an interested person, the
15 affidavit or declaration must also include a statement of why the
16 petitioner qualifies as an interested person.

17 (4) A petition for an order may be made whether or not there is a
18 pending lawsuit, complaint, petition, or other action (~~between the~~
19 ~~parties~~) pending that relates to the issues presented in the petition
20 for an order for protection.

21 (5) Within ninety days of receipt of the master copy from the
22 administrative office of the courts, all court clerk's offices shall
23 make available the standardized forms and instructions required by
24 section 4 of this act.

25 (6) Any assistance or information provided by any person,
26 including, but not limited to, court clerks, employees of the
27 department, and other court facilitators, to another to complete the
28 forms provided by the court in subsection (5) of this section does not
29 constitute the practice of law.

30 (7) A petitioner is not required to post bond to obtain relief in
31 any proceeding under this section.

32 (~~(+6+)~~) (8) An action under this section shall be filed in the
33 county where the (~~petitioner~~) vulnerable adult resides; except that
34 if the (~~petitioner~~) vulnerable adult has left or been removed from
35 the residence as a result of abandonment, abuse, financial
36 exploitation, or neglect, or in order to avoid abandonment, abuse,
37 financial exploitation, or neglect, the petitioner may bring an action

1 in the county of either the vulnerable adult's previous or new
2 residence.

3 ~~((7) The filing fee for the petition may be waived at the
4 discretion of the court.))~~

5 (9) No filing fee may be charged to the petitioner for proceedings
6 under this section. Standard forms and written instructions shall be
7 provided free of charge.

8 NEW SECTION. Sec. 4. A new section is added to chapter 74.34 RCW
9 to read as follows:

10 (1) The administrative office of the courts shall develop and
11 prepare standard petition, temporary order for protection, and
12 permanent order for protection forms, a standard notice form to provide
13 notice to the vulnerable adult if the vulnerable adult is not the
14 petitioner, instructions, and a court staff handbook on the protection
15 order process. The standard petition and order for protection forms
16 must be used after October 1, 2007, for all petitions filed and orders
17 issued under this chapter. The administrative office of the courts, in
18 preparing the instructions, forms, notice, and handbook, may consult
19 with attorneys from the elder law section of the Washington state bar
20 association, judges, the department, the Washington protection and
21 advocacy system, and law enforcement personnel.

22 (a) The instructions shall be designed to assist petitioners in
23 completing the petition, and shall include a sample of the standard
24 petition and order for protection forms.

25 (b) The order for protection form shall include, in a conspicuous
26 location, notice of criminal penalties resulting from violation of the
27 order.

28 (c) The standard notice form shall be designed to explain to the
29 vulnerable adult in clear, plain language the purpose and nature of the
30 petition and that the vulnerable adult has the right to participate in
31 the hearing and to either support or object to the petition.

32 (2) The administrative office of the courts shall distribute a
33 master copy of the standard forms, instructions, and court staff
34 handbook to all court clerks and shall distribute a master copy of the
35 standard forms to all superior, district, and municipal courts.

36 (3) The administrative office of the courts shall determine the
37 significant non-English-speaking or limited-English-speaking

1 populations in the state. The administrator shall then arrange for
2 translation of the instructions required by this section, which shall
3 contain a sample of the standard forms, into the languages spoken by
4 those significant non-English-speaking populations, and shall
5 distribute a master copy of the translated instructions to all court
6 clerks by December 31, 2007.

7 (4) The administrative office of the courts shall update the
8 instructions, standard forms, and court staff handbook when changes in
9 the law make an update necessary. The updates may be made in
10 consultation with the persons and entities specified in subsection (1)
11 of this section.

12 (5) For purposes of this section, "court clerks" means court
13 administrators in courts of limited jurisdiction and elected court
14 clerks.

15 **Sec. 5.** RCW 74.34.120 and 1986 c 187 s 6 are each amended to read
16 as follows:

17 (1) The court shall order a hearing on a petition under RCW
18 74.34.110 not later than fourteen days from the date of filing the
19 petition.

20 (2) Personal service shall be made upon the respondent not less
21 than ((five)) six court days before the hearing. When good faith
22 attempts to personally serve the respondent have been unsuccessful, the
23 court shall permit service by mail or by publication.

24 (3) When a petition under RCW 74.34.110 is filed by someone other
25 than the vulnerable adult, notice of the petition and hearing must be
26 personally served upon the vulnerable adult not less than six court
27 days before the hearing. In addition to copies of all pleadings filed
28 by the petitioner, the petitioner shall provide a written notice to the
29 vulnerable adult using the standard notice form developed under section
30 4 of this act. When good faith attempts to personally serve the
31 vulnerable adult have been unsuccessful, the court shall permit service
32 by mail, or by publication if the court determines that personal
33 service and service by mail cannot be obtained.

34 (4) If timely service under subsections (2) and (3) of this section
35 cannot be made, the court ((may set a new hearing date)) shall continue
36 the hearing date until the substitute service approved by the court has
37 been satisfied.

1 (5)(a) A petitioner may move for temporary relief under chapter
2 7.40 RCW. The court may continue any temporary order for protection
3 granted under chapter 7.40 RCW until the hearing on a petition under
4 RCW 74.34.110 is held.

5 (b) Written notice of the request for temporary relief must be
6 provided to the respondent, and to the vulnerable adult if someone
7 other than the vulnerable adult filed the petition. A temporary
8 protection order may be granted without written notice to the
9 respondent and vulnerable adult if it clearly appears from specific
10 facts shown by affidavit or declaration that immediate and irreparable
11 injury, loss, or damage would result to the vulnerable adult before the
12 respondent and vulnerable adult can be served and heard, or that show
13 the respondent and vulnerable adult cannot be served with notice, the
14 efforts made to serve them, and the reasons why prior notice should not
15 be required.

16 **Sec. 6.** RCW 74.34.130 and 2000 c 119 s 27 and 2000 c 51 s 2 are
17 each reenacted and amended to read as follows:

18 The court may order relief as it deems necessary for the protection
19 of the ((~~petitioner~~)) vulnerable adult, including, but not limited to
20 the following:

21 (1) Restraining respondent from committing acts of abandonment,
22 abuse, neglect, or financial exploitation against the vulnerable adult;

23 (2) Excluding the respondent from ((~~petitioner's~~)) the vulnerable
24 adult's residence for a specified period or until further order of the
25 court;

26 (3) Prohibiting contact with the vulnerable adult by respondent for
27 a specified period or until further order of the court;

28 (4) Prohibiting the respondent from knowingly coming within, or
29 knowingly remaining within, a specified distance from a specified
30 location;

31 (5) Requiring an accounting by respondent of the disposition of
32 ((~~petitioner's~~)) the vulnerable adult's income or other resources;

33 (6) Restraining the transfer of the respondent's and/or vulnerable
34 adult's property for a specified period not exceeding ninety days; and

35 (7) Requiring the respondent to pay ((~~the~~)) a filing fee and court
36 costs, including service fees, and to reimburse the petitioner for

1 costs incurred in bringing the action, including a reasonable
2 attorney's fee.

3 Any relief granted by an order for protection, other than a
4 judgment for costs, shall be for a fixed period not to exceed (~~one~~
5 ~~year~~) five years. The clerk of the court shall enter any order for
6 protection issued under this section into the judicial information
7 system.

8 **Sec. 7.** RCW 74.34.145 and 2000 c 119 s 2 are each amended to read
9 as follows:

10 (1) An order for protection of a vulnerable adult issued under this
11 chapter which restrains the respondent or another person from
12 committing acts of abuse, prohibits contact with the (~~petitioner~~)
13 vulnerable adult, excludes the person from any specified location, or
14 prohibits the person from coming within a specified distance from a
15 location, shall prominently bear on the front page of the order the
16 legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A
17 CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO
18 ARREST.

19 (2) Whenever an order for protection of a vulnerable adult is
20 issued under this chapter, and the respondent or person to be
21 restrained knows of the order, a violation of a provision restraining
22 the person from committing acts of abuse, prohibiting contact with the
23 (~~petitioner~~) vulnerable adult, excluding the person from any
24 specified location, or prohibiting the person from coming within a
25 specified distance of a location, shall be punishable under RCW
26 26.50.110, regardless of whether the person is a family or household
27 member as defined in RCW 26.50.010.

28 **Sec. 8.** RCW 74.34.150 and 1986 c 187 s 9 are each amended to read
29 as follows:

30 The department of social and health services, in its discretion,
31 may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and
32 with the consent of any vulnerable adult. When the department has
33 reason to believe a vulnerable adult lacks the ability or capacity to
34 consent, the department, in its discretion, may seek relief under RCW
35 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither

1 the department of social and health services nor the state of
2 Washington shall be liable for (~~failure~~) seeking or failing to seek
3 relief on behalf of any persons under this section.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.34 RCW
5 to read as follows:

6 (1) When a petition for protection under RCW 74.34.110 is filed by
7 someone other than the vulnerable adult or the vulnerable adult's full
8 guardian over either the person or the estate, or both, and the
9 vulnerable adult for whom protection is sought advises the court at the
10 hearing that he or she does not want all or part of the protection
11 sought in the petition, then the court may dismiss the petition or the
12 provisions that the vulnerable adult objects to and any protection
13 order issued under RCW 74.34.120 or 74.34.130, or the court may take
14 additional testimony or evidence, or order additional evidentiary
15 hearings to determine whether the vulnerable adult is unable, due to
16 incapacity, undue influence, or duress, to protect his or her person or
17 estate in connection with the issues raised in the petition or order.
18 If an additional evidentiary hearing is ordered and the court
19 determines that there is reason to believe that there is a genuine
20 issue about whether the vulnerable adult is unable to protect his or
21 her person or estate in connection with the issues raised in the
22 petition or order, the court may issue a temporary order for protection
23 of the vulnerable adult pending a decision after the evidentiary
24 hearing.

25 (2) An evidentiary hearing on the issue of whether the vulnerable
26 adult is unable, due to incapacity, undue influence, or duress, to
27 protect his or her person or estate in connection with the issues
28 raised in the petition or order, shall be held within fourteen days of
29 entry of the temporary order for protection under subsection (1) of
30 this section. If the court did not enter a temporary order for
31 protection, the evidentiary hearing shall be held within fourteen days
32 of the prior hearing on the petition. Notice of the time and place of
33 the evidentiary hearing shall be personally served upon the vulnerable
34 adult and the respondent not less than six court days before the
35 hearing. When good faith attempts to personally serve the vulnerable
36 adult and the respondent have been unsuccessful, the court shall permit
37 service by mail, or by publication if the court determines that

1 personal service and service by mail cannot be obtained. If timely
2 service cannot be made, the court may set a new hearing date. A
3 hearing under this subsection is not necessary if the vulnerable adult
4 has been determined to be fully incapacitated over either the person or
5 the estate, or both, under the guardianship laws, chapter 11.88 RCW.
6 If a hearing is scheduled under this subsection, the protection order
7 shall remain in effect pending the court's decision at the subsequent
8 hearing.

9 (3) At the hearing scheduled by the court, the court shall give the
10 vulnerable adult, the respondent, the petitioner, and in the court's
11 discretion other interested persons, the opportunity to testify and
12 submit relevant evidence.

13 (4) If the court determines that the vulnerable adult is capable of
14 protecting his or her person or estate in connection with the issues
15 raised in the petition, and the individual continues to object to the
16 protection order, the court shall dismiss the order or may modify the
17 order if agreed to by the vulnerable adult. If the court determines
18 that the vulnerable adult is not capable of protecting his or her
19 person or estate in connection with the issues raised in the petition
20 or order, and that the individual continues to need protection, the
21 court shall order relief consistent with RCW 74.34.130 as it deems
22 necessary for the protection of the vulnerable adult. In the entry of
23 any order that is inconsistent with the expressed wishes of the
24 vulnerable adult, the court's order shall be governed by the
25 legislative findings contained in RCW 74.34.005.

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.34 RCW
27 to read as follows:

28 Any vulnerable adult who has not been adjudicated fully
29 incapacitated under chapter 11.88 RCW, or the vulnerable adult's
30 guardian, at any time subsequent to entry of a permanent protection
31 order under this chapter, may apply to the court for an order to modify
32 or vacate the order. In a hearing on an application to dismiss or
33 modify the protection order, the court shall grant such relief
34 consistent with RCW 74.34.110 as it deems necessary for the protection
35 of the vulnerable adult, including dismissal or modification of the
36 protection order.

1 **Sec. 11.** RCW 74.34.210 and 1995 1st sp.s. c 18 s 86 are each
2 amended to read as follows:

3 A petition for an order for protection (~~((or))~~) may be brought by the
4 vulnerable adult, the vulnerable adult's guardian or legal fiduciary,
5 the department, or any interested person as defined in RCW 74.34.020.
6 An action for damages under this chapter may be brought by the
7 ((plaintiff)) vulnerable adult, or where necessary, by his or her
8 family members and/or guardian or legal fiduciary(~~(, or as otherwise~~
9 provided under this chapter)). The death of the ((plaintiff))
10 vulnerable adult shall not deprive the court of jurisdiction over a
11 petition or claim brought under this chapter. Upon petition, after the
12 death of the vulnerable ((person)) adult, the right to initiate or
13 maintain the action shall be transferred to the executor or
14 administrator of the deceased, for recovery of all damages for the
15 benefit of the ((surviving spouse, child or children, or other heirs))
16 deceased person's beneficiaries set forth in chapter 4.20 RCW or if
17 there are no beneficiaries, then for recovery of all economic losses
18 sustained by the deceased person's estate."

ESHB 1008 - S COMM AMD
By Committee on Judiciary

ADOPTED 04/11/2007

19 On page 1, line 1 of the title, after "adults;" strike the
20 remainder of the title and insert "amending RCW 74.34.020, 74.34.067,
21 74.34.110, 74.34.120, 74.34.145, 74.34.150, and 74.34.210; reenacting
22 and amending RCW 74.34.130; and adding new sections to chapter 74.34
23 RCW."

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