
SUBSTITUTE HOUSE BILL 1008

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Moeller, Lovick, Kagi, Cody, Appleton, Conway, Morrell, Kenney, Simpson, B. Sullivan, Goodman and Lantz)

READ FIRST TIME 02/15/07.

1 AN ACT Relating to the protection of vulnerable adults; amending
2 RCW 74.34.020, 74.34.110, 74.34.120, 74.34.145, 74.34.150, and
3 74.34.210; reenacting and amending RCW 74.34.130; and adding new
4 sections to chapter 74.34 RCW.

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

6 **Sec. 1.** RCW 74.34.020 and 2006 c 339 s 109 are each amended to
7 read as follows:

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

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

14 (2) "Abuse" means the willful action or inaction that inflicts
15 injury, unreasonable confinement, intimidation, or punishment on a
16 vulnerable adult. In instances of abuse of a vulnerable adult who is
17 unable to express or demonstrate physical harm, pain, or mental
18 anguish, the abuse is presumed to cause physical harm, pain, or mental

1 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,
2 and exploitation of a vulnerable adult, which have the following
3 meanings:

4 (a) "Sexual abuse" means any form of nonconsensual sexual contact,
5 including but not limited to unwanted or inappropriate touching, rape,
6 sodomy, sexual coercion, sexually explicit photographing, and sexual
7 harassment. Sexual abuse includes any sexual contact between a staff
8 person, who is not also a resident or client, of a facility or a staff
9 person of a program authorized under chapter 71A.12 RCW, and a
10 vulnerable adult living in that facility or receiving service from a
11 program authorized under chapter 71A.12 RCW, whether or not it is
12 consensual.

13 (b) "Physical abuse" means the willful action of inflicting bodily
14 injury or physical mistreatment. Physical abuse includes, but is not
15 limited to, striking with or without an object, slapping, pinching,
16 choking, kicking, shoving, prodding, or the use of chemical restraints
17 or physical restraints unless the restraints are consistent with
18 licensing requirements, and includes restraints that are otherwise
19 being used inappropriately.

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

25 (d) "Exploitation" means an act of forcing, compelling, or exerting
26 undue influence over a vulnerable adult causing the vulnerable adult to
27 act in a way that is inconsistent with relevant past behavior, or
28 causing the vulnerable adult to perform services for the benefit of
29 another.

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

34 (4) "Department" means the department of social and health
35 services.

36 (5) "Facility" means a residence licensed or required to be
37 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,

1 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36
2 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation
3 centers; or any other facility licensed by the department.

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

8 (7) "Individual provider" means a person under contract with the
9 department to provide services in the home under chapter 74.09 or
10 74.39A RCW.

11 (8) "Interested person" means a person who is interested in the
12 welfare of the vulnerable adult and who has a good faith belief that
13 the court's intervention is necessary to protect the vulnerable adult.

14 (9) "Mandated reporter" is an employee of the department; law
15 enforcement officer; social worker; professional school personnel;
16 individual provider; an employee of a facility; an operator of a
17 facility; an employee of a social service, welfare, mental health,
18 adult day health, adult day care, home health, home care, or hospice
19 agency; county coroner or medical examiner; Christian Science
20 practitioner; or health care provider subject to chapter 18.130 RCW.

21 ((+9)) (10) "Neglect" means (a) a pattern of conduct or inaction
22 by a person or entity with a duty of care that fails to provide the
23 goods and services that maintain physical or mental health of a
24 vulnerable adult, or that fails to avoid or prevent physical or mental
25 harm or pain to a vulnerable adult; or (b) an act or omission that
26 demonstrates a serious disregard of consequences of such a magnitude as
27 to constitute a clear and present danger to the vulnerable adult's
28 health, welfare, or safety, including but not limited to conduct
29 prohibited under RCW 9A.42.100.

30 ((+10)) (11) "Permissive reporter" means any person, including,
31 but not limited to, an employee of a financial institution, attorney,
32 or volunteer in a facility or program providing services for vulnerable
33 adults.

34 ((+11)) (12) "Protective services" means any services provided by
35 the department to a vulnerable adult with the consent of the vulnerable
36 adult, or the legal representative of the vulnerable adult, who has
37 been abandoned, abused, financially exploited, neglected, or in a state
38 of self-neglect. These services may include, but are not limited to

1 case management, social casework, home care, placement, arranging for
2 medical evaluations, psychological evaluations, day care, or referral
3 for legal assistance.

4 ~~((12))~~ (13) "Self-neglect" means the failure of a vulnerable
5 adult, not living in a facility, to provide for himself or herself the
6 goods and services necessary for the vulnerable adult's physical or
7 mental health, and the absence of which impairs or threatens the
8 vulnerable adult's well-being. This definition may include a
9 vulnerable adult who is receiving services through home health,
10 hospice, or a home care agency, or an individual provider when the
11 neglect is not a result of inaction by that agency or individual
12 provider.

13 ~~((13))~~ (14) "Vulnerable adult" includes a person:

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

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

17 (c) Who has a developmental disability as defined under RCW
18 71A.10.020; or

19 (d) Admitted to any facility; or

20 (e) Receiving services from home health, hospice, or home care
21 agencies licensed or required to be licensed under chapter 70.127 RCW;
22 or

23 (f) Receiving services from an individual provider.

24 **Sec. 2.** RCW 74.34.110 and 1999 c 176 s 12 are each amended to read
25 as follows:

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

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

33 (2) A petition shall allege that the petitioner, or person on whose
34 behalf the petition is brought, is a vulnerable adult and that the
35 petitioner, or person on whose behalf the petition is brought, has been
36 abandoned, abused, financially exploited, or neglected, or is

1 threatened with abandonment, abuse, financial exploitation, or neglect
2 by respondent.

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

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

13 (5) Within ninety days of receipt of the master copy from the
14 administrative office of the courts, all court clerk's offices shall
15 make available the standardized forms and instructions required by
16 section 3 of this act.

17 (6) Any assistance or information provided by any person,
18 including, but not limited to, court clerks, employees of the
19 department, and other court facilitators, to another to complete the
20 forms provided by the court in subsection (5) of this section does not
21 constitute the practice of law.

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

24 ~~((6))~~ (8) An action under this section shall be filed in the
25 county where the (~~petitioner~~) vulnerable adult resides; except that
26 if the (~~petitioner~~) vulnerable adult has left or been removed from
27 the residence as a result of abandonment, abuse, financial
28 exploitation, or neglect, or in order to avoid abandonment, abuse,
29 financial exploitation, or neglect, the petitioner may bring an action
30 in the county of either the vulnerable adult's previous or new
31 residence.

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.34 RCW
2 to read as follows:

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

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

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

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

25 (2) The administrative office of the courts shall distribute a
26 master copy of the standard forms, instructions, and court staff
27 handbook to all court clerks and shall distribute a master copy of the
28 standard forms to all superior, district, and municipal courts.

29 (3) The administrative office of the courts shall determine the
30 significant non-English-speaking or limited-English-speaking
31 populations in the state. The administrator shall then arrange for
32 translation of the instructions required by this section, which shall
33 contain a sample of the standard forms, into the languages spoken by
34 those significant non-English-speaking populations, and shall
35 distribute a master copy of the translated instructions to all court
36 clerks by September 1, 2007.

37 (4) The administrative office of the courts shall update the
38 instructions, standard forms, and court staff handbook when changes in

1 the law make an update necessary. The updates may be made in
2 consultation with the persons and entities specified in subsection (1)
3 of this section.

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

7 **Sec. 4.** RCW 74.34.120 and 1986 c 187 s 6 are each amended to read
8 as follows:

9 (1) The court shall order a hearing on a petition under RCW
10 74.34.110 not later than fourteen days from the date of filing the
11 petition.

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

16 (3) When a petition under RCW 74.34.110 is filed by someone other
17 than the vulnerable adult, notice of the petition and hearing must be
18 personally served upon the vulnerable adult not less than six court
19 days before the hearing. In addition to copies of all pleadings filed
20 by the petitioner, the petitioner shall provide a written notice to the
21 vulnerable adult using the standard notice form developed under section
22 3 of this act. When good faith attempts to personally serve the
23 vulnerable adult have been unsuccessful, the court shall permit service
24 by mail, or by publication if the court determines that personal
25 service and service by mail cannot be obtained.

26 (4) If timely service under subsections (2) and (3) of this section
27 cannot be made, the court ~~((may set a new hearing date))~~ shall continue
28 the hearing date until the substitute service approved by the court has
29 been satisfied. The court may continue any temporary order for
30 protection until the hearing is held. A petitioner may also move for
31 temporary relief under chapter 7.40 RCW.

32 **Sec. 5.** RCW 74.34.130 and 2000 c 119 s 27 and 2000 c 51 s 2 are
33 each reenacted and amended to read as follows:

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

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

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

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

8 (4) Prohibiting the respondent from knowingly coming within, or
9 knowingly remaining within, a specified distance from a specified
10 location;

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

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

15 (7) Requiring the respondent to pay ((~~the~~)) a filing fee and court
16 costs, including service fees, and to reimburse the petitioner for
17 costs incurred in bringing the action, including a reasonable
18 attorney's fee.

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

24 **Sec. 6.** RCW 74.34.145 and 2000 c 119 s 2 are each amended to read
25 as follows:

26 (1) An order for protection of a vulnerable adult issued under this
27 chapter which restrains the respondent or another person from
28 committing acts of abuse, prohibits contact with the ((~~petitioner~~))
29 vulnerable adult, excludes the person from any specified location, or
30 prohibits the person from coming within a specified distance from a
31 location, shall prominently bear on the front page of the order the
32 legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A
33 CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO
34 ARREST.

35 (2) Whenever an order for protection of a vulnerable adult is
36 issued under this chapter, and the respondent or person to be
37 restrained knows of the order, a violation of a provision restraining

1 the person from committing acts of abuse, prohibiting contact with the
2 ((petitioner)) vulnerable adult, excluding the person from any
3 specified location, or prohibiting the person from coming within a
4 specified distance of a location, shall be punishable under RCW
5 26.50.110, regardless of whether the person is a family or household
6 member as defined in RCW 26.50.010.

7 **Sec. 7.** RCW 74.34.150 and 1986 c 187 s 9 are each amended to read
8 as follows:

9 The department of social and health services, in its discretion,
10 may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and
11 with the consent of any vulnerable adult. When the department has
12 reason to believe a vulnerable adult lacks the ability or capacity to
13 consent, the department, in its discretion, may seek relief under RCW
14 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither
15 the department of social and health services nor the state of
16 Washington shall be liable for ((failure)) seeking or failing to seek
17 relief on behalf of any persons under this section.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.34 RCW
19 to read as follows:

20 (1) When a petition for protection under RCW 74.34.110 is filed by
21 someone other than the vulnerable adult or the vulnerable adult's
22 guardian, and the vulnerable adult for whom protection is sought
23 advises the court at the hearing that he or she does not want all or
24 part of the protection sought in the petition, then the court may
25 dismiss the petition or the provisions that the vulnerable adult
26 objects to and any protection order issued under RCW 74.34.120 or
27 74.34.130, or the court may take additional testimony or evidence, or
28 order additional hearings to determine whether the vulnerable adult is
29 unable, due to incapacity, undue influence, or other factors found by
30 the court, to protect his or her person or estate in connection with
31 the issues raised in the petition or order.

32 (2) If the court issues a protection order over the objection of
33 the vulnerable adult, and is not able to make an adequate determination
34 regarding whether the vulnerable adult is unable, due to incapacity,
35 undue influence, or other factors found by the court, to protect his or
36 her person or estate in connection with the issues raised in the

1 petition or order, based on the evidence and testimony offered at the
2 hearing, then the court shall schedule a separate evidentiary hearing
3 on this issue and on any other issue the court may order. The hearing
4 shall be held within fourteen days of entry of the order. Notice of
5 the time and place of the evidentiary hearing shall be personally
6 served upon the vulnerable adult and the respondent not less than six
7 court days before the hearing. When good faith attempts to personally
8 serve the vulnerable adult and the respondent have been unsuccessful,
9 the court shall permit service by mail, or by publication if the court
10 determines that personal service and service by mail cannot be
11 obtained. If timely service cannot be made, the court may set a new
12 hearing date. A hearing under this subsection is not necessary if the
13 vulnerable adult has been determined to be incapacitated under the
14 guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under
15 this subsection, the protection order shall remain in effect pending
16 the court's decision at the subsequent hearing.

17 (3) At the hearing scheduled by the court, the court shall give the
18 vulnerable adult, the respondent, the petitioner, and in the court's
19 discretion other interested persons, the opportunity to testify and
20 submit relevant evidence.

21 (4) If the court determines that the vulnerable adult is capable of
22 protecting his or her person or estate in connection with the issues
23 raised in the petition, and the individual continues to object to the
24 protection order, the court shall dismiss the order or may modify the
25 order if agreed to by the vulnerable adult, or the court may enter any
26 other orders as are proper or necessary in the court's discretion. If
27 the court determines that the vulnerable adult is not capable of
28 protecting his or her person or estate in connection with the issues
29 raised in the petition or order, and that the individual continues to
30 need protection, the court shall order relief consistent with RCW
31 74.34.130 as it deems necessary for the protection of the vulnerable
32 adult. In the entry of any order that is inconsistent with the
33 expressed wishes of the vulnerable adult, the court's order shall be
34 governed by the legislative findings contained in RCW 74.34.005.

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

37 Any vulnerable adult who has not been adjudicated incapacitated

1 under chapter 11.88 RCW, or the vulnerable adult's guardian, at any
2 time subsequent to entry of a permanent protection order under this
3 chapter, may apply to the court for an order to modify or vacate the
4 order. In a hearing on an application to dismiss or modify the
5 protection order, the court shall grant such relief consistent with RCW
6 74.34.110 as it deems necessary for the protection of the vulnerable
7 adult, including dismissal or modification of the protection order.

8 **Sec. 10.** RCW 74.34.210 and 1995 1st sp.s. c 18 s 86 are each
9 amended to read as follows:

10 A petition for an order for protection (~~(or)~~) may be brought by the
11 vulnerable adult, the vulnerable adult's guardian or legal fiduciary,
12 the department, or any interested person as defined in RCW 74.34.020.
13 An action for damages under this chapter may be brought by the
14 (~~plaintiff~~) vulnerable adult, or where necessary, by his or her
15 family members and/or guardian or legal fiduciary(~~, or as otherwise~~
16 provided under this chapter)). The death of the (~~plaintiff~~)
17 vulnerable adult shall not deprive the court of jurisdiction over a
18 petition or claim brought under this chapter. Upon petition, after the
19 death of the vulnerable (~~person~~) adult, the right to initiate or
20 maintain the action shall be transferred to the executor or
21 administrator of the deceased, for the benefit of the surviving spouse,
22 child or children, or other heirs set forth in chapter 4.20 RCW.

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