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SENATE BILL 6323

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State of Washington

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By Senators Swecker and Stevens

Read first time 01/12/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to providing protection for vulnerable adults when  
2 domestic violence temporary ex parte protection orders are requested  
3 and issued; and amending RCW 26.50.070 and 74.34.020.

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

5 **Sec. 1.** RCW 26.50.070 and 2000 c 119 s 16 are each amended to read  
6 as follows:

7 (1) Where an application under this section alleges that  
8 irreparable injury could result from domestic violence if an order is  
9 not issued immediately without prior notice to the respondent, the  
10 court may grant an ex parte temporary order for protection, pending a  
11 full hearing, and grant relief as the court deems proper, including an  
12 order:

13 (a) Restraining any party from committing acts of domestic  
14 violence;

15 (b) Restraining any party from going onto the grounds of or  
16 entering the dwelling that the parties share, from the residence,  
17 workplace, or school of the other, or from the day care or school of a  
18 child until further order of the court;

1 (c) Prohibiting any party from knowingly coming within, or  
2 knowingly remaining within, a specified distance from a specified  
3 location;

4 (d) Restraining any party from interfering with the other's custody  
5 of the minor children or from removing the children from the  
6 jurisdiction of the court;

7 (e) Restraining any party from having any contact with the victim  
8 of domestic violence or the victim's children or members of the  
9 victim's household; and

10 (f) Considering the provisions of RCW 9.41.800.

11 (2) Irreparable injury under this section includes but is not  
12 limited to situations in which the respondent has recently threatened  
13 petitioner with bodily injury or has engaged in acts of domestic  
14 violence against the petitioner.

15 (3) The court shall hold an ex parte hearing in person or by  
16 telephone on the day the petition is filed or on the following judicial  
17 day.

18 (4) An ex parte temporary order for protection shall be effective  
19 for a fixed period not to exceed fourteen days or twenty-four days if  
20 the court has permitted service by publication under RCW 26.50.085 or  
21 by mail under RCW 26.50.123. The ex parte order may be reissued. A  
22 full hearing, as provided in this chapter, shall be set for not later  
23 than fourteen days from the issuance of the temporary order or not  
24 later than twenty-four days if service by publication or by mail is  
25 permitted. Except as provided in RCW 26.50.050, 26.50.085, and  
26 26.50.123, the respondent shall be personally served with a copy of the  
27 ex parte order along with a copy of the petition and notice of the date  
28 set for the hearing.

29 (5) Any order issued under this section shall contain the date and  
30 time of issuance and the expiration date and shall be entered into a  
31 statewide judicial information system by the clerk of the court within  
32 one judicial day after issuance.

33 (6) If the court declines to issue an ex parte temporary order for  
34 protection the court shall state the particular reasons for the court's  
35 denial. The court's denial of a motion for an ex parte order of  
36 protection shall be filed with the court.

37 (7) Before the court issues an ex parte temporary protection order,  
38 the court shall determine from the petitioner's sworn testimony whether

1 the respondent is a vulnerable adult as provided in RCW 74.34.020. If  
2 the respondent is a vulnerable adult who resides with the petitioner,  
3 the court shall inquire and the petitioner shall provide to the court  
4 known information, regarding the nature and extent of the respondent's  
5 condition, the respondent's ability to find suitable care, and any  
6 reasonable accommodations that may be made to prevent harm to the  
7 vulnerable adult as a result of the service or enforcement of the  
8 order.

9       **Sec. 2.** RCW 74.34.020 and 2007 c 312 s 1 are each amended to read  
10 as follows:

11       Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

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

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

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

34       (b) "Physical abuse" means the willful action of inflicting bodily  
35 injury or physical mistreatment. Physical abuse includes, but is not  
36 limited to, striking with or without an object, slapping, pinching,  
37 choking, kicking, shoving, prodding, or the use of chemical restraints

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

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

9 (d) "Exploitation" means an act of forcing, compelling, or exerting  
10 undue influence over a vulnerable adult causing the vulnerable adult to  
11 act in a way that is inconsistent with relevant past behavior, or  
12 causing the vulnerable adult to perform services for the benefit of  
13 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 RCW,  
22 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36  
23 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation  
24 centers; or any other facility licensed by the department.

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

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

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

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

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

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

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

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

3 (15) "Vulnerable adult" includes a person:

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

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

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

9 (d) Admitted to any facility; or

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

12 (~~(e)~~)

13 (f) Receiving services from an individual provider; or

14 (g) Who is an individual with a brain injury whether the injury is  
15 traumatic or acquired, including, but not limited to, injuries from  
16 accident, aneurysm, assault, blast, concussion, epidural and subdural  
17 hematoma, fall, post traumatic stress disorder, and stroke.

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