
Judiciary Committee

HB 2343

Title: An act relating to defining willful in chapter 74.34 RCW regarding abuse of vulnerable adults.

Brief Description: Defining "willful" in the chapter regarding abuse of vulnerable adults.

Sponsors: Representatives Valdez, Harris, Jinkins, Tharinger, Muri, Goodman, Pellicciotti, Reeves, Macri, Appleton and Doglio; by request of Department of Social and Health Services.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Defining "willful" as it relates to the abuse of vulnerable adults as a deliberate action, regardless of whether injury or harm is intended.
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Hearing Date: 1/9/18

Staff: Ingrid Lewis (786-7289).

Background:

State law provides protections for vulnerable adults, including authorizing the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, self-neglect, or neglect of vulnerable adults.

Individuals found to have abused a vulnerable adult are prohibited from being employed in the care of vulnerable adults. In addition, a vulnerable adult, interested person on behalf of a vulnerable adult, or the DSHS may file a petition for an order for protection of a vulnerable adult who has been abandoned, abused, financially exploited, neglected, or is threatened with such.

"Vulnerable adult" means: (1) a person 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; (2) a person who is found incapacitated under the guardianship laws; (3) a person who has a developmental disability; (4) a person who is

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admitted to a facility; (5) a person who is receiving services from home health, hospice, or home care agencies licensed or required to be licensed; (6) a person who is receiving services from certain individual providers; or (7) a person who self-directs his or her own care and receives services from a personal aide.

"Abuse," as it pertains to the mistreatment of vulnerable adults, is defined as willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult.

"Mental abuse" is defined as willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

"Physical abuse" is defined as the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

"Willful" is not defined in the statute relating to vulnerable adults. Washington courts have defined an action as "willful" if a person acts knowingly with respect to the material elements of an offense. Under the common law definition, an alleged perpetrator of abuse must knowingly inflict injury, unreasonable confinement, intimidation, or punishment. Relevant administrative code recently defined "willful" as a nonaccidental action or inaction by an alleged perpetrator who knew or reasonably should have known could cause harm, injury, or a negative outcome. In a recent Division Three Court of Appeals (Court) decision, *Crosswhite v. DSHS*, 197 Wn. App. 539, the Court held that the administrative rule exceeded the scope of legislative intent and invalidated the definition. Lastly, as it relates to abuse, the Code of Federal Regulations governing long term care facilities, which includes nursing facilities, defines "willful" as the deliberate actions of an individual regardless of whether the individual intended to inflict harm or injury.

Summary of Bill:

"Willful" is defined as the deliberate inflicting of injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult, regardless of whether the intent was to harm or injure.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.