

SENATE BILL REPORT

HB 2343

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2018

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.

Brief History: Passed House: 2/07/18, 98-0.

Committee Activity: Human Services & Corrections: 2/21/18, 2/23/18 [DPA].

Brief Summary of Amended Bill

- Defines willful, in the abuse of vulnerable adult statutes, as a deliberate action, regardless of intent to inflict injury or harm.
- Clarifies that inadvertent medication error does not constitute abuse, and physical action taken to protect a vulnerable adult from imminent risk of serious harm does not constitute physical abuse.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

Staff: Keri Waterland (786-7490)

Background: State law authorizes 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 guilty of abuse of a vulnerable adult are prohibited from being a licensed caregiver for vulnerable adults.

Vulnerable adult means an individual who meets one of the following criteria:

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- is 60 years of age or older and has the functional, mental, or physical inability to care for themselves;
- is found incapacitated;
- has a developmental disability;
- is admitted to any facility;
- is receiving services from home health, hospice, or home care agencies licensed or required to be licensed;
- is receiving services from an individual provider; or
- self-directs their own care and receives services from a personal aide.

Abuse means willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances where a vulnerable adult is abused who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult, terms which are defined in statute.

Willful is not defined in statute, relating to the abuse of vulnerable adults. The Washington Administrative Code (WAC), until 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. A recent Division Three Court of Appeals decision in *Crosswhite v. DSHS, 197 Wn. App. 539*, held that the WAC definition of willful exceeded the scope of legislative intent. The court invalidated the definition. The Code of Federal Regulations (CFR) 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, as it relates to abuse.

Summary of Amended Bill: Willful is defined, relating to the abuse, neglect, abandonment, financial exploitation, or self-neglect of vulnerable adults, as a deliberate act, not an intent to inflict injury or harm. Inadvertent medication error does not constitute abuse, and physical action taken to protect a vulnerable adult from imminent risk of serious harm does not constitute physical abuse.

EFFECT OF HUMAN SERVICES & CORRECTIONS COMMITTEE AMENDMENT (S): Clarifies that certain actions do not constitute abuse.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Findings are being overturned

because people say it was not their intent to harm the vulnerable adult, which leads to vulnerable adults continuing to be victimized. This language matches the federal definition. Willing to work to see if there are changes that can be made for clarity. Examples of accidents and errors would be screened out by APS.

OTHER: Unintended consequences because of the language in the bill. It removes consideration of intent and removes consideration of context. This may mean unjust consequences to the vulnerable adults because they may lose their care giver because language is unclear and discretionary. Two concerns: not sure if this bill is necessary, and the federal definition is not consistent with the legal definition. This is not descriptive enough to guard against unintended consequences, and there should be some work done on the language.

Persons Testifying: PRO: Representative Javier Valdez, Prime Sponsor; Bea Rector, Aging and Long Term Support Administration, DSHS.

OTHER: Steve Lindstrom, Washington Association of Professional Guardians; Alberto Casas, Northwest Justice Project.

Persons Signed In To Testify But Not Testifying: No one.