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**SENATE BILL 5115**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Hunt and C. Wilson

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1 AN ACT Relating to clarifying what constitutes mental abuse of  
2 vulnerable adults; and amending RCW 74.34.020.

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

4 **Sec. 1.** RCW 74.34.020 and 2021 c 215 s 162 are each amended to  
5 read as follows:

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

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

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

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

11 (b) "Physical abuse" means the intentional, willful, or reckless  
12 action of inflicting bodily injury or physical mistreatment. Physical  
13 abuse includes, but is not limited to, striking with or without an  
14 object, slapping, pinching, choking, kicking, shoving, or prodding.

15 (c) "Mental abuse" means an intentional, willful, or reckless  
16 verbal or nonverbal action that threatens, humiliates, harasses,  
17 coerces, intimidates, isolates, unreasonably confines, or punishes a  
18 vulnerable adult. Mental abuse may include ridiculing, yelling,  
19 ((~~o~~)) swearing, or an action by an agent under power of attorney to  
20 unreasonably confine a vulnerable adult to a care facility.

21 (d) "Personal exploitation" means an act of forcing, compelling,  
22 or exerting undue influence over a vulnerable adult causing the  
23 vulnerable adult to act in a way that is inconsistent with relevant  
24 past behavior, or causing the vulnerable adult to perform services  
25 for the benefit of another.

26 (e) "Improper use of restraint" means the inappropriate use of  
27 chemical, physical, or mechanical restraints for convenience or  
28 discipline or in a manner that: (i) Is inconsistent with federal or  
29 state licensing or certification requirements for facilities,  
30 hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is  
31 not medically authorized; or (iii) otherwise constitutes abuse under  
32 this section.

33 (3) "Chemical restraint" means the administration of any drug to  
34 manage a vulnerable adult's behavior in a way that reduces the safety  
35 risk to the vulnerable adult or others, has the temporary effect of  
36 restricting the vulnerable adult's freedom of movement, and is not  
37 standard treatment for the vulnerable adult's medical or psychiatric  
38 condition.

39 (4) "Consent" means express written consent granted after the  
40 vulnerable adult or his or her legal representative has been fully

1 informed of the nature of the services to be offered and that the  
2 receipt of services is voluntary.

3 (5) "Department" means the department of social and health  
4 services.

5 (6) "Facility" means a residence licensed or required to be  
6 licensed under chapter 18.20 RCW, assisted living facilities; chapter  
7 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;  
8 chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential  
9 habilitation centers; or any other facility licensed or certified by  
10 the department.

11 (7) "Financial exploitation" means the illegal or improper use,  
12 control over, or withholding of the property, income, resources, or  
13 trust funds of the vulnerable adult by any person or entity for any  
14 person's or entity's profit or advantage other than for the  
15 vulnerable adult's profit or advantage. "Financial exploitation"  
16 includes, but is not limited to:

17 (a) The use of deception, intimidation, or undue influence by a  
18 person or entity in a position of trust and confidence with a  
19 vulnerable adult to obtain or use the property, income, resources, or  
20 trust funds of the vulnerable adult for the benefit of a person or  
21 entity other than the vulnerable adult;

22 (b) The breach of a fiduciary duty, including, but not limited  
23 to, the misuse of a power of attorney, trust, or a guardianship  
24 appointment, that results in the unauthorized appropriation, sale, or  
25 transfer of the property, income, resources, or trust funds of the  
26 vulnerable adult for the benefit of a person or entity other than the  
27 vulnerable adult; or

28 (c) Obtaining or using a vulnerable adult's property, income,  
29 resources, or trust funds without lawful authority, by a person or  
30 entity who knows or clearly should know that the vulnerable adult  
31 lacks the capacity to consent to the release or use of his or her  
32 property, income, resources, or trust funds.

33 (8) "Financial institution" has the same meaning as in RCW  
34 30A.22.040 and 30A.22.041. For purposes of this chapter only,  
35 "financial institution" also means a "broker-dealer" or "investment  
36 adviser" as defined in RCW 21.20.005.

37 (9) "Hospital" means a facility licensed under chapter 70.41 or  
38 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any  
39 employee, agent, officer, director, or independent contractor  
40 thereof.

1 (10) "Individual provider" means a person under contract with the  
2 department to provide services in the home under chapter 74.09 or  
3 74.39A RCW.

4 (11) "Interested person" means a person who demonstrates to the  
5 court's satisfaction that the person is interested in the welfare of  
6 the vulnerable adult, that the person has a good faith belief that  
7 the court's intervention is necessary, and that the vulnerable adult  
8 is unable, due to incapacity, undue influence, or duress at the time  
9 the petition is filed, to protect his or her own interests.

10 (12)(a) "Isolate" or "isolation" means to restrict a vulnerable  
11 adult's ability to communicate, visit, interact, or otherwise  
12 associate with persons of his or her choosing. Isolation may be  
13 evidenced by acts including but not limited to:

14 (i) Acts that prevent a vulnerable adult from sending, making, or  
15 receiving his or her personal mail, electronic communications, or  
16 telephone calls; or

17 (ii) Acts that prevent or obstruct the vulnerable adult from  
18 meeting with others, such as telling a prospective visitor or caller  
19 that a vulnerable adult is not present, or does not wish contact,  
20 where the statement is contrary to the express wishes of the  
21 vulnerable adult.

22 (b) The term "isolate" or "isolation" may not be construed in a  
23 manner that prevents a guardian or limited guardian from performing  
24 his or her fiduciary obligations under chapter 11.130 RCW or prevents  
25 a hospital or facility from providing treatment consistent with the  
26 standard of care for delivery of health services.

27 (13) "Mandated reporter" is an employee of the department; law  
28 enforcement officer; social worker; professional school personnel;  
29 individual provider; an employee of a facility; an operator of a  
30 facility; an employee of a social service, welfare, mental health,  
31 adult day health, adult day care, home health, home care, or hospice  
32 agency; county coroner or medical examiner; Christian Science  
33 practitioner; or health care provider subject to chapter 18.130 RCW.

34 (14) "Mechanical restraint" means any device attached or adjacent  
35 to the vulnerable adult's body that he or she cannot easily remove  
36 that restricts freedom of movement or normal access to his or her  
37 body. "Mechanical restraint" does not include the use of devices,  
38 materials, or equipment that are (a) medically authorized, as  
39 required, and (b) used in a manner that is consistent with federal or

1 state licensing or certification requirements for facilities,  
2 hospitals, or programs authorized under chapter 71A.12 RCW.

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

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

16 (17) "Physical restraint" means the application of physical force  
17 without the use of any device, for the purpose of restraining the  
18 free movement of a vulnerable adult's body. "Physical restraint" does  
19 not include (a) briefly holding without undue force a vulnerable  
20 adult in order to calm or comfort him or her, or (b) holding a  
21 vulnerable adult's hand to safely escort him or her from one area to  
22 another.

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

31 (19) "Self-neglect" means the failure of a vulnerable adult, not  
32 living in a facility, to provide for himself or herself the goods and  
33 services necessary for the vulnerable adult's physical or mental  
34 health, and the absence of which impairs or threatens the vulnerable  
35 adult's well-being. This definition may include a vulnerable adult  
36 who is receiving services through home health, hospice, or a home  
37 care agency, or an individual provider when the neglect is not a  
38 result of inaction by that agency or individual provider.

39 (20) "Social worker" means:

40 (a) A social worker as defined in RCW 18.320.010(2); or

1 (b) Anyone engaged in a professional capacity during the regular  
2 course of employment in encouraging or promoting the health, welfare,  
3 support, or education of vulnerable adults, or providing social  
4 services to vulnerable adults, whether in an individual capacity or  
5 as an employee or agent of any public or private organization or  
6 institution.

7 (21) "Vulnerable adult" includes a person:

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

10 (b) Subject to a guardianship under RCW 11.130.265 or adult  
11 subject to conservatorship under RCW 11.130.360; or

12 (c) Who has a developmental disability as defined under RCW  
13 71A.10.020; or

14 (d) Admitted to any facility; or

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

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

19 (g) Who self-directs his or her own care and receives services  
20 from a personal aide under chapter 74.39 RCW.

21 (22) "Vulnerable adult advocacy team" means a team of three or  
22 more persons who coordinate a multidisciplinary process, in  
23 compliance with chapter 266, Laws of 2017 and the protocol governed  
24 by RCW 74.34.320, for preventing, identifying, investigating,  
25 prosecuting, and providing services related to abuse, neglect, or  
26 financial exploitation of vulnerable adults.

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