

CERTIFICATION OF ENROLLMENT

SENATE BILL 5370

68th Legislature
2023 Regular Session

Passed by the Senate February 28,
2023

Yeas 47 Nays 0

President of the Senate

Passed by the House March 24, 2023

Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5370** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5370

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senators Wagoner, Dhingra, Van De Wege, and C. Wilson; by request of Department of Social and Health Services

Read first time 01/13/23. Referred to Committee on Human Services.

1 AN ACT Relating to adult protective services; and amending RCW
2 74.34.020, 74.34.063, 74.34.095, and 68.50.105.

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, or
19 swearing.

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

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

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

38 (4) "Consent" means express written consent granted after the
39 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~~
2 ~~the department to provide services in the home under chapter 74.09 or~~
3 ~~74.39A RCW~~) has the same meaning as in RCW 74.39A.240.

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 or the
28 department of children, youth, and families; law enforcement officer;
29 social worker; professional school personnel; individual provider;
30 (~~an employee of a facility;~~) an operator of a facility or a
31 certified residential services and supports agency under chapter
32 71A.12 RCW; an employee of a facility; an employee of a social
33 service, welfare, mental health, adult day health, adult day care,
34 home health, home care, (~~or~~) hospice, or certified residential
35 services and supports agency; county coroner or medical examiner;
36 Christian Science practitioner; or health care provider subject to
37 chapter 18.130 RCW.

38 (14) "Mechanical restraint" means any device attached or adjacent
39 to the vulnerable adult's body that he or she cannot easily remove
40 that restricts freedom of movement or normal access to his or her

1 body. "Mechanical restraint" does not include the use of devices,
2 materials, or equipment that are (a) medically authorized, as
3 required, and (b) used in a manner that is consistent with federal or
4 state licensing or certification requirements for facilities,
5 hospitals, or programs authorized under chapter 71A.12 RCW.

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

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

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

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

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

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

3 (20) "Social worker" means:

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

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

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

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

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

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

18 (d) Admitted to any facility; or

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

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

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

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

31 **Sec. 2.** RCW 74.34.063 and 2017 3rd sp.s. c 6 s 818 are each
32 amended to read as follows:

33 (1) The department shall initiate a response to a report, no
34 later than twenty-four hours after knowledge of the report, of
35 suspected abandonment, abuse, financial exploitation, neglect, or
36 self-neglect of a vulnerable adult.

37 (2) When the initial report or investigation by the department
38 indicates that the alleged abandonment, abuse, financial
39 exploitation, or neglect may be criminal, the department shall make

1 an immediate report to the appropriate law enforcement agency. The
2 department and law enforcement will coordinate in investigating
3 reports made under this chapter. The department may provide
4 protective services and other remedies as specified in this chapter.

5 (3) The law enforcement agency or the department shall report the
6 incident in writing to the proper county prosecutor or city attorney
7 for appropriate action whenever the investigation reveals that a
8 crime may have been committed.

9 (4) ~~((The))~~ Upon request, the department and law enforcement
10 ~~((may))~~ shall share information contained in reports and findings of
11 abandonment, abuse, financial exploitation, and neglect of vulnerable
12 adults with each other, consistent with RCW 74.04.060, chapter 42.56
13 RCW, and other applicable confidentiality laws.

14 (5) Unless prohibited by federal law, the department of social
15 and health services may share with the department of children, youth,
16 and families information contained in reports and findings of
17 abandonment, abuse, financial exploitation, and neglect of vulnerable
18 adults.

19 (6) The department shall notify the proper licensing authority
20 concerning any report received under this chapter that alleges that a
21 person who is professionally licensed, certified, or registered under
22 Title 18 RCW has abandoned, abused, financially exploited, or
23 neglected a vulnerable adult.

24 **Sec. 3.** RCW 74.34.095 and 2013 c 23 s 218 are each amended to
25 read as follows:

26 (1) The following information is confidential and not subject to
27 disclosure, except as provided in this section:

28 (a) A report of abandonment, abuse, financial exploitation, or
29 neglect made under this chapter;

30 (b) The identity of the person making the report; and

31 (c) All files, reports, records, communications, and working
32 papers used or developed in the investigation or provision of
33 protective services.

34 (2) Information considered confidential may be disclosed only for
35 a purpose consistent with this chapter or as authorized by chapter
36 18.20, 18.51, or 74.39A RCW, ~~((or as authorized by))~~ the long-term
37 care ombuds programs under federal law or state law, chapter 43.190
38 RCW, or the office of the developmental disabilities ombuds program
39 under chapter 43.382 RCW.

1 (3) A court or presiding officer in an administrative proceeding
2 may order disclosure of confidential information only if the court,
3 or presiding officer in an administrative proceeding, determines that
4 disclosure is essential to the administration of justice and will not
5 endanger the life or safety of the vulnerable adult or individual who
6 made the report. The court or presiding officer in an administrative
7 hearing may place restrictions on such disclosure as the court or
8 presiding officer deems proper.

9 (4) (a) Except as provided in (b) of this subsection, upon a
10 request for information regarding a specifically named vulnerable
11 adult, the department may disclose only the following information:

12 (i) Whether or not a report was received;

13 (ii) The status of the report; and

14 (iii) The outcome of an investigation.

15 (b) The department may not disclose any information regarding a
16 specifically named vulnerable adult if any of the following
17 circumstances apply:

18 (i) The information concerns a vulnerable adult residing in or
19 receiving services from a department licensed or certified facility
20 or provider where an unannounced investigation in response to the
21 report has not been initiated;

22 (ii) The requester is the alleged perpetrator;

23 (iii) The department has a reasonable belief that disclosure may
24 compromise any investigation by a law enforcement agency,
25 disciplinary authority, the department, or the department of
26 children, youth, and families; or

27 (iv) The department has a reasonable belief that the information
28 may endanger any person.

29 **Sec. 4.** RCW 68.50.105 and 2019 c 470 s 14 are each amended to
30 read as follows:

31 (1) Reports and records of autopsies or postmortems shall be
32 confidential, except that the following persons may examine and
33 obtain copies of any such report or record: The personal
34 representative of the decedent as defined in RCW 11.02.005, any
35 family member, the attending physician or advanced registered nurse
36 practitioner, the prosecuting attorney or law enforcement agencies
37 having jurisdiction, public health officials, the department of labor
38 and industries in cases in which it has an interest under RCW
39 68.50.103, ((~~or~~)) the secretary of the department of children, youth,

1 and families or his or her designee in cases being reviewed under RCW
2 74.13.640, or the secretary of the department of social and health
3 services or his or her designee under chapter 74.34 RCW.

4 (2) (a) Notwithstanding the restrictions contained in this section
5 regarding the dissemination of records and reports of autopsies or
6 postmortems, nor the exemptions referenced under RCW 42.56.240(1),
7 nothing in this chapter prohibits a coroner, medical examiner, or his
8 or her designee, from publicly discussing his or her findings as to
9 any death subject to the jurisdiction of his or her office where
10 actions of a law enforcement officer or corrections officer have been
11 determined to be a proximate cause of the death, except as provided
12 in (b) of this subsection.

13 (b) A coroner, medical examiner, or his or her designee may not
14 publicly discuss his or her findings outside of formal court or
15 inquest proceedings if there is a pending or active criminal
16 investigation, or a criminal or civil action, concerning a death that
17 has commenced prior to January 1, 2014.

18 (3) The coroner, the medical examiner, or the attending physician
19 shall, upon request, meet with the family of the decedent to discuss
20 the findings of the autopsy or postmortem. For the purposes of this
21 section, the term "family" means the surviving spouse, state
22 registered domestic partner, or any child, parent, grandparent,
23 grandchild, brother, or sister of the decedent, or any person who was
24 guardian of the decedent at the time of death.

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