
SENATE BILL 5338

State of Washington

66th Legislature

2019 Regular Session

By Senators Darneille, Rivers, Conway, Keiser, and Van De Wege; by request of Department of Social and Health Services

1 AN ACT Relating to the protection of vulnerable adults; amending
2 RCW 74.34.020, 74.34.063, 74.34.095, 74.34.300, 74.39A.056,
3 13.50.010, and 68.50.105; and adding a new section to chapter 74.34
4 RCW.

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

6 **Sec. 1.** RCW 74.34.020 and 2018 c 201 s 9016 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

14 (2) "Abuse" means (~~the willful~~) an action or inaction that
15 inflicts injury, unreasonable confinement, intimidation, or
16 punishment on a vulnerable adult. An action or inaction is abusive if
17 the individual's conduct was intentional or reckless; or if the
18 individual knew or reasonably should have known that his or her
19 conduct was likely to cause injury, unreasonable confinement,
20 intimidation, or punishment. In instances of abuse of a vulnerable
21 adult who is unable to express or demonstrate physical harm, pain, or

1 mental anguish, the abuse is presumed to cause physical harm, pain,
2 or mental anguish. Abuse includes sexual abuse, mental abuse,
3 physical abuse, and personal exploitation of a vulnerable adult, and
4 improper use of restraint against a vulnerable adult which have the
5 following meanings:

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

15 (b) "Physical abuse" means the (~~willful~~) action of inflicting
16 bodily injury or physical mistreatment. Physical abuse includes, but
17 is not limited to, striking with or without an object, slapping,
18 pinching, choking, kicking, shoving, or prodding.

19 (c) "Mental abuse" means a (~~willful~~) verbal or nonverbal action
20 that threatens, humiliates, harasses, coerces, intimidates, isolates,
21 unreasonably confines, or punishes a vulnerable adult. Mental abuse
22 may include ridiculing, yelling, or swearing.

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

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

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

1 (4) "Consent" means express written consent granted after the
2 vulnerable adult or his or her legal representative has been fully
3 informed of the nature of the services to be offered and that the
4 receipt of services is voluntary.

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

7 (6) "Facility" means a residence licensed or required to be
8 licensed under chapter 18.20 RCW, assisted living facilities; chapter
9 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes;
10 chapter 72.36 RCW, soldiers' homes; chapter 70.97 RCW, enhanced
11 services facilities; or chapter 71A.20 RCW, residential habilitation
12 centers; or any other facility licensed or certified by the
13 department (~~or the department of health~~).

14 (7) "Financial exploitation" means the illegal or improper use,
15 control over, or withholding of the property, income, resources, or
16 trust funds of the vulnerable adult by any person or entity (~~for any~~
17 ~~person's or entity's profit or advantage other than for the~~
18 ~~vulnerable adult's profit or advantage~~), other than the vulnerable
19 adult.

20 (a) "Financial exploitation" includes, but is not limited to:

21 (~~(a)~~) (i) The use of deception, intimidation, or undue
22 influence by a person or entity in a position of trust and confidence
23 with a vulnerable adult to obtain, withhold, or use the property,
24 income, resources, or trust funds of the vulnerable adult (~~for the~~
25 ~~benefit of a person or entity other than the vulnerable adult~~);

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

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

37 (b) For the purposes of this subsection:

38 (i) "Illegal" means contrary to any law or rule.

39 (ii) "Improper" means performed without any legal right.

1 (8) "Financial institution" has the same meaning as in RCW
2 30A.22.040 and 30A.22.041. For purposes of this chapter only,
3 "financial institution" also means a "broker-dealer" or "investment
4 adviser" as defined in RCW 21.20.005.

5 (9) "Hospital" means a facility licensed under chapter 70.41 or
6 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any
7 employee, agent, officer, director, or independent contractor
8 thereof.

9 (10) "Incapacitated person" means a person who is at a
10 significant risk of personal or financial harm under RCW 11.88.010(1)
11 (a), (b), (c), or (d).

12 (11) "Individual provider" means a person under contract with the
13 department to provide services in the home under chapter 74.09 or
14 74.39A RCW.

15 (12) "Interested person" means a person who demonstrates to the
16 court's satisfaction that the person is interested in the welfare of
17 the vulnerable adult, that the person has a good faith belief that
18 the court's intervention is necessary, and that the vulnerable adult
19 is unable, due to incapacity, undue influence, or duress at the time
20 the petition is filed, to protect his or her own interests.

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

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

28 (ii) Acts that prevent or obstruct the vulnerable adult from
29 meeting with others, such as telling a prospective visitor or caller
30 that a vulnerable adult is not present, or does not wish contact,
31 where the statement is contrary to the express wishes of the
32 vulnerable adult.

33 (b) The term "isolate" or "isolation" may not be construed in a
34 manner that prevents a guardian or limited guardian from performing
35 his or her fiduciary obligations under chapter 11.92 RCW or prevents
36 a hospital or facility from providing treatment consistent with the
37 standard of care for delivery of health services.

38 (14) "Mandated reporter" is an employee of the department or the
39 department of children, youth, and families; law enforcement officer;
40 social worker; professional school personnel; individual provider;

1 (~~(an employee of a facility;)~~) an operator of a facility or a
2 certified residential services and supports agency under chapter
3 71A.12 RCW; an employee of a facility; an employee of a social
4 service, welfare, mental health, adult day health, adult day care,
5 home health, home care, (~~(or)~~) hospice, or certified residential
6 services and supports agency; county coroner or medical examiner;
7 Christian Science practitioner; or health care provider subject to
8 chapter 18.130 RCW.

9 (15) "Mechanical restraint" means any device attached or adjacent
10 to the vulnerable adult's body that he or she cannot easily remove
11 that restricts freedom of movement or normal access to his or her
12 body. "Mechanical restraint" does not include the use of devices,
13 materials, or equipment that are (a) medically authorized, as
14 required, and (b) used in a manner that is consistent with federal or
15 state licensing or certification requirements for facilities,
16 hospitals, or programs authorized under chapter 71A.12 RCW.

17 (16) "Misappropriation of resident property" has the same meaning
18 as defined in 42 C.F.R. Sec. 483.5.

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

28 (~~(17)~~) (18) "Permissive reporter" means any person, including,
29 but not limited to, an employee of a financial institution, attorney,
30 or volunteer in a facility or program providing services for
31 vulnerable adults.

32 (~~(18)~~) (19) "Physical restraint" means the application of
33 physical force without the use of any device, for the purpose of
34 restraining the free movement of a vulnerable adult's body. "Physical
35 restraint" does not include (a) briefly holding without undue force a
36 vulnerable adult in order to calm or comfort him or her, or (b)
37 holding a vulnerable adult's hand to safely escort him or her from
38 one area to another.

39 (~~(19)~~) (20) "Protective services" means any services provided
40 by the department to a vulnerable adult with the consent of the

1 vulnerable adult, or the legal representative of the vulnerable
2 adult, who has been abandoned, abused, financially exploited,
3 neglected, or in a state of self-neglect. These services may include,
4 but are not limited to, case management, social casework, home care,
5 placement, arranging for medical evaluations, psychological
6 evaluations, day care, or referral for legal assistance.

7 ~~((20))~~ (21) "Self-neglect" means the failure of a vulnerable
8 adult, not living in a facility, to provide for himself or herself
9 the goods and services necessary for the vulnerable adult's physical
10 or mental health, and the absence of which impairs or threatens the
11 vulnerable adult's well-being. This definition may include a
12 vulnerable adult who is receiving services through home health,
13 hospice, or a home care agency, or an individual provider when the
14 neglect is not a result of inaction by that agency or individual
15 provider.

16 ~~((21))~~ (22) "Social worker" means:

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

18 (b) Anyone engaged in a professional capacity during the regular
19 course of employment in encouraging or promoting the health, welfare,
20 support, or education of vulnerable adults, or providing social
21 services to vulnerable adults, whether in an individual capacity or
22 as an employee or agent of any public or private organization or
23 institution.

24 ~~((22))~~ (23) "Vulnerable adult" includes a person:

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

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

28 (c) Who has a developmental disability as defined under RCW
29 71A.10.020; or

30 (d) Admitted to any facility; or

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

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

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

37 ~~((23))~~ (24) "Vulnerable adult abuse registry" means a list of
38 individuals who have a final substantiated finding by the department
39 of abuse, abandonment, neglect, or financial exploitation of a
40 vulnerable adult.

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

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

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

13 (2) When the initial report or investigation by the department
14 indicates that the alleged abandonment, abuse, financial
15 exploitation, or neglect may be criminal, the department shall make
16 an immediate report to the appropriate law enforcement agency. The
17 department and law enforcement will coordinate in investigating
18 reports made under this chapter. The department may provide
19 protective services and other remedies as specified in this chapter.

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

24 (4) Upon request, the department and law enforcement ((may)) must
25 share information contained in reports and findings of abandonment,
26 abuse, financial exploitation, and neglect of vulnerable adults with
27 each other, consistent with RCW 74.04.060 ((, chapter 42.56 RCW,)) and
28 other applicable confidentiality laws. The information contained in
29 reports and findings may not be further disseminated and is not
30 subject to disclosure under chapter 42.56 RCW.

31 (~~(Unless prohibited by federal law, the department of social~~
32 ~~and health services may share with the department of children, youth,~~
33 ~~and families information contained in reports and findings of~~
34 ~~abandonment, abuse, financial exploitation, and neglect of vulnerable~~
35 ~~adults.)) (a) The investigation of alleged abandonment, abuse,~~

36 financial exploitation, neglect or self-neglect of a vulnerable
37 adult, or misappropriation of resident property is a legitimate state
38 purpose. Upon request, the department and the department of children,
39 youth, and families must share information with each other contained

1 in reports and findings of: (i) Abandonment, abuse, financial
2 exploitation, neglect or self-neglect of vulnerable adults, and
3 misappropriation of resident property; and (ii) abuse and neglect of
4 children but only for the purposes set forth in (b) of this
5 subsection.

6 (b) Upon request, the department and the department of children,
7 youth, and families may only share information with each other to the
8 extent that such information pertains to or may assist with (i)
9 investigating or preventing child abuse or neglect; (ii) providing
10 for the health and well-being of children in foster care; or (iii)
11 investigating or preventing the abandonment, abuse, financial
12 exploitation, neglect or self-neglect of a vulnerable adult, or
13 misappropriation of resident property.

14 (c) This information sharing is required for purposes of the
15 federal health insurance portability and accountability act of 1996.
16 The information contained in reports and findings retains its
17 confidentiality under federal and state law and may not be further
18 disseminated except as authorized by law. This information is not
19 subject to public disclosure under chapter 42.56 RCW.

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

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

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

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

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

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

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

1 RCW; or the office of the developmental disabilities ombuds program
2 under chapter 43.382 RCW.

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

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

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

15 (ii) The status of the report; and

16 (iii) The outcome of an investigation.

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

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

24 (ii) The requester is the alleged perpetrator;

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

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

31 **Sec. 4.** RCW 74.34.300 and 2016 c 172 s 4 are each amended to
32 read as follows:

33 (1) The department shall conduct quality assurance reviews to
34 monitor processes related to the receipt of and timely response to
35 reports of vulnerable adult abuse, abandonment, neglect, self-
36 neglect, financial exploitation, or misappropriation of resident
37 property; quality of investigations; and implementation of protective
38 services.

1 (a) As part of the quality assurance process, the department
2 shall conduct a vulnerable adult fatality review in the event of a
3 death of a vulnerable adult when the department has reason to believe
4 that the death of the vulnerable adult may be related to the abuse,
5 abandonment, financial exploitation, or neglect of the vulnerable
6 adult, or may be related to the vulnerable adult's self-neglect, and
7 the vulnerable adult was:

8 ~~((a))~~ (i) Receiving home and community-based services in his or
9 her own home or licensed or certified settings, described under
10 chapters 74.39, 74.39A, 18.20, 70.128, and 71A.12 RCW, within sixty
11 days preceding his or her death; or

12 ~~((b))~~ (ii) Living in his or her own home or licensed or
13 certified settings described under chapters 74.39, 74.39A, 18.20,
14 70.128, and 71A.12 RCW and was the subject of a report under this
15 chapter received by the department within twelve months preceding his
16 or her death.

17 ~~((2))~~ (b) When conducting a vulnerable adult fatality review of
18 a person who had been receiving hospice care services before the
19 person's death, the review shall provide particular consideration to
20 the similarities between the signs and symptoms of abuse and those of
21 many patients receiving hospice care services.

22 (2)(a) Quality assurance reviews completed pursuant to this
23 section are not subject to discovery in a civil or administrative
24 proceeding and may not be admitted into evidence or otherwise used in
25 a civil or administrative proceeding except pursuant to this section.

26 (b) A department employee responsible for conducting quality
27 assurance reviews, or a member of a quality assurance team, may not
28 be examined in a civil or administrative proceeding regarding (i) the
29 work of the quality assurance review or quality assurance team, (ii)
30 the incident under review, (iii) his or her statements,
31 deliberations, thoughts, analyses, or impressions relating to the
32 work of the quality assurance review or the incident under review, or
33 (iv) the statements, deliberations, thoughts, analyses, or
34 impressions of any other member of the quality assurance review or
35 quality assurance team, or any person who provided information to the
36 quality assurance review or quality assurance team, relating to the
37 work of the quality assurance review or the incident under review.

38 (c) Documents prepared by or for a quality assurance review or
39 quality assurance team are inadmissible and may not be used in a
40 civil or administrative proceeding, except that any document that

1 exists before its use or consideration in a quality assurance review,
2 or that is created independently of such review, does not become
3 inadmissible merely because it is reviewed or used by a quality
4 assurance team. A person is not unavailable as a witness merely
5 because the person has been interviewed by or has provided a
6 statement for a quality assurance review, but if called as a witness,
7 a person may not be examined regarding the person's interactions with
8 the quality assurance review including, without limitation, whether
9 the person was interviewed during such review, the questions that
10 were asked during such review, and the answers that the person
11 provided during such review. This section does not restrict the
12 person from testifying fully in any proceeding regarding his or her
13 knowledge of the incident under review.

14 ~~(3) ((All files, reports, records, communications, and working~~
15 ~~papers used or developed for purposes of a fatality review are~~
16 ~~confidential and not subject to disclosure pursuant to RCW 74.34.095.~~
17 ~~(4))~~) The department may adopt rules to implement this section.

18 NEW SECTION. Sec. 5. A new section is added to chapter 74.34
19 RCW to read as follows:

20 (1) The department shall maintain a vulnerable adult abuse
21 registry. Upon request of any person, the department may disclose the
22 identity of a person who has been entered on the registry with a
23 final substantiated finding of abandonment, abuse, financial
24 exploitation, or neglect of a vulnerable adult.

25 (2) The department must develop a process in rule by which the
26 department may remove individuals from the vulnerable adult abuse
27 registry. The process must not allow a removal that would conflict
28 with federal law.

29 (3) Except as described in subsection (4) of this section, a
30 person who is on the vulnerable adult abuse registry may petition the
31 department, in writing, for removal from the registry after three
32 years have elapsed from the date on which the final substantiated
33 finding is entered on the registry.

34 (4) A person may not petition the department to be removed from
35 the registry if:

36 (a) The final substantiated finding that the person abused,
37 abandoned, neglected, or financially exploited a vulnerable adult
38 included information that:

39 (i) The person sexually abused a vulnerable adult;

1 (ii) The abuse or neglect caused a vulnerable adult to suffer
2 great bodily harm or death;

3 (iii) The person financially exploited a vulnerable adult of
4 property, resources, or services exceeding five thousand dollars; or

5 (iv) The abuse involved a lethal weapon;

6 (b) The person has a conviction for a disqualifying crime under
7 RCW 43.43.842;

8 (c) The person has more than one final substantiated finding of
9 abuse, abandonment, neglect, financial exploitation of a vulnerable
10 adult, or misappropriation of resident property; or has a final
11 substantiated finding involving more than one vulnerable adult
12 victim; or has a final substantiated finding involving multiple
13 instances of misconduct against a single vulnerable adult victim; or

14 (d) The person is a nursing assistant whose name is on the
15 registry for conduct committed while working as a certified nursing
16 assistant in a nursing facility, unless the removal from the registry
17 maintained by the department under 42 C.F.R. Sec. 483.156 would be
18 authorized under 42 U.S.C. Sec. 1396r(g)(1)(D).

19 (5) A person may petition the department for removal from the
20 vulnerable adult abuse registry a maximum of three times and may only
21 file one petition in any twelve-month period.

22 (6) If the petition is granted, the individual is removed from
23 the vulnerable adult abuse registry and the individual is no longer
24 disqualified from employment under RCW 74.39A.056 or 18.20.125 by
25 reason of the final substantiated finding. Nothing in this subsection
26 affects a finding against the individual that is on the vulnerable
27 adult abuse registry maintained by the department under 42 C.F.R.
28 Sec. 483.156 unless removal from that registry is permitted by 42
29 U.S.C. Sec. 1396r(g)(1)(D).

30 (7) If the department removes an individual from the vulnerable
31 adult abuse registry, the department shall maintain a record of the
32 individual and the underlying finding. These records are exempt from
33 disclosure under subsection (1) of this section and chapter 42.56
34 RCW.

35 (8)(a) The state of Washington and its officers, employees,
36 contractors, agents, and agencies, including the department, are
37 immune from suit in law, equity, or any action under the
38 administrative procedure act, chapter 34.05 RCW, based on the
39 exercise of discretion to remove an individual from the vulnerable
40 adult abuse registry, except as specified in (b) of this subsection.

1 This section does not modify an applicant's right to seek review of
2 an agency's licensing or certification decision under the
3 administrative procedure act, chapter 34.05 RCW, or other applicable
4 statute or agency rule.

5 (b) A person denied removal from the vulnerable adult abuse
6 registry has the right to an adjudicative proceeding, and to judicial
7 review of that adjudicative proceeding, to challenge the denial
8 pursuant to chapter 34.05 RCW. In any such proceeding, it is the
9 appellant's burden to prove that the appellant should be removed from
10 the registry.

11 (9) (a) Except as provided in (b) of this subsection, the
12 following information is inadmissible and may not be used against the
13 department or its employees in any civil or administrative action
14 related to the hiring of a person who is or was on the vulnerable
15 adult abuse registry:

16 (i) Documents prepared by department staff during the
17 department's review and consideration of a petition for removal of a
18 registry finding; and

19 (ii) Facts related to the underlying finding, including the
20 underlying finding itself.

21 (b) Any documents that existed before a petition for removal was
22 filed or that were created independently of the department's review
23 and consideration of such petition do not become inadmissible merely
24 because they were used during the department's review process.

25 (10) An individual's removal from the vulnerable adult abuse
26 registry does not require an employer to use that individual for the
27 care of, or allow that individual unsupervised access to, vulnerable
28 adults.

29 (11) The department shall adopt rules necessary to implement this
30 section.

31 (12) Nothing in this section limits any rights or remedies
32 available under federal law, including the removal of a name from the
33 nurse aide registry under 42 U.S.C. Sec. 1395i-3(g) (1) (D).

34 (13) This section does not create a protected class; private
35 right of action; any right, privilege, or duty; or change any right,
36 privilege, or duty existing under law.

37 **Sec. 6.** RCW 74.39A.056 and 2018 c 278 s 8 are each amended to
38 read as follows:

1 (1) (a) All long-term care workers shall be screened through state
2 and federal background checks in a uniform and timely manner to
3 verify that they do not have a history that would disqualify them
4 from working with vulnerable persons. The department must process
5 background checks for long-term care workers and make the information
6 available to employers, prospective employers, and others as
7 authorized by law.

8 (b) (i) Except as provided in (b) (ii) of this subsection, for
9 long-term care workers hired on or after January 7, 2012, the
10 background checks required under this section shall include checking
11 against the federal bureau of investigation fingerprint
12 identification records system and against the national sex offenders
13 registry or their successor programs. The department shall require
14 these long-term care workers to submit fingerprints for the purpose
15 of investigating conviction records through both the Washington state
16 patrol and the federal bureau of investigation. The department shall
17 not pass on the cost of these criminal background checks to the
18 workers or their employers.

19 (ii) This subsection does not apply to long-term care workers
20 employed by community residential service businesses until January 1,
21 2016.

22 (c) The department shall share state and federal background check
23 results with the department of health in accordance with RCW
24 18.88B.080.

25 (d) Background check screening required under this section and
26 department rules is not required for an employee of a consumer
27 directed employer if all of the following circumstances apply:

28 (i) The individual has an individual provider contract with the
29 department;

30 (ii) The last background check on the contracted individual
31 provider is still valid under department rules and did not disqualify
32 the individual from providing personal care services;

33 (iii) Employment by the consumer directed employer is the only
34 reason a new background check would be required; and

35 (iv) The department's background check results have been shared
36 with the consumer directed employer.

37 (2) ~~((No provider, or its staff, or long-term care worker, or
38 prospective provider or long-term care worker, with a stipulated
39 finding of fact, conclusion of law, an agreed order, or finding of
40 fact, conclusion of law, or final order issued by a disciplining~~

1 ~~authority or a court of law or entered into a state registry with a~~
2 ~~final substantiated finding of abuse, neglect, exploitation, or~~
3 ~~abandonment of a minor or a vulnerable adult as defined in chapter~~
4 ~~74.34 RCW shall be employed in the care of and have unsupervised~~
5 ~~access to vulnerable adults.)) A provider may not be employed in the
6 care of and have unsupervised access to vulnerable adults if:~~

7 (a) The provider is on the vulnerable adult abuse registry as
8 defined in RCW 74.34.020 or on any other registry based upon a
9 finding of abuse, abandonment, neglect, financial exploitation, or
10 misappropriation of resident property;

11 (b) The department of children, youth, and families has made a
12 founded finding of abuse or neglect of a child against the provider;

13 (c) A disciplining authority, including the department of health,
14 has made a finding of abuse, abandonment, neglect, financial
15 exploitation, or misappropriation of resident property of a minor or
16 a vulnerable adult against the provider; or

17 (d) A court has issued an order that includes a finding of fact
18 or conclusion of law that the provider has committed abuse,
19 abandonment, neglect, financial exploitation, or misappropriation of
20 resident property of a minor or vulnerable adult.

21 ~~(3) ((The department shall establish, by rule, a state registry~~
22 ~~which contains identifying information about long-term care workers~~
23 ~~identified under this chapter who have final substantiated findings~~
24 ~~of abuse, neglect, financial exploitation, or abandonment of a~~
25 ~~vulnerable adult as defined in RCW 74.34.020. The rule must include~~
26 ~~disclosure, disposition of findings, notification, findings of fact,~~
27 ~~appeal rights, and fair hearing requirements. The department shall~~
28 ~~disclose, upon request, final substantiated findings of abuse,~~
29 ~~neglect, financial exploitation, or abandonment to any person so~~
30 ~~requesting this information. This information must also be shared~~
31 ~~with the department of health to advance the purposes of chapter~~
32 ~~18.88B RCW.)) For the purposes of this section, "provider" means:~~

33 (a) An individual provider as defined in RCW 74.39A.240;

34 (b) An employee, licensee, or contractor of any of the following:
35 A home care agency licensed under chapter 70.127 RCW, a nursing home
36 under chapter 18.51 RCW, an assisted living facility under chapter
37 18.20 RCW, an enhanced services facility under chapter 70.97 RCW, a
38 certified residential services and supports agency licensed or
39 certified under chapter 71A.12 RCW, an adult family home under

1 chapter 70.128 RCW, or any other long-term care facility certified to
2 provide medicaid or medicare services; and

3 (c) Any contractor of the department who may have unsupervised
4 access to vulnerable adults.

5 (4) The department shall adopt rules to implement this section.

6 **Sec. 7.** RCW 13.50.010 and 2018 c 58 s 78 are each amended to
7 read as follows:

8 (1) For purposes of this chapter:

9 (a) "Good faith effort to pay" means a juvenile offender has
10 either (i) paid the principal amount in full; (ii) made at least
11 eighty percent of the value of full monthly payments within the
12 period from disposition or deferred disposition until the time the
13 amount of restitution owed is under review; or (iii) can show good
14 cause why he or she paid an amount less than eighty percent of the
15 value of full monthly payments;

16 (b) "Juvenile justice or care agency" means any of the following:
17 Police, diversion units, court, prosecuting attorney, defense
18 attorney, detention center, attorney general, the oversight board for
19 children, youth, and families, the office of the family and
20 children's ombuds, the department of social and health services and
21 its contracting agencies, the department of children, youth, and
22 families and its contracting agencies, schools; persons or public or
23 private agencies having children committed to their custody; and any
24 placement oversight committee created under RCW 72.05.415;

25 (c) "Official juvenile court file" means the legal file of the
26 juvenile court containing the petition or information, motions,
27 memorandums, briefs, notices of hearing or appearance, service
28 documents, witness and exhibit lists, findings of the court and court
29 orders, agreements, judgments, decrees, notices of appeal, as well as
30 documents prepared by the clerk, including court minutes, letters,
31 warrants, waivers, affidavits, declarations, invoices, and the index
32 to clerk papers;

33 (d) "Records" means the official juvenile court file, the social
34 file, and records of any other juvenile justice or care agency in the
35 case;

36 (e) "Social file" means the juvenile court file containing the
37 records and reports of the probation counselor.

38 (2) Each petition or information filed with the court may include
39 only one juvenile and each petition or information shall be filed

1 under a separate docket number. The social file shall be filed
2 separately from the official juvenile court file.

3 (3) It is the duty of any juvenile justice or care agency to
4 maintain accurate records. To this end:

5 (a) The agency may never knowingly record inaccurate information.
6 Any information in records maintained by the department of social and
7 health services or the department of children, youth, and families
8 relating to a petition filed pursuant to chapter 13.34 RCW that is
9 found by the court to be false or inaccurate shall be corrected or
10 expunged from such records by the agency;

11 (b) An agency shall take reasonable steps to assure the security
12 of its records and prevent tampering with them; and

13 (c) An agency shall make reasonable efforts to insure the
14 completeness of its records, including action taken by other agencies
15 with respect to matters in its files.

16 (4) Each juvenile justice or care agency shall implement
17 procedures consistent with the provisions of this chapter to
18 facilitate inquiries concerning records.

19 (5) Any person who has reasonable cause to believe information
20 concerning that person is included in the records of a juvenile
21 justice or care agency and who has been denied access to those
22 records by the agency may make a motion to the court for an order
23 authorizing that person to inspect the juvenile justice or care
24 agency record concerning that person. The court shall grant the
25 motion to examine records unless it finds that in the interests of
26 justice or in the best interests of the juvenile the records or parts
27 of them should remain confidential.

28 (6) A juvenile, or his or her parents, or any person who has
29 reasonable cause to believe information concerning that person is
30 included in the records of a juvenile justice or care agency may make
31 a motion to the court challenging the accuracy of any information
32 concerning the moving party in the record or challenging the
33 continued possession of the record by the agency. If the court grants
34 the motion, it shall order the record or information to be corrected
35 or destroyed.

36 (7) The person making a motion under subsection (5) or (6) of
37 this section shall give reasonable notice of the motion to all
38 parties to the original action and to any agency whose records will
39 be affected by the motion.

1 (8) The court may permit inspection of records by, or release of
2 information to, any clinic, hospital, or agency which has the subject
3 person under care or treatment. The court may also permit inspection
4 by or release to individuals or agencies, including juvenile justice
5 advisory committees of county law and justice councils, engaged in
6 legitimate research for educational, scientific, or public purposes.
7 Each person granted permission to inspect juvenile justice or care
8 agency records for research purposes shall present a notarized
9 statement to the court stating that the names of juveniles and
10 parents will remain confidential.

11 (9) The court shall release to the caseload forecast council the
12 records needed for its research and data-gathering functions. Access
13 to caseload forecast data may be permitted by the council for
14 research purposes only if the anonymity of all persons mentioned in
15 the records or information will be preserved.

16 (10) Juvenile detention facilities shall release records to the
17 caseload forecast council upon request. The commission shall not
18 disclose the names of any juveniles or parents mentioned in the
19 records without the named individual's written permission.

20 (11) Requirements in this chapter relating to the court's
21 authority to compel disclosure shall not apply to the oversight board
22 for children, youth, and families or the office of the family and
23 children's ombuds.

24 (12) For the purpose of research only, the administrative office
25 of the courts shall maintain an electronic research copy of all
26 records in the judicial information system related to juveniles.
27 Access to the research copy is restricted to the administrative
28 office of the courts for research purposes as authorized by the
29 supreme court or by state statute. The administrative office of the
30 courts shall maintain the confidentiality of all confidential records
31 and shall preserve the anonymity of all persons identified in the
32 research copy. Data contained in the research copy may be shared with
33 other governmental agencies as authorized by state statute, pursuant
34 to data-sharing and research agreements, and consistent with
35 applicable security and confidentiality requirements. The research
36 copy may not be subject to any records retention schedule and must
37 include records destroyed or removed from the judicial information
38 system pursuant to RCW 13.50.270 and 13.50.100(3).

39 (13) The court shall release to the Washington state office of
40 public defense records needed to implement the agency's oversight,

1 technical assistance, and other functions as required by RCW
2 2.70.020. Access to the records used as a basis for oversight,
3 technical assistance, or other agency functions is restricted to the
4 Washington state office of public defense. The Washington state
5 office of public defense shall maintain the confidentiality of all
6 confidential information included in the records.

7 (14) The court shall release to the Washington state office of
8 civil legal aid records needed to implement the agency's oversight,
9 technical assistance, and other functions as required by RCW
10 2.53.045. Access to the records used as a basis for oversight,
11 technical assistance, or other agency functions is restricted to the
12 Washington state office of civil legal aid. The Washington state
13 office of civil legal aid shall maintain the confidentiality of all
14 confidential information included in the records, and shall, as soon
15 as possible, destroy any retained notes or records obtained under
16 this section that are not necessary for its functions related to RCW
17 2.53.045.

18 (15) For purposes of providing for the educational success of
19 youth in foster care, the department of children, youth, and families
20 may disclose only those confidential child welfare records that
21 pertain to or may assist with meeting the educational needs of foster
22 youth to another state agency or state agency's contracted provider
23 responsible under state law or contract for assisting foster youth to
24 attain educational success. The records retain their confidentiality
25 pursuant to this chapter and federal law and cannot be further
26 disclosed except as allowed under this chapter and federal law.

27 (16) For the purpose of ensuring the safety and welfare of the
28 youth who are in foster care, the department of children, youth, and
29 families may disclose to the department of commerce and its
30 contracted providers responsible under state law or contract for
31 providing services to youth, only those confidential child welfare
32 records that pertain to ensuring the safety and welfare of the youth
33 who are in foster care who are admitted to crisis residential centers
34 or HOPE centers under contract with the office of homeless youth
35 prevention and protection. Records disclosed under this subsection
36 retain their confidentiality pursuant to this chapter and federal law
37 and may not be further disclosed except as permitted by this chapter
38 and federal law.

39 (17) Except as provided in subsection (18) of this section, for
40 purposes of investigating and preventing child abuse and neglect, and

1 providing for the health care coordination and the well-being of
2 children in foster care, the department of children, youth, and
3 families may disclose only those confidential child welfare records
4 that pertain to or may assist with investigation and prevention of
5 child abuse and neglect, or may assist with providing for the health
6 and well-being of children in foster care to the department of social
7 and health services, the health care authority, or their contracting
8 agencies. For purposes of investigating and preventing child abuse
9 and neglect, and to provide for the coordination of health care and
10 the well-being of children in foster care, the department of social
11 and health services and the health care authority may disclose only
12 those confidential child welfare records that pertain to or may
13 assist with investigation and prevention of child abuse and neglect,
14 or may assist with providing for the health care coordination and the
15 well-being of children in foster care to the department of children,
16 youth, and families, or its contracting agencies. The records retain
17 their confidentiality pursuant to this chapter and federal law and
18 cannot be further disclosed except as allowed under this chapter and
19 federal law.

20 (18) (a) Upon request, the department and the department of social
21 and health services must share information with each other contained
22 in reports and findings of: (i) Abandonment, abuse, financial
23 exploitation, self-neglect and neglect of vulnerable adults, or
24 misappropriation of resident property; and (ii) abuse and neglect of
25 children.

26 (b) Upon request, the department and the department of social and
27 health services must share information with each other to the extent
28 that such information pertains to or may assist with (i)
29 investigating or preventing child abuse or neglect; (ii) providing
30 for the health and well-being of children in foster care; or (iii)
31 investigating or preventing the abandonment, abuse, financial
32 exploitation, self-neglect and neglect of a vulnerable adult, or
33 misappropriation of resident property.

34 (c) This information sharing is required for purposes of the
35 federal health insurance portability and accountability act of 1996.
36 The information contained in reports and findings retains its
37 confidentiality under federal and state law and may not be further
38 disseminated except as authorized by law. This information is not
39 subject to public disclosure under chapter 42.56 RCW.

1 **Sec. 8.** RCW 68.50.105 and 2013 c 295 s 1 are each amended to
2 read as follows:

3 (1) Reports and records of autopsies or postmortems shall be
4 confidential, except that the following persons may examine and
5 obtain copies of any such report or record: The personal
6 representative of the decedent as defined in RCW 11.02.005, any
7 family member, the attending physician or advanced registered nurse
8 practitioner, the prosecuting attorney or law enforcement agencies
9 having jurisdiction, public health officials, the department of labor
10 and industries in cases in which it has an interest under RCW
11 68.50.103, or the secretary of the department of social and health
12 services or his or her designee in cases being reviewed under RCW
13 74.13.640 and chapter 74.34 RCW.

14 (2)(a) Notwithstanding the restrictions contained in this section
15 regarding the dissemination of records and reports of autopsies or
16 postmortems, nor the exemptions referenced under RCW 42.56.240(1),
17 nothing in this chapter prohibits a coroner, medical examiner, or his
18 or her designee, from publicly discussing his or her findings as to
19 any death subject to the jurisdiction of his or her office where
20 actions of a law enforcement officer or corrections officer have been
21 determined to be a proximate cause of the death, except as provided
22 in (b) of this subsection.

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

28 (3) The coroner, the medical examiner, or the attending physician
29 shall, upon request, meet with the family of the decedent to discuss
30 the findings of the autopsy or postmortem. For the purposes of this
31 section, the term "family" means the surviving spouse, state
32 registered domestic partner, or any child, parent, grandparent,
33 grandchild, brother, or sister of the decedent, or any person who was
34 guardian of the decedent at the time of death.

--- END ---