

VULNERABLE ADULT PROTECTION ORDER BASICS



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How did we get to the Abuse of Vulnerable Adults Act?

- Prior law in chapters 26.44, 70.124, and 74.34 RCW contained different definitions of key terms (abuse, neglect, abandonment, exploitation)
- Laws 1999 chapter 176 combined Adult Protective Services (APS) authority to investigate and make abuse/neglect findings with protection order proceedings and created new statutory cause of action for damages

VAPOs and Other Orders

- Key differences for VAPO include:
 - Focus on vulnerable adults [defined term];
 - Any interested party can file if VA is unable to protect their own interests;
 - Broad relief, including DVPO-type “stay away; no contact” and interim financial relief, including an accounting or restraining property transfer for up to 90 days; and
 - Maximum duration is 5 years.

VAPOs and Other Orders (con't)

- Summary of main differences:
 - <https://wscadv.org/wp-content/uploads/2015/06/WA-State-Civil-Safety-Order-Comparison-Chart.pdf>
- Which PO to file flow chart?:
 - <http://www.kingcounty.gov/~media/courts/Clerk/Images/What-Type-PO.ashx?la=en>

Request for Temporary VAPO

- Available pursuant to chapter 7.40 RCW [Injunctions] if requested in Petition
- Written notice to respondent & VA (if someone other than VA filed petition) required absent specific facts showing immediate & irreparable injury (CR 65-type standard) or inability to serve notice after diligent efforts

Request for Temporary VAPO (con't)

- How to prepare request for Temp DVPO:
 - Use mandatory form; same practice pointers as for temporary DVPOs!
 - Be specific
 - Be concise
 - State harm that will occur if not granted
 - Request specific relief: freeze account, suspend POA
 - No filing fee or bond required. RCW 74.34.110
 - File in county where VA lives; if VA relocated as result of actions alleged against respondent, can be in either prior or new residence county.

Definition of Vulnerable Adult

- RCW 74.34.010(17) defines VA as a person:
 - 60+ and inability to care for self;
 - Found incapacitated under chapter 11.88 RCW;
 - Admitted to any “facility;”
 - Receiving home health or hospice care;
 - Receiving services from an “individual provider;”
 - Who self-directs care & receives services from “personal aide”
 - *Not just elders, not all elders, not all AIPs*

Who can file Petition for VAPO?

Basic Rule (RCW 74.34.110): A VA, or interested person on behalf of a VA may seek relief from:

1. abandonment,
2. abuse,
3. financial exploitation,
4. neglect, or
5. the threat thereof!

Who can file for VAPO? (con't)

“Interested person” (RCW 74.34.020(10)) is any person showing to court’s satisfaction that they:

1. Are interested in VA’s welfare,
2. Have good faith belief court action needed, and
3. VA unable, due to incapacity, undue influence or duress, *at time petition filed*, to protect own interests.

APS can also file petition if VA consents, or is unable to consent due to incapacity. RCW 74.34.150

“Interested person” considerations

- VA must be given written notice of petition & hearing using standard form. RCW 74.34.120(3).
- VA not previously determined incapacitated under 11.88 RCW may object to petition or relief; court may dismiss case or take testimony or schedule additional evidentiary hearing to determine if VA unable to protect self or estate. RCW 74.34.135(1).
- No permanent order over VA’s objection until after evidentiary hearing held. RCW 74.34.135(2).

“Abandonment”

- RCW 74.34.020(1)
- Action or inaction by person with duty of care for VA that leaves them without means or ability to obtain necessary food, clothing, shelter or health care
- “duty of care” not defined in VA statute; but “person with a duty of care” is defined in DSHS WACs

Person with a duty of care

- **"Person with a duty of care"** includes, but is not limited to, the following:
 - (1) A guardian appointed under chapter [11.88](#) RCW; or
 - (2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter [11.94](#) RCW.
 - (3) A person providing the basic necessities of life to a vulnerable adult where:
 - (a) The person is employed by or on behalf of the vulnerable adult; or
 - (b) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis. WAC 388-71-0105.

Abuse - RCW 74.34.020(2)

- Willful action or inaction that inflicts injury, unreasonable confinement, intimidation or punishment
- Abuse presumed to cause harm, pain or anguish if VA unable to express or demonstrate same
- Sexual abuse, mental abuse, physical abuse and exploitation all included & separately defined in 74.34.020

Abuse of a VA defined(con't)

- Sexual abuse – any form of nonconsensual sexual contact; any sexual contact between VA and facility staff
- Mental abuse – coercion, harassment, inappropriate isolation, verbal assault
- Physical abuse – willful action inflicting bodily injury or physical mistreatment
- Exploitation – compelling or exerting undue influence causing action inconsistent with relevant past behavior

Financial exploitation -74.34.020(6)

- Illegal or improper use, control over, or withholding of property, income, resources, or trust funds of VA for profit or advantage of a person or entity other than the VA, including:
 - Use of deception, intimidation, etc to obtain or use property, funds, etc of VA for such benefit
 - Breach of fiduciary duty (POA, trustee, guardian)
 - Obtaining or using VA's property, etc without lawful authority when VA unable to consent

Neglect - RCW 74.34.020(12)

- Pattern of conduct or inaction by person with duty of care that fails to provide goods or services to maintain health of VA or prevent harm or pain to VA; or
- Act or omission demonstrates serious disregard of consequences, with magnitude constituting clear and present danger to VA's health, welfare or safety, including endangerment with a controlled substance (RCW 9A.42.100)

Issues which may impact VAPO case

- Ask questions about –
 - VA's current and recent health status
 - Who provides VA 's care & decision making
 - Disputes between family members & caregivers
 - Drug/alcohol/mental health of same
 - Prior police involvement, reports
 - Loans, gifts, property transfers, by VA to others
 - Bank & investment accounts of VA
 - POAs, trusts, other key documents

VAPO case issues (con't)

- What forms of relief should you seek?
 - Stay away/no contact
 - Who will provide care/transportation/etc.?
 - Temporarily freezing accounts/other assets
 - How will VA's expenses be paid in interim?
 - Accounting
 - Are you prepared to enforce via contempt?
 - Is VAPO an interim or ultimate response?
 - If bad guy kept away will things stabilize, or
 - Does VA really need new POA, guardianship, etc.?

VAPO Reported cases

- *Raven v DSHS*, 172 Wn.2d 804, 306 P.3d 920 (2012) –limited guardian’s failure to obtain sufficient in-home care for elderly ward who opposed move to facility did not establish a pattern of conduct evidencing neglect.
- *In re Knight*, 178 Wn.App. 929, 317 P.3d 1068 (2014) – request for VAPO against VA’s wishes implicates liberty and autonomy interests, requiring proof by clear, cogent and convincing standard.
- *Gradineau v. DSHS*, 181 Wn.App.18, 325 P.3d 209 (2014) – caregiver committed financial exploitation when using VA’s morphine in failed suicide attempt.

VAPO resources

- Adult Protective Services 1-866-END-HARM
- DSHS Complaint Resolution Unit (CRU)
(allegations arising in DSHS licensed facilities)
1-800-562-6078
- Long Term Care Ombudsman 1-800-562-6028
- Senior Info & Assist (local county phone #)

<https://www.dshs.wa.gov/adult-care>