Supreme Court No. 89470-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

APPEAL FROM THE COURT OF APPEALS

DIVISION I

No. 67711-0-I

MADHURI PATEL, individually and on behalf of AMANDA HINGORANI, a developmentally disabled minor,

Petitioner,

v.

KENT SCHOOL DISTRICT,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Madhuri Patel, individually and on behalf of Amanda Hingorani, a developmentally disabled minor, seeks review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner seeks review of a Court of Appeals, Division I, opinion filed August 26, 2013. The Court of Appeals affirmed the judgment entered on the jury's verdict in favor of the District. A copy of the decision is found at Appendix "A" at pages A-1 through 24.

C. ISSUES PRESENTED FOR REVIEW

1. For decades, the Washington Supreme Court "has consistently held a parent is not liable for ordinary negligence in the performance of parental responsibilities." quoting *Zellmer v. Zellmer*, 164 Wn.2d 147, 155-156 (2008). Likewise, Washington law prohibits a defendant from arguing that damages claimed by a minor child should be diminished due to claimed negligence on the part of the child's parent. *See* RCW 4.22.020; *See also* WPI 11.05.

The trial court denied parental immunity sounding in ordinary negligence and approved irreconcilable jury instructions and a Special Verdict form that both required and prohibited the jury from diminishing

Amanda's damages based upon the claimed negligence of her mother, Ms. Patel.

Pursuant to RAP 13.4(b)(1) & (2), should review be granted because the Court of Appeals opinion: (1) conflicts with *Zellmer*, RCW 4.22.020, and WPI 11.05; and (2) conflicts with this Court's holding in *Hall v. Corporation of Catholic Archbishop*, 80 Wn.2d 797, 804 (1972) (prejudicial error for trial court to give irreconcilable jury instructions on a material issue)?

2. Pursuant to Evidence Rule 412, evidence of a victim's sexual history and/or sexual predisposition is presumed inadmissible. This Court previously held that an individual's capacity to consent to sex must be assessed by analyzing a person's ability to understand the nature and consequences of sexual activity at the time of the offense. *State v. Ortega-Martinez*, 124 Wn.2d 702, 716 (1994).

Moreover, evidence of prior sexual conduct of an individual is both irrelevant and unduly prejudicial where a victim, like Amanda, suffers from permanent developmental impairments "because the prior acts may have occurred due to the same lack of capacity." *State v. Summers*, 70 Wn. App. 424, 435 (Div. I. 1993).

The trial court admitted evidence that Amanda was allegedly involved in a sexual relationship with her cousin at age 8 – fully 8 years

before the events relevant to her lawsuit – as well as evidence that she attempted to obtain birth control a year before her victimization.

Pursuant to RAP 13.4(b)(1)&(2), should review be granted because the Court of Appeals opinion undermines the policy behind Evidence Rule 412 and conflicts with both *Ortega-Martinez* and *Summers*?

D. STATEMENT OF THE CASE

1. Facts Related to Amanda Hingorani

Amanda Hingorani was a student in the Kent School District ("Defendant KSD") for her entire academic career. Amanda was diagnosed with cognitive and intellectual delays when she was three years old and never received a Full Scale Intelligence Quotient ("FSIQ") score higher than 71. Ex. 2; CP 2099-2102. Amanda participated in the Special Education Program throughout her academic career, from the first grade.

In March 2006, while enrolled in the 9th grade at Kentridge High School ("KHS"), Amanda was evaluated by Defendant KSD to prepare her Individualized Education Program ("IEP"). The evaluation found that: (1) Amanda had an FSIQ of 68, placing her in the "Extremely Low" range (bottom 2% of her peers); (2) Amanda scored a 71 on the Vineland Adaptive Behavior test (exceeding 3% of her peers in social and behavioral skills); and (3) Amanda's adaptive and cognitive skills were in the range of mental retardation. Ex. 6; CP 2104-2118.

During the 2006 evaluation, Amanda's mother, Ms. Patel, warned officials at KHS that Amanda often exhibited unsafe behaviors and required near constant supervision. *Id.* The staff at KHS agreed that "Amanda is not aware of the potential danger of situations and does not necessarily use caution when encountering risky social situations." *Id.*

Shortly after Ms. Patel's first warnings to KHS staff, Amanda was financially and sexually exploited at KHS. In April 2006, Ms. Patel found a note that a classmate sent to Amanda. CP 240. The note showed that Amanda was coaxed to steal money from her mother's wallet in exchange for friendship, affection and sex. Ex. 7; CP 260-261.

Ms. Patel requested a meeting with the administration at KHS. On April 27, 2006, Ms. Patel provided KHS officials with further documentation of the exploitation. Ex. 9. Ms. Patel warned KHS staff that Amanda was being sexually victimized at school. Exs. 9, 47-49; CP 1273, 1275, 1277-1278. Amanda was pulled from her mainstream classes and a "no contact" order was implemented between Amanda and the other students involved. Ex. 13. Ms. Patel removed Amanda from KHS until an appropriate plan of supervision was established.

On April 28, 2006, Sally McLurg, the school psychologist for KHS, wrote that her evaluation showed that Amanda "cannot function safely and independently in the IP [integrated placement] setting because

she is being victimized[.]" Ex. 11; CP 1133. Ms. McLurg found that Amanda "does not have the skills necessary to make appropriate choices ... and/or to ask for help from teachers when she is in trouble." *Id.*

The same day, the KHS Special Education Department Chair, Jennifer Grajewski, agreed that Amanda should be given increased protection from dangers at school. Ex. 10; CP 1131. On May 3, 2006, Amanda's special education teacher, Francine Wilhelm, wrote to Ms. Grajewski, school counselor Vanderport and Vice-Principal Edwards stating her impression that another student was "grooming Hingorani for possible mental, emotional, and physical/sexual abuse." Ex. 12; CP 1140.

On May 5, 2006, a plan of supervision was established, requiring KHS to provide one-on-one supervision for Amanda during school hours. Ex. 13; CP 282-284. This plan remained in effect for the school year.

When Amanda returned to begin her 10th grade year, the school did not immediately continue the supervision plan implemented at the end of her 9th grade year. As a result, Ms. Patel requested a meeting to insist that KSD re-institute the supervision protocols.

On September 13, 2006, a meeting was held between Ms. Patel and KHS personnel, including Ms. Wilhelm, Amanda's teacher. This meeting was also attended by Marnee Crawford, Amanda's counselor. Ex. 33. Ms. Crawford warned KHS staff that "there were reasons to be concerned

with Amanda's safety if she was left in any unsupervised times. This included lunch, passing times, and *especially bathroom time*." Ex. 33.

Following this meeting, Ms. Wilhelm wrote to Ms. Grajewski about the issue of supervision, stating "I want to write in a 1:1 [supervision on the IEP] based on the psych eval. from last year and the new information we have from the new therapist." Ex. 62; CP 1293.

On October 17, 2006, a second meeting was held between Ms. Patel and KHS staff. Issues discussed included: (1) Ms. Patel's ongoing concerns that Amanda was at risk; (2) Ms. Patel's warnings that Amanda remained vulnerable to exploitation; (3) Amanda's inability to know right from wrong; and (4) Amanda's inability to make safe decisions. Ex. 35; CP 2122-2146. Ms. Patel again requested that the supervision plan be re-instituted for Amanda's 10th grade year and insisted on it as a pre-condition of Amanda's return to KHS. Ex. 30; CP 240-241; 1142.

In the agreement drafted at the October 17, 2006 meeting, KSD specifically acknowledged that, "Amanda is vulnerability [sic] to exploitation as file records indicate." Ex. 35; CP 2122-2146. Accordingly, KHS agreed to re-implement the one-on-one supervision plan. *Id.*

Ms. Patel was told by KHS that while Amanda was receiving special education instruction, at least three adults were present in the classroom. CP 241-242. Ms. Patel was assured that Amanda was required

to use a bathroom reserved for the female special education students, and that she would be escorted to and from the bathroom by staff. CP 242.

During this same period, Ms. Wilhelm documented additional examples of Amanda's vulnerability. On February 2, 2007, Ms. Wilhelm noted that Amanda "will do anything to be involved" in social groups and did not understand the difference between "violent rape" and "desire or love." Ex. 39; CP 1148. Ms. Wilhelm understood her obligation to supervise Amanda. Ms. Wilhelm wrote, "the agreement we have with Hingorani's mom is that [Amanda] be supervised at all times."

By late April 2007, KHS abdicated its responsibility to protect Amanda by abandoning the supervision protocols. As a result, Amanda was sexually victimized in the boys' bathroom during Ms. Wilhelm's class. Ex. 52. On April 30, 2007, Ms. Wilhelm sent an e-mail to Ms. Grajewski noting that school administrator Molly King found Amanda and a male student "hugging" in the school hallway during class – when each was supposed to be under Ms. Wilhelm's supervision. Ex. 44; CP 1263. Ms. Grajewski responded, "contact Amanda's mom and alert her about the bathroom incident! This is serious." *Id.*

Later that day, Ms. Wilhelm informed Ms. Patel via email that a few days earlier, Ms. Wilhelm caught another student, "Matt," sneaking out of class after Amanda left to use the bathroom. Ms. Wilhelm

"assume[d] that [Amanda] may have been about to repeat some of the same behaviors in our bathroom . . . that she engaged in last year." *Id.*

Ms. Patel asked Amanda about Ms. Wilhelm's report. Ex. 46; CP 1269. Amanda disclosed that "Matt" had sex with her in the boys' bathroom located next to Ms. Wilhelm's self-contained classroom on several occasions during Ms. Wilhelm's third period class. *Id.*

On May 2, 2007, Ms. Patel wrote to KHS Principal Mike Albrecht. Ex. 47. Ms. Patel advised Mr. Albrecht that, while KHS failed to provide supervision, Amanda was sexually victimized during Ms. Wilhelm's class. *Id.* Mr. Albrecht immediately forwarded the email he received from Ms. Patel to Vice-Principal Kim Edwards and Ms. Grajewski. Mr. Albrecht simply wrote, "See me." *Id.*

Ms. Grajewski acknowledged that she and Ms. Edwards met with Ms. Patel "numerous times" and that "[Ms. Wilhelm] was instructed to have an IA with Amanda at all times." Ex. 47. Principal Albrecht agreed, writing "I thought that Amanda was under complete adult supervision throughout the entire day." Ex. 48. Vice-Principal Edwards also indicated that "we were under the impression that Amanda was under complete adult supervision throughout her school day." Ex. 49.

2. Procedural History

On June 18, 2008, Petitioner filed a Complaint for Damages against Defendant KSD. CP 9-25. Petitioner alleged two causes of action pertaining to KSD: (1) negligence; and (2) failure to report child abuse and/or neglect pursuant to RCW 26.44.030. CP 22, 24.

Trial commenced on June 13, 2011 and lasted more than six weeks. CP. 2378-2448. On July 27, 2011, the jury found that both KSD and Ms. Patel were negligent on the special verdict form reflecting Amanda's claims. CP 2445. The jury also concluded that both KSD and Ms. Patel failed to report allegations that Amanda had been abused and/or neglected, as required by RCW 26.44. CP 2446. However, the jury did not award damages to Amanda. CP 6696.

Petitioner appealed to the Court of Appeals, Division I, identifying seven assignments of error. Defendant KSD filed a cross-appeal, identifying four assignments of error. The Court of Appeals filed an unpublished opinion on August 26, 2013.

a. Parental Immunity and Allocation of Fault to the Mother of the Child-Victim

Prior to trial, Petitioner filed a Motion Re: Parental Immunity. CP 1349-1356. On May 24, 2011, Petitioner filed initial motions *in limine*. CP 1689-1708. On May 27, 2011, the trial court issued an Order Re: Plaintiffs' Motion Re: Parental Immunity. CP 1877-1878. The court

ruled that Defendant KSD could both apportion fault to Ms. Patel and reduce the damages claimed by Amanda based upon Ms. Patel's alleged negligence. CP 1877.

b. Jury Instructions and Special Verdict Forms

After the parties submitted competing jury instructions and special verdict forms, Petitioner filed a Brief Regarding Proposed Jury Instructions and Special Verdict Forms. CP 6543-6556. Petitioner's briefing attached a proposed special verdict form reflecting that Ms. Patel should not be identified as a negligent actor on Amanda's special verdict form. CP 6583-6586.

As described below, the trial court adopted conflicting jury instructions that both prohibited and directed the jury to apportion fault to Ms. Patel when considering Amanda's claims. Likewise, the court approved a special verdict form for Amanda's claims that allowed the jury to apportion fault to Ms. Patel. *See* Section E, 1, *infra*.

c. Evidence Rule 412

On May 27, 2011, Petitioner filed a motion *in limine* seeking to exclude evidence of Amanda's sexual behaviors and sexual predisposition beyond those alleged in the Complaint. CP 1851-1862. The basis for the motion was Evidence Rule 412. On June 13, 2011, Defendant KSD confirmed that it intended to offer evidence of Amanda's

sexual behaviors and sexual predisposition at trial. The trial court ruled that Defendant KSD could introduce evidence that Amanda sought birth control and evidence that Amanda had allegedly been victimized by her cousin. CP 5942.

E. LEGAL ARGUMENT

1. The Trial Court's Ruling on Parental Immunity Resulted in Irreconcilable Jury Instructions and Special Verdict Forms

Prior to trial, Petitioner filed a motion requesting that Ms. Patel be granted parental immunity. CP 1349-1356. Petitioner's motion cited several Washington cases supporting her requested relief, as well as RCW 4.22.020 which states, in relevant part:

> The contributory fault of one spouse or one domestic partner shall not be imputed to the other spouse or other domestic partner or the minor child of the spouse or domestic partner to diminish recovery in an action by the other spouse or other domestic partner or the minor child of the spouse or other domestic partner, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property . . .[1]

Petitioner also pointed to the Washington Pattern Jury Instructions:

> Contributory negligence, if any, of the child affects the claims of both child and parent, whether the parent was negligent or not. Contributory negligence, if any, of the

[1] CP 1355.

> parent affects the claim of the parent only,
> ***but does not affect the claim of the child.***

See WPI 11.05 (emphasis supplied); *see also Poston v. Mathers*, 77 Wn.2d 329 (1969); *Griffin v. Gehret*, 17 Wn. App. 546 (1977).

The trial court denied the motion, citing its belief that RCW 4.22.020 does ***not*** apply to claims brought by minor children. CP 1877. Consequently, Defendant KSD's attorneys argued throughout the trial that: (1) Amanda's mother was at fault; and (2) that the wrongdoing of Amanda's mother should diminish the damages sought by Amanda. *See e.g.* RP p. 4647, l. 25 – p. 4648, l. 16; p. 4648, l. 21-24.

The trial court's ruling is contrary to long standing precedent. Washington courts recognize that RCW 4.22.020 applies to claims brought by children, including decisions made by Washington courts after enactment of the Tort Reform Act of 1986: [2]

> The direction in RCW 4.22.020 that contributory fault shall not be imputed applies only when a spouse, child or their legal representative brings an independent cause of action for their injury or death, not when the action is for damages incurred under RCW 4.20.010 . . .

Ginochio v. Hesston Corp., 46 Wn. App. 843, 847 (1987).

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[2] RCW 4.22.020 uses the term "minor children" in the statute's heading. This provides additional guidance regarding the legislature's intention regarding the scope of the law's application. *See e.g. State v. Chhom*, 162 Wn.2d 451 (2007) (statute headings may be utilized to as source of legislative intent).

The trial court committed reversible error by inviting the jury to factor in the alleged fault of Amanda's mother when considering Amanda's claims. The Washington Pattern Jury Instructions state that any the claimed misconduct of a parent cannot affect the claims of a child:

> The Washington Pattern Jury Instructions clearly describe the allocation process to be used in every case in which released and immune entities share fault with a defendant. For example, instructions state that *the contributory negligence of a parent affects the claim of the parent only, but* ***does not affect the claim of a child****, which is in conformity with the statutory scheme; a parent's negligence affects only the parent's claim, and a child's comparative negligence affects the child's claim.*[3]

See WPI 11.05.

However, the trial court allowed Defendant KSD to make this precise argument during trial. The jury also received inconsistent jury instructions and improper special verdict forms on this same issue. The trial court provided two instructions (Jury Instructions 15 and 20) ***prohibiting*** the jury from considering the alleged negligence of Amanda's mother when assessing Amanda's claims. CP 6667; 6672. However, the court provided another instruction (Jury Instruction 23) ***directing*** the jury to attribute fault to each entity that proximately caused harm, including

[3] *Id.*, p. 28. *See also* WPI 11.05.

Amanda's mother, when considering ***both*** claims. CP 6675. Jury Instruction 23 also indicated that "the court will provide you with a special verdict form for this purpose" of allocating fault. The special verdict form reflecting Amanda's claims also instructs the jury to diminish her damages based upon the contributory negligence of Amanda's mother – a statement that is irreconcilable with the directive given by Instructions 15 and 20. CP 6694-6697; CP 6695.

In order for jury instructions to be sufficient, they must: (1) allow counsel to argue their theory of the case; (2) not mislead the jury; and (3) when read as a whole, properly inform the trier of fact of the applicable law. *Bodin v. City of Stanwood*, 130 Wn.2d 726, 732 (1996). Claimed errors in jury instructions are reviewed *de novo*. *Keller v. City of Spokane*, 104 Wn. App. 545, 551, (2001), *aff'd*, 146 Wn.2d 237 (2002).

Errors in special verdict forms are reviewed under the same standard as jury instructions – *de novo*. *Capers v. Bon Marche*, 91 Wn. App. 138, 142 (1998). When read as a whole, the special verdict form must adequately present the contested issues to the jury in an unclouded and fair manner. *See Lahmann v. Sisters of St. Francis*, 55 Wn. App. 716, 723 (1989). A special verdict form is prejudicially defective when it contradicts accompanying jury instructions. As this Court held in *Capers*,

a special verdict form "may not contain language that is inconsistent with or contradicts that instruction." 91 Wn. App at 144.

Prejudice is ***presumed*** when the trial court provides inconsistent jury instructions on a material issue:

> [W]e have held consistently that it is prejudicial error to give irreconcilable instructions upon a material issue in the case. Where instructions are inconsistent or contradictory on a given material point, their use is prejudicial, for the reason that it is impossible to know what effect they may have on the verdict.

Hall v. Corporation of Catholic Archbishop, 80 Wn.2d 797, 804 (1972).

The alleged fault of Amanda's mother was a "material issue" in this litigation. The jury instructions and special verdict forms were inconsistent, did not accurately reflect the law, and related to a material issue considered by the jury.

2. Evidence Related to Amanda's Alleged Sexual History Should Have Been Excluded Under Evidence Rule 412

Pursuant to Evidence Rule 412, evidence of a victim's sexual history and/or sexual predisposition is presumed inadmissible. ER 412(b). This presumption can only be overcome if the evidence's "probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party." ER 412(c).

Petitioner argued at trial that questions of capacity turn on cognitive considerations, not a person's sexual history. RP 34, l. 10-16. Petitioner pointed out that allowing a defendant to avoid the exclusionary presumption of Evidence Rule 412 by claiming that the evidence was offered to rebut damages would eviscerate the rule's protections. RP 41, l. 19 – RP 42, l. 5.

The trial court disagreed. Evidence regarding Amanda's alleged sexual behaviors, occurring eight years before the events described in the Complaint, was permitted. RP p. 56, l. 1-15. The trial court also permitted evidence that Amanda sought birth control. The trial court concluded that this evidence was also admissible to establish capacity.

The trial court's admission or exclusion of evidence pursuant to Rule 412 is reviewed for abuse of discretion. *United States v. White Buffalo*, 84 F.3d 1052 (8th Cir. S.D. 1996). However, Washington law makes clear that failure to exercise discretion is, in and of itself, an abuse of discretion. *Kucera v. DOT*, 140 Wn.2d 200 (2000). Here, the trial court failed to exercise authority and instead allowed Defendant KSD's expert's opinion to establish the admissibility of evidence.

Even if the trial court had exercised discretion, its rulings reflect an abuse of that discretion. A trial court's exercise of discretion warrants

reversal when it is based on an erroneous view of the law or an incorrect legal analysis. *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833 (2007).

Due to her lifelong cognitive limitations, Amanda's mental capacity to consent to sex was a central issue at trial. Applying RCW 9A.44.010(4), the Washington State Supreme Court has held that mental incapacity must be measured by a person's understanding of the nature and consequences ***at the time of the offense***:

> It is important to distinguish between a person's *general* ability to understand the nature and consequences of sexual intercourse and that person's ability to understand the nature and consequences at a given time and in a given situation. This treatment of the two as identical contradicts the express language of the statute. *RCW 9A.44.010(4)* specifically notes "'mental incapacity' is that condition existing *at the time of the offense* which prevents a person from understanding the nature or consequences of the act of sexual intercourse . . ." (Italics ours.)

State of Washington v. Ortega-Martinez, 124 Wn.2d 702, 716 (1994).

As recognized by *Ortega-Martinez*, evidence that Amanda was allegedly involved in a sexual relationship with her cousin at age 8 has no bearing on her capacity to consent to sex at age 16. *Ortega-Martinez* makes it clear that a trial court must focus on a person's capacity to consent to sex at the time the offense occurs.

The trial court's ruling that prior sexual conduct demonstrates capacity to consent to sex also ignores the underlying causes of Amanda's incapacity – her life-long developmental disabilities. Evidence of prior sexual conduct is ***irrelevant*** where a victim, like Amanda, suffers from permanent, developmental impairments:

> Where the lack of capacity is based on a permanent, organic condition, it logically follows that prior acts of intercourse cannot demonstrate that the victim understands the nature and consequences because the prior acts may have occurred due to the same lack of capacity. The risk of undue prejudice from the admission of such evidence is high, while the benefit to the defense is insubstantial.

State of Washington v. Summers, 70 Wn. App. 424, 435 (Div. I. 1993).

At trial, Defendant KSD repeatedly referenced that Amanda had sex with her cousin, for clear strategic purposes, with the intention of prejudicing the jury against both Amanda and her mother. Tactics like these are why Evidence Rule 412 was enacted.

Defendant KSD also argued, and the Court of Appeals agreed, that Amanda's sexual history and sexual predisposition should be admitted to rebut Amanda's claim of damages. Specifically, Defendant KSD argued that, because Petitioner's expert witnesses testified that the events in the

school restrooms caused harm, her sexual history became an issue for the jury to consider.

Defendant KSD's arguments are not supported by legal authority and ignore the purpose behind Evidence Rule 412. The rule was adopted to ***encourage*** victims of sexual misconduct to come forward with the knowledge that degrading and embarrassing details about their private lives would not be offered or admitted at trial.[4] *See United States v Cardinal*, 782 F.2d 34 (6th Cir. 1986), *cert denied at* 476 US 1161 (1986); *see also United States v Saunders*, 943 F.2d 388 (4th Cir. 1991); *cert denied,* 502 US 1105 (1992) (evidence that victim was prostitute that traded sex from drugs properly excluded pursuant to Rule 412).

Adopting Defendant KSD's argument would mean that the protections afforded by Evidence Rule 412 would cease to apply whenever a victim alleges damages as a result of sexual misconduct – a near universal request. Under this logic, otherwise-inadmissible sexual innuendo could be offered to "rebut" a claimant's damages.

Where there is a risk of prejudice arising from improperly admitted evidence and "no way to know what value the jury placed upon the improperly admitted evidence, a new trial is necessary." *Salas v. Hi-Tech*

[4] ER 412 is derived from Federal Rule of Evidence 412. Federal case law interpreting an identical federal rule may be used by this Court to construe ER 412. *In re Det. of Stout*, 159 Wn.2d 357, 386 (2007).

Erectors, 168 Wn.2d 664, 673 (2010) (*quoting Thomas v. French*, 99 Wn.2d 95, 105 (1983)).

F. CONCLUSION

This Petition for Review should be granted. The Court of Appeals Opinion conflicts with well-settled law and presents issues of great importance to the public.

RESPECTFULLY SUBMITTED this 25th day of September, 2013.

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MADHURI PATEL, individually and on behalf of AMANDA HINGORANI, a developmentally disabled minor,	)	DIVISION ONE
Appellant/Cross-Respondent,	)	No. 67711-0-I
v.	)	UNPUBLISHED OPINION
KENT SCHOOL DISTRICT, a Washington municipal corporation; KENT YOUTH AND FAMILY SERVICES, a Washington corporation and healthcare provider; MARNEE CRAWFORD, a healthcare provider; and DENNIS BALLINGER, a healthcare provider,	)	
Respondents/Cross-Appellants.	)	FILED: August 26, 2013

DWYER, J. — This appeal arises from a lawsuit in which Madhuri Patel sued the Kent School District, alleging that its negligent supervision of Patel's daughter, Amanda Hingorani, had caused damage to both Patel and Amanda.[1] At trial, Patel alleged that the District had breached its duty of care by failing to prevent Amanda from engaging in sexual relations with another student in the school bathrooms. Patel argued that Amanda, who had been diagnosed with cognitive delays, was incapable of consenting to this sexual contact. Following a

[1] The parties both reference Amanda Hingorani by her first name throughout their briefing to the court. For the sake of consistency, we also adopt this convention.

six week trial, the jury found in favor of the District. By special verdict, the jury determined that, although the District had breached its duty of care, this breach was not a proximate cause of any injury to Amanda. The jury further determined that the District had breached no duty to Patel.

On appeal, Patel asserts that the trial court erred by instructing the jury to consider the percentage of fault attributable to Patel when assessing Amanda's alleged injuries. She further contends that the trial court erred by admitting certain evidence relating to Amanda's sexual history, that a guardianship order declaring Amanda to be legally incapacitated was improperly excluded from evidence, and that the trial court erred by utilizing criminal standards when instructing the jury on the definition of "sexual abuse." Finally, Patel contends that the trial court erred by denying her motion to amend her complaint to add a claim under RCW 74.34.035, a statute applying to the protection of vulnerable adults. None of these contentions has merit. Accordingly, we affirm the judgment entered on the jury's verdict in favor of the District.

I

Amanda entered Kentridge High School as a freshman during the 2005-06 academic year. Amanda, who had been previously diagnosed with cognitive and intellectual delays, was classified by the Kent School District as mildly mentally retarded.[2] As required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1490, an individualized education program (IEP) was

[2] The District has now abandoned its use of the term "mentally retarded" in favor of the term "developmentally delayed."

developed for Amanda. Amanda was thereafter enrolled in a combination of special education and general education classes.

In April 2006, Amanda's mother, Patel, discovered a series of e-mail exchanges between Amanda and several of her classmates. In the e-mails, students Eric Warren, Tayana Bryant, and Amanda Hedstrom urged Amanda to steal money from her mother in exchange for promises of friendship and sex. Amanda's romantic and sexual interest in Warren would be reciprocated, the students told Amanda, only if Amanda regularly delivered money to them at school. In one of the e-mail exchanges between Amanda and Warren, the two students utilized highly explicit sexual language to describe their sexual desires for one another.

Patel thereafter contacted school staff at Kentridge to discuss her concern that Amanda was being exploited at school. An investigation of these incidents was immediately initiated. After interviewing both Amanda and Warren, school officials concluded that no sexual encounters had occurred. Nevertheless, because Warren and Bryant each admitted to asking Amanda to steal money from Patel, they were both placed on long-term suspension. Neither student would return to Kentridge. Hedstrom continued to be enrolled at the school but signed a no-contact order prohibiting her from contacting Amanda.[3]

Following this incident, Amanda was moved to a more restrictive special education classroom setting. Amanda was placed in the "self contained"

[3] Amanda signed a reciprocal no-contact order, prohibiting her from contacting Hedstrom, Warner, and Bryant.

classroom of Francine Wilhelm, which was located in a separate building with only four classrooms. Special education students were the only students in Wilhelm's class. The school provided Amanda with escorts to walk her between classes and to and from the bus. Wilhelm volunteered to take her lunches with Amanda in the classroom. These restrictions continued for the remainder of Amanda's freshman year in school.

During this same time period, Amanda began counseling services at Kent Youth and Family Services (KYFS). Marnee Crawford was Amanda's counselor. In June 2006, Amanda admitted to Crawford that during her freshman year, she had in fact engaged in sexual intercourse with Warner. She told Crawford that several of these incidents had occurred in a school bathroom.

Crawford thereafter contacted her supervisor to determine whether either Child Protective Services (CPS) or the school should be notified. Crawford explained to her supervisor that she believed that Amanda had freely consented to the sexual intercourse with Warren and that Amanda understood the nature and consequences of her behavior. Because Crawford and KYFS did not believe that the incidents involved either sexual or physical abuse, they determined that there was no need to file a report with CPS. Moreover, because Amanda had requested that information regarding her sexual activities remain private, KYFS determined that the school would not be notified of Amanda's behavior in the school bathrooms.

The following fall, at the beginning of Amanda's sophomore year, Patel requested that the school continue the same restrictions that had been imposed

at the end of Amanda's freshman year at Kentridge. Patel met twice with school officials to discuss Amanda's IEP. Patel requested that, in addition to the previously imposed restrictions, the school also provide Amanda with constant one-on-one supervision. Patel did not, however, inform school officials that Amanda had engaged in sexual intercourse in the school bathrooms during the previous year.[4]

Crawford also attended both meetings with the IEP team. Crawford told the group that there were reasons to be concerned for Amanda's safety if she was left unsupervised. She stated that her concerns related to "lunch, passing times, and especially bathroom times." However, Crawford would not elaborate with respect to her specific concerns. Instead, she encouraged school officials to meet directly with Amanda.

Following these meetings, the IEP team determined that Amanda would remain in a restrictive special education classroom setting and that she would continue to receive escorts between classes. The team determined that Amanda would not, however, be provided with constant one-on-one supervision.[5] As Jennifer Grajewski, the director of special education at Kentridge, would later testify, because the IDEA requires that special education students be educated in the "least restrictive environment," such one-on-one monitoring can only be justified where a specific need is demonstrated. Based upon the information

[4] Patel learned of Amanda's sexual conduct in the school bathrooms in October 2006.

[5] Amanda's written IEP, in a section pertaining to "the concerns of the parents for enhancing the education of their child," provided: "[S]taff escorts Amanda to and from her classes. Upon arrival at school, Amanda is escorted to her first class. At days [sic] end she is walked to her bus. In this way, staff is able to provide the safety and close monitoring needed."

provided to the IEP team, constant one-on-one supervision was deemed inappropriate for Amanda.

In September 2006, Amanda was again enrolled in Wilhelm's self-contained special education classroom. Amanda was initially escorted to and from the girls' restroom, which was directly adjacent to Wilhelm's classroom. However, by the spring of 2007, Wilhelm determined that Amanda's observed behavior warranted fewer restrictions. In lieu of providing an escort for Amanda, Wilhelm began to simply monitor the clock during times that Amanda was out of the classroom using the restroom. Wilhelm would later testify that Amanda was never gone for more than five minutes.

In March 2007, Amanda began a relationship with another special education student, Matthew Mills. Mills, who was also enrolled in Wilhelm's class, asked Amanda "if she would be [his] girlfriend, and she said yes."[6] Mills was 18 years old and Amanda was 16 years old at the time this relationship began.

Between the months of March and April of 2007, Mills and Amanda had sexual relations at school on several occasions. These incidents occurred in the boys' bathroom. Mills would leave Wilhelm's classroom to use the bathroom.

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[6] Amanda had previously been involved with Mills. In December of 2006, Amanda wrote a note to Mills in which she expressed her interest in him:

> Hey Matt. What's up with life. I really love you + like you lots! Do you have a cell phone so I can call you when I get my cell phone? I do want you to kiss me. Also I was wondering are you going to ask me out to homecoming? I love your hugs there [sic] so combortable [sic]. Do you want to do you know what whenever your [sic] ready. Write me back. I really miss you a lot and think of us! Ok bye! Loveya.

Several minutes later, Amanda would also leave the classroom. The two students would then go to the boys' bathroom. They would enter the stall that was farthest from the entrance. Mills would remove his pants, and either Mills or Amanda would then remove her pants and underwear. Mills would then attempt to put his penis into Amanda's anus. This was never successful. On one occasion, Amanda performed oral sex on Mills for approximately 1-2 seconds. Mills would later tell the jury that it was Amanda's idea to attempt anal sex because Amanda did not want to get pregnant.

On April 27, 2007, Assistant Principal Molly King discovered Amanda and Mills hugging in the school hallway. Mills was standing behind Amanda with his arms around her waist, and Amanda was leaning back against him, smiling. King immediately notified Wilhelm. The following week, Wilhelm observed Mills quietly leave the classroom approximately 30 seconds after Amanda had left to use the restroom. Wilhelm quickly followed Mills. She found Amanda in the girls' restroom washing her hands. Wilhelm thereafter escorted Amanda back to the classroom. Mills returned to class approximately three minutes later. Amanda was extremely angry with Wilhelm for interfering with her.

Wilhelm immediately notified Patel about the incident. In an e-mail dated April 30, 2007, Wilhelm told Patel that she believed that Amanda "may have been about to repeat some of the same behaviors in our bathroom with Matt that she engaged in last year." When Patel confronted Amanda about this incident later that day, Amanda told her mother that she had sex with Mills in the boys' bathroom on two occasions during the previous week.

Patel thereafter removed Amanda from school and contacted the police to report the incident. Detective Belinda Ferguson met with Amanda and Patel on May 16, 2007. Amanda told Detective Ferguson that "she liked Matt and he liked her." Amanda stated that Mills "asked her if she wanted to have sex, she agreed and the two went into the bathroom (boys) together." Detective Ferguson observed that "Amanda was very calm talking about the incident." When Detective Ferguson asked Amanda if Mills "forced her to do anything she didn't want to do, she said 'no.'"

On June 18, 2008, Patel filed a complaint for damages against the District. Patel alleged that the District was liable both for negligent supervision of Amanda and for failing to report the abuse or neglect of a child pursuant to RCW 26.44.030. Patel sought damages both for her own alleged injuries and on behalf of Amanda.

Trial began in June 2011. At the conclusion of six weeks of testimony, the jury determined that neither Amanda nor Patel had been proximately damaged by the acts or omissions of the District. With respect to Amanda's claims, the jury found that both Patel and the District were "negligent" but that proximate cause was lacking and that Amanda had suffered no damages. The jury also concluded that both Patel and the District failed to report reasonably suspected abuse or neglect but that these omissions did not proximately lead to any damages.[7]

[7] The District asserted that Patel, who as a nurse was required to report suspected sexual abuse pursuant to RCW 26.44.030, also violated the requirements of the statute.

With respect to Patel's individual claims, the jury determined that the District was not negligent and that Patel was not damaged.

Patel appeals and the District cross appeals.

II

Patel first asserts that the trial court erred by instructing the jury to consider the percentage of fault attributable to Patel when assessing Amanda's alleged injuries. She sets forth several bases for this contention. Patel contends, first, that she was entitled to parental immunity with regard to Amanda's claim for damages, second, that the court's instructions impermissibly allowed the jury to impute Patel's negligence to Amanda, and, third, that the relevant instructions were inconsistent and irreconcilable. However, because Patel demonstrates no prejudice arising from these alleged errors, her assertions provide no basis for a grant of appellate relief.

Given the jury's special verdict findings, it is clear that the trial court's instructions regarding the apportionment of fault had no effect on the verdict in favor of the District. Although the jury determined that both the District and Patel had breached a duty owed to Amanda, it found that these actions were not the proximate cause of any injury to Amanda. The jury likewise concluded that although both the District and Patel had violated the law by failing to report suspected abuse or neglect, Amanda was not proximately injured by these violations. The jury found by special verdict that the amount of Amanda's noneconomic and future economic damages was $0.

Patel's assignments of error have no bearing on these dispositive jury

determinations. The jury was instructed that "'proximate cause' means a cause that was a substantial factor in bringing about the injury even if the result would have occurred without it."[8] Instruction 17. In determining Amanda's noneconomic damages, the jury was told to consider the "nature and extent of the injuries," her "loss of enjoyment of life," as well as "pain and suffering . . . experienced and with reasonable probability to be experienced in the future." Instruction 37. Future economic damages to be considered included the costs of "necessary medical care, treatment, and services." Instruction 37. Utilizing these instructions, the jury determined that Amanda had suffered no damages as a result of the acts or omissions of Patel or the District.

"Trial court error on jury instructions is not a ground for reversal unless it is prejudicial. An error is prejudicial if it affects the outcome of the trial." Stiley v. Block, 130 Wn.2d 486, 498-99, 925 P.2d 194 (1996) (footnote omitted). Here, the instructions that permitted the jury to consider the percentage of fault attributable to Patel when apportioning fault for Amanda's alleged injuries were unrelated to the jury's determination that Amanda was uninjured by the District's conduct. This determination was entirely independent of the question of whether either the District or Patel breached a duty to Amanda. Indeed, having determined that neither Patel's nor the District's conduct was a proximate cause of Amanda's alleged injuries, the jury never reached the question of whether to apportion fault to Patel.

[8] The jury was also instructed that "'proximate cause' means a cause which in a direct sequence unbroken by any new independent cause produces the injury complained of and without which such injury would not have happened." Instruction 16.

The alleged errors in the court's instructions had no effect on the jury's verdict in favor of the District. Accordingly, because Patel was not prejudiced by the asserted errors, appellate relief on this basis is unwarranted.[9] Thus, we need not further address the merits of Patel's claims in this regard.

III

Patel next asserts that the trial court erred by admitting certain evidence relating to Amanda's sexual history. We disagree.

Evidence Rule (ER) 412 provides that in a civil case, "evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party." A trial court has broad discretion in ruling on evidentiary matters; the court's decision to admit or exclude evidence will be overturned only for a manifest abuse of that discretion. State v. Magers, 164 Wn.2d 174, 181, 189 P.3d 126 (2008).

Here, the trial court admitted evidence of two incidents involving prior sexual conduct by Amanda. Dr. Shirley Feldman-Summers, who counseled Amanda at KYFS, was permitted to testify that Amanda had told her of a prior

[9] Patel contends that, because it is impossible to know what effect inconsistent instructions may have on a verdict, prejudice is presumed in instances where the trial court gives irreconcilable instructions. However, this is true only where the contradictory instructions pertain to a material issue in the case. See Hall v. Corp. of Catholic Archbishop of Seattle, 80 Wn.2d 797, 804, 498 P.2d 844 (1972). Here, given the jury's determination that Amanda was uninjured by the actions of either the District or Patel, the percentage of fault attributable to Patel was not a material issue reached by the jury in this case. In such circumstances, reversal is unwarranted. See Miller v. Alaska S.S. Co., 139 Wash. 207, 212, 246 P. 296 (1926) ("Inconsistent instructions, to work a reversal, must be prejudicial to the party complaining before such a result will follow.").

sexual relationship with Amanda's cousin, Sunil Patel. Amanda explained to Feldman-Summers that she had "told [her cousin] I did not want to [have sex] anymore because I did not want to have a messed up baby since we're cousins."

In addition, Feldman-Summers was permitted to tell the jury that Amanda had assertively sought to acquire birth control pills. Amanda told Feldman-Summers that she wanted "to go on birth control because Eric wants me to have a baby with him but I am not ready."

In explaining its ruling, the trial court noted that Amanda's capacity to consent to sex was an important issue at trial. Because there was no evidence that Amanda had been forcibly raped by Mills, Patel's theory of liability was that Amanda lacked the capacity to consent to the sexual contact.[10] Because the sexual contact was nonconsensual, Patel claimed, it was abusive. See C.J.C. v. Corp. of Catholic Bishop of Yakima, 138 Wn.2d 699, 709, 985 P.2d 262 (1999) ("The alleged sexual abuse is essentially an element of the plaintiffs' negligence claims. Absent the abuse, plaintiffs would not have suffered any injury and their negligence claims could not stand."). Accordingly, in order to demonstrate that Amanda lacked the capacity to consent, Patel was required to prove at trial that Amanda was incapable of "understanding the nature or consequences of the act of sexual intercourse" at the time of the sexual contact. Instruction 34.

The trial court determined that the proffered evidence was highly relevant to this issue. Amanda's decision to end a sexual relationship with her cousin

[10] Amanda's capacity to consent was also relevant to Patel's claim that school personnel failed to report that Amanda had been subjected to sexual abuse.

because she believed that any children born of such a union would be at risk for birth defects tended to demonstrate her understanding of the nature and consequences of sexual intercourse.[11] Similarly, evidence that Amanda had sought to obtain birth control pills further indicated that Amanda understood the potential consequences of sexual intercourse. Indeed, as Feldman-Summers later testified, Amanda also demonstrated an understanding that condoms are used to prevent sexually-transmitted disease, an additional potential consequence of sexual contact.

With regard to the danger of unfair prejudice or harm to the victim, the trial court noted that this evidence was not being introduced to prove propensity. This was not a case, the court explained, in which evidence of a victim's past sexual conduct was offered to demonstrate that the victim had also consented in the current case. To the contrary, there was no dispute that Amanda willingly engaged in the sexual conduct in question. Instead, the issue was whether Amanda had the capacity to consent. Accordingly, the trial court ruled, such

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[11] Patel relies upon our Supreme Court's decision in State v. Ortega-Martinez, 124 Wn.2d 702, 716, 881 P.2d 231 (1994), for the proposition that, in determining competency to consent, only evidence from the time of the sexual contact is admissible. That case held no such thing. Rather, the court simply noted that a person's capacity to consent must be evaluated as it existed at the time of the sexual contact. The court did not hold that only evidence from the time of the contact is relevant. To the contrary, particularly where a plaintiff asserts that a person's lack of capacity is a permanent condition, as Patel did here, even noncontemporaneous evidence tending to demonstrate that such capacity in fact exists may be highly probative.

Here, Amanda allegedly ended the sexual relationship with her cousin when she was only 12 years old. Accordingly, Patel contends that this event was too remote in time to be relevant to Amanda's capacity to consent at the time of the incidents involving Mills. However, it was Amanda's statements to her counselor and not her actual conduct that was probative of Amanda's capacity to consent to the contact with Mills. Amanda told her counselor about this incident on October 31, 2006, only five months before she began having sexual relations with Mills. Accordingly, this evidence was relevant to Amanda's understanding of the nature and consequences of sexual intercourse at the time that the more recent incidents took place.

evidence was unlikely to result in unfair prejudice or harm to Amanda.

Nevertheless, Patel asserts that evidence of prior sexual conduct is always irrelevant where the alleged victim suffers from a permanent lack of capacity. In support of this proposition, she relies upon our decision in State v. Summers, in which we explained that where a victim's "lack of capacity is based on a permanent, organic condition, it logically follows that prior acts of intercourse cannot demonstrate that the victim understands the nature and consequences because the prior acts may have occurred due to the same lack of capacity." 70 Wn. App. 424, 435, 853 P.2d 953 (1993).

Patel's reliance on Summers, however, is misplaced. Whether Amanda lacked the capacity to consent as a result of a permanent, organic condition was itself a hotly contested issue at trial. Moreover, in contrast to the issue presented in Summers, it was not the fact of Amanda's prior sexual activity that was deemed relevant by the trial court. Instead, it was the nature of Amanda's reasoning in deciding to terminate a sexual relationship and her reasons for later seeking birth control pills that bore on the question of her capacity to consent. The trial court correctly determined that this evidence was highly probative with regard to this issue. See State v. Frost, 141 N.H. 493, 502, 686 A.2d 1172 (1996) ("The issue the jury must decide is the complainant's mental capacity to choose whether to consent; the defendant is correct that evidence that she had exercised that mental capacity on prior occasions would be highly probative.").

In determining whether to admit evidence pertaining to Amanda's prior sexual behavior, the trial court properly applied ER 412. The court weighed on

the record the probative value of this evidence against the risk of unfair prejudice and harm to Amanda. The trial court did not abuse its discretion by determining that the evidence was admissible. There was no error.[12]

IV

Patel next contends that the trial court erred by excluding from evidence a copy of a guardianship order that declared Amanda to be legally incapacitated. We disagree.

Under ER 403, evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." A trial court's decisions regarding the admissibility of evidence are reviewed for abuse of discretion. State v. Vreen, 143 Wn.2d 923, 932, 26 P.3d 236 (2001). The trial court's balancing of the evidence's probative value against its prejudicial effect or potential to mislead is entitled to great deference. State v. Luvene, 127 Wn.2d 690, 706-07, 903 P.2d 960 (1995)).

Here, Patel moved to introduce the "Findings of Fact, Conclusions of Law and Order Appointing Guardian of Person and Estate," entered by a King County

[12] The trial court also determined that evidence of Amanda's sexual relationship with her cousin was relevant to the issue of Amanda's damages. At trial, Patel argued that Amanda's view of sexual relationships had become "distorted" as the result of her relationship with Mills and that she was thereafter vulnerable to further exploitation. The trial court determined that evidence of Amanda's prior relationship was relevant to the question of whether this alleged condition predated the incidents involving Mills at Kentridge. On appeal, Patel asserts that the trial court improperly deferred to the opinion of the District's expert in making this determination. To the contrary, in ruling on this issue, the trial court properly acknowledged that the District's expert's opinion was not the "standard of relevance" set forth by ER 412. Instead, the record indicates that the court thoroughly considered the language of the rule, the briefing of the parties, and extensive oral arguments prior to admitting the evidence for this purpose.

Superior Court judge, declaring Amanda to be legally incapacitated under Washington law. After evaluating this document, the trial court determined that the probative value of the guardianship order was substantially outweighed by the danger of unfair prejudice or confusion of the issues and, accordingly, excluded all evidence that such an order had been entered. On the other hand, the court noted that evidence of the facts underlying the determination of Amanda's legal incapacity would be admissible.[13]

The trial court did not err by so ruling. The court explained that the guardianship order was minimally relevant to the question of Amanda's capacity to consent to sex. A determination of legal incapacity, the court noted, is "arrived at under a different standard" than that utilized to determine a person's capacity to consent to sex. A person may be deemed legally incapacitated based upon his or her "demonstrated inability to adequately provide for nutrition, health, housing, or physical safety," RCW 11.88.010(a), or where the person is at significant risk of financial harm based upon an "inability to adequately manage property or financial affairs." RCW 11.88.010(b). Such findings are generally not relevant to the question of a person's capacity to consent to sex.

Furthermore, the trial court noted, this evidence was likely to confuse the jury. On the issue of Amanda's ability to consent to sex, the jury was ultimately instructed that "'[m]ental incapacity' means a condition that at the time of the sexual intercourse or contact prevents a person from understanding the nature or

[13] At trial, Patel did not choose to call as witnesses any persons involved in the determination of the guardianship for Amanda.

consequences of the act of sexual intercourse." Instruction 34. By contrast, the guardianship order stated that Amanda was legally "incapacitated." Given the substantial similarities between the language of the guardianship order and the language of the anticipated jury instruction (which was, in fact, given), the trial court determined that the jury might incorrectly conclude that the guardianship order had already resolved the question of whether Amanda lacked the capacity to consent to sex.

Finally, the court explained, admission of the order would be unfairly prejudicial to the District. "[J]udicial findings of fact 'present a rare case where, by virtue of their having been made by a judge, they would likely be given undue weight by the jury, thus creating a serious danger of unfair prejudice.'" Nipper v. Snipes, 7 F.3d 415, 418 (4th Cir. 1993) (quoting Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 505 F. Supp. 1125, 1186 (E.D. Pa. 1980)); accord United States v. Sine, 493 F.3d 1021, 1034 (9th Cir. 2007). As the trial court properly determined, there was a substantial risk that the jury might assign inappropriate weight to the factual findings and order of a court.

The trial court's decision to exclude evidence of the order was based on tenable grounds and was eminently reasonable. There was no error.

V

Patel next contends that the trial court erred by utilizing criminal standards when instructing the jury on the definition of "sexual abuse." We disagree.

Jury instructions are proper when they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the

applicable law. In re Det. of Greenwood, 130 Wn. App. 277, 287, 122 P.3d 747 (2005); In re Det. of Twining, 77 Wn. App. 882, 894, 894 P.2d 1331 (1995). "Trial courts must define technical words and expressions used in jury instructions, but need not define words and expressions that are of ordinary understanding or self-explanatory." State v. Brown, 132 Wn.2d 529, 611-12, 940 P.2d 546 (1997). Whether a word is technical in nature is a question within the discretion of the trial court. State v. Guloy, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985).

In this case, Patel asserted that Amanda was injured by the District's failure to report its knowledge of Amanda's sexual activities to certain authorities, as required by statute. The mandatory reporting statute, RCW 26.44.030, requires professional school personnel with "reasonable cause to believe that a child has suffered abuse or neglect" to report the suspected abuse to the Department of Social and Health Services (DSHS) or the proper law enforcement agency.[14] RCW 26.44.030(1)(a). The statute defines "[a]buse or neglect," in relevant part, as "sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety." RCW 26.44.020(1). "Sexual exploitation" is defined to include "[a]llowing, permitting, or encouraging a child to engage in prostitution" or "allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child." RCW 26.44.020(20). The statute does not, however, define the terms "sexual abuse" or "injury."

[14] Our Supreme Court has determined that there is an implied cause of action against a mandatory reporter who fails to report suspected abuse. Beggs v. Dep't of Soc. & Health Servs., 171 Wn.2d 69, 77, 247 P.3d 421 (2011).

Here, the trial court determined that the jury would benefit from a definition of the term "sexual abuse."[15] ("What do we do when the jury comes back and says, what is sexual abuse?"). Accordingly, the court instructed the jury that "'[s]exual abuse' means that a child has been the victim of an intentional sexual offense that is a violation of the Washington state criminal code." Instruction 31. The jury was told that "[c]onsensual sexual contact with another person by any person 15 years of age does not violate the Washington state criminal code when the other person is at least 13 years old and less than 19 years old."[16] Instruction 32. The jury was further instructed that a person lacks the capacity to consent where that person is incapable of "understanding the nature or consequences of the act of sexual intercourse" at the time of the sexual contact. Instruction 34.

Patel contends that, by so instructing the jury, the trial court improperly injected criminal standards into a civil case. She asserts that these instructions required her to prove that a criminal act had been committed in order to sustain her claims for violations of the mandatory reporting statute. This is not so. Rather, in order to demonstrate such a violation, Patel was required to prove only that a mandatory reporter "reasonably believed" that a violation of the criminal code had occurred. No proof of an actual crime was required. Moreover, Patel

[15] The trial court also instructed the jury regarding the statutory definitions of "abuse or neglect" and "sexual exploitation."

[16] The trial court further instructed the jury that neither "sexual contact between a person aged 18 years or older and a person age 16 years or older" nor "[c]onsensual contact between any person 16 years of age with another person 16 years or older" is a violation of our state's criminal code. Instruction 32.

remained free to argue that professional school personnel reasonably believed that Amanda had suffered injury under circumstances causing harm to her health, welfare, or safety. The jury was not instructed that such an injury must constitute a criminal violation.[17]

In addition, DSHS, the agency responsible for investigating reports made under chapter RCW 26.44, has expressly incorporated the criminal definition of sexual abuse within the Washington Administrative Code (WAC). WAC 388.15.009(3) provides that "[s]exual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code." An agency is entitled to great deference in cases where the agency has interpreted an ambiguous statute within its area of special expertise. Dot Foods, Inc. v. Dep't of Revenue, 166 Wn.2d 912, 921, 215 P.3d 185 (2009). The trial court properly relied upon this definition in instructing the jury regarding the

[17] In arguing that the instructions were proper, the District appears to assert that only sexual acts constituting violations of the criminal code give rise to a cause of action for negligence. Insofar as the District so contends, it is incorrect. The District relies upon our Supreme Court's decision in C.J.C. v. Corp. of Catholic Bishop of Yakima, 138 Wn.2d 699, 985 P.2d 262 (1999), for this proposition. In that case, the court stated that if alleged sexual abuse does not amount to a violation of the criminal code, then "no claim of any type, against any person, lies." C.J.C., 138 Wn.2d at 712. However, the court's decision in C.J.C. was limited to consideration of actions brought pursuant to RCW 4.16.340, which applies only where the plaintiff alleges damages for "childhood sexual abuse." 138 Wn.2d at 712. Because the statute expressly defines "childhood sexual abuse" as acts that would constitute sexual offenses under the criminal code, only where such acts are alleged is there a cause of action under that statute. The court did not, however, indicate that a plaintiff must demonstrate a violation of the criminal code in an ordinary negligence action. Indeed, as this court has noted in a similar context, it is irrelevant "that the particular injury that in fact occurred was a criminal assault or that it was sexual in nature." J.N. v. Bellingham Sch. Dist. No. 501, 74 Wn. App. 49, 59, 871 P.2d 1106 (1994).

Nevertheless, despite the District's argument on appeal, the jury was not improperly instructed. The jury was told that the District had "an affirmative duty to protect students in its custody from reasonably anticipated dangers." Instruction 10. It was not instructed that it must find a violation of the criminal code in order to determine that the District was negligent. Accordingly, there was no error.

meaning of "sexual abuse." There was no error in the jury instructions relating to this issue.

VI

Patel's final contention is that the trial court erred by denying her motion to amend her complaint to add a claim under RCW 74.34.035, a statute applying to the protection of vulnerable adults. The trial court determined that the statute applies only to the protection of adults. Because Amanda was only 15 and 16 years old at the time of the events underlying Patel's claims, the trial court determined that the statute was inapplicable and, accordingly, denied Patel's motion to amend her complaint. There was no error.

"The court's fundamental objective in construing a statute is to ascertain and carry out the legislature's intent." Arborwood Idaho, L.L.C. v. City of Kennewick, 151 Wn.2d 359, 367, 89 P.3d 217 (2004). Statutory interpretation begins with the statute's plain meaning. Lake v. Woodcreek Homeowners Ass'n,169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Plain meaning "is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009). If the statute is unambiguous after a review of the plain meaning, the court's inquiry is at an end. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If, however, the statute is ambiguous, the court may then "look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." Rest. Dev., Inc. v. Cananwill, Inc., 150

Wn.2d 674, 682, 80 P.3d 598 (2003).

The legislature enacted the vulnerable adult protection statute, chapter 74.34 RCW, based upon its finding that "some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult." RCW 74.34.005(1). "When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to [DSHS]." RCW 74.34.035(1). Although the term "adult" is left undefined in the statute, this term is commonly defined in the law as a person who has attained the age of legal majority. BLACK'S LAW DICTIONARY 59 (9th ed. 2009). In Washington, the age of legal majority is 18 years old. RCW 26.28.010. Thus, the plain language of the statute indicates that the statute's protections apply only to persons who are at least 18 years of age.

Here, Patel does not contend that Amanda was an adult at the time of the events giving rise to this case. Instead, she asserts that the legislature intended that the vulnerable adult protection statute apply to other persons as well. She points out that the definition of a "vulnerable adult" includes a "person . . . [w]ho has a developmental disability as defined under RCW 71A.10.020." RCW 74.34.020(17)(c). Although the statute makes no mention of "children" or "minors" in any of its provisions, Patel asserts that, because Amanda is a person who has a developmental disability, the legislature must have intended that the vulnerable adult protection statute also apply to Amanda.

A cursory review of the statutory scheme belies this assertion. The protection of vulnerable adults was previously governed by several statutes, including former chapter 26.44 RCW. The former statute applied both to the protection of "adult dependent persons"—defined by statute as "persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW"—and to children under the age of 18 years. Former RCW 26.44.020 (6), (14) (1998). In 1999, the legislature determined that combining the various protections for vulnerable adults within one statute "would better serve this state's population of vulnerable adults." Laws of 1999, ch. 176, § 1. Accordingly, the protections originally afforded adults pursuant to chapter 26.44 RCW were removed from that statute and centralized (along with other such protections found elsewhere in the code) within chapter 74.34 RCW. Laws of 1999, ch. 176. Following these changes, chapter RCW 26.44 applied exclusively to the protection of children and chapter RCW 74.34 applied exclusively to the protection of adults.

Indeed, the final bill report relating to this act reflects this intent. This document explains that vulnerable adults in Washington include:

- adults over the age of 60 who lack the functional, mental, physical ability to care for himself or herself;
- adult clients of the Division of Developmental Disabilities;
- dependent adults with a legal guardian;
- adults receiving in-home care services; and
- adults living in a nursing home, adult family home, boarding home.

Final B. Rep. on Substitute HB 1620, 56th Leg., Reg. Sess. (Wash. 1999). There

is no indication that the legislature intended that the vulnerable adult protection statute also apply to children with disabilities.

Because Amanda was not an adult at the time of the events underlying Patel's claims, the trial court did not err by denying Patel's motion to amend her complaint to add a claim under RCW 74.34.035.

Affirmed.[18]

We concur:

[18] Given our determination that the jury's verdict in favor of the District should be affirmed, we need not address the issues set forth in the District's cross appeal.

APPENDIX B

RCW 4.22.020
Imputation of contributory fault — Spouse, domestic partner, or minor child of spouse or domestic partner — Wrongful death actions.

The contributory fault of one spouse or one domestic partner shall not be imputed to the other spouse or other domestic partner or the minor child of the spouse or domestic partner to diminish recovery in an action by the other spouse or other domestic partner or the minor child of the spouse or other domestic partner, or his or her legal representative, to recover damages caused by fault resulting in death or in injury to the person or property, whether separate or community, of the spouse or domestic partner. In an action brought for wrongful death or loss of consortium, the contributory fault of the decedent or injured person shall be imputed to the claimant in that action.

[2008 c 6 § 401; 1987 c 212 § 801; 1981 c 27 § 10; 1973 1st ex.s. c 138 § 2.]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Wrongful death actions: Chapter 4.20 RCW.

APPENDIX C

6 WAPRAC WPI 11.05

WPI 11.05 Contributory Negligence—Parent of Child Six or Over

6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 11.05 (6th ed.)

Washington Practice Series TM
Database updated June 2013

Washington Pattern Jury Instructions--Civil
Washington State Supreme Court Committee on Jury Instructions

Part II. Negligence—Risk—Misconduct—Proximate Cause
Chapter 11. Contributory Negligence and Imputed Negligence

WPI 11.05 Contributory Negligence—Parent of Child Six or Over

In this lawsuit, the child claims damages for *[his] [her]* injuries. Also, the child's parent claims compensation for the reasonable value of necessary *[doctor's care] [medical care] [hospital care] [nursing care] [treatment and services]* received by the child *[and for the reasonable value of loss of services of the child during the child's minority]*.

Contributory negligence, if any, of the child affects the claims of both child and parent, whether the parent was negligent or not. Contributory negligence, if any, of the parent affects the claim of the parent only, but does not affect the claim of the child.

NOTE ON USE

Use bracketed material as applicable.

Use this instruction only when a child six years of age or over and the parent are suing in the same action for their respective damages arising out of the same occurrence. If the child is under six years, use WPI 11.06, Contributory Negligence—Parent of Child Under Six.

In a suit by a child alone, use WPI 11.04, Negligence of Parent Not Imputed.

Do not use this instruction for claims of wrongful death or loss of consortium.

For cases in which negligence is imputed on one claim and not on other claims, this instruction will need to be modified.

COMMENT

RCW 4.22.020.

The opinion in Griffin v. Gehret, 17 Wn.App. 546, 564 P.2d 332 (1977), supports the position taken in WPI 11.05, Contributory Negligence—Parent of Child Six or Over, that a child's negligence may be imputed to a parent. In Poston v. Mathers, 77 Wn.2d 329, 462 P.2d 222 (1969), the court held that a father's contributory negligence affects his claim for special damages due to his daughter's injury but does not affect the child's claim for general damages.

[Current as of June 2009.]

6 WAPRAC WPI 11.05

END OF DOCUMENT

APPENDIX D

RCW 26.44.030
Reports — Duty and authority to make — Duty of receiving agency — Duty to notify — Case planning and consultation — Penalty for unauthorized exchange of information — Filing dependency petitions — Investigations — Interviews of children — Records — Risk assessment process. (*Effective until December 1, 2013.*)

***** CHANGE IN 2013 *** (SEE 5359.SL) *****

***** CHANGE IN 2013 *** (SEE 5316-S.SL) *****

***** CHANGE IN 2013 *** (SEE 5077-S.SL) *****

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that

occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(13) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(17) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

[2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008). Prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Notes:

Effective date -- 2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date -- 2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date -- Implementation -- 2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability -- 2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings -- Intent -- Severability -- 1999 c 267: See notes following RCW 43.20A.790.

Short title -- Purpose -- Entitlement not granted -- Federal waivers -- 1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings -- Purpose -- Severability -- Conflict with federal requirements -- 1999 c 176: See notes following RCW 74.34.005.

Application -- Effective date -- 1997 c 386: See notes following RCW 13.50.010.

Finding -- Intent--1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability -- 1987 c 512: See RCW 18.19.901.

Legislative findings -- 1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability -- 1984 c 97: See RCW 74.34.900.

Severability -- 1982 c 129: See note following RCW 9A.04.080.

Purpose -- Intent -- Severability -- 1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.030
Reports — Duty and authority to make — Duty of receiving agency — Duty to notify — Case planning and consultation — Penalty for unauthorized exchange of information — Filing dependency petitions — Investigations — Interviews of children — Records — Risk assessment process. (*Effective December 1, 2013.*)

***** CHANGE IN 2013 *** (SEE 5359.SL) *****

***** CHANGE IN 2013 *** (SEE 5316-S.SL) *****

***** CHANGE IN 2013 *** (SEE 5077-S.SL) *****

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

(i) Investigation; or

(ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

(14) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

[2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008). Prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Notes:

Reviser's note: This section was amended by 2012 c 55 § 1 and by 2012 c 259 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date -- 2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation -- Family assessment response survey -- 2012 c 259: See notes following RCW 26.44.260.

Effective date -- 2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date -- 2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date -- Implementation -- 2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability -- 2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings -- Intent -- Severability -- 1999 c 267: See notes following RCW 43.20A.790.

Short title -- Purpose -- Entitlement not granted -- Federal waivers -- 1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings -- Purpose -- Severability -- Conflict with federal requirements -- 1999 c 176: See notes following RCW 74.34.005.

Application -- Effective date -- 1997 c 386: See notes following RCW 13.50.010.

Finding -- Intent--1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse

or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability -- 1987 c 512: See RCW 18.19.901.

Legislative findings -- 1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability -- 1984 c 97: See RCW 74.34.900.

Severability -- 1982 c 129: See note following RCW 9A.04.080.

Purpose -- Intent -- Severability -- 1977 ex.s. c 80: See notes following RCW 4.16.190.

APPENDIX E

ER 412
SEXUAL OFFENSES - VICTIM'S PAST BEHAVIOR

(a) Criminal Cases. [Reserved. See RCW 9A.44.020.]

(b) Civil Cases; Evidence Generally Inadmissible. The following evidence is not admissible in any civil proceeding involving alleged sexual misconduct except as provided in sections (c) and (d):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(c) Exceptions. In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(d) Procedure to determine admissibility.

(1) A party intending to offer evidence under section (c) must:

(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

[Adopted effective September 1, 1988.]

Comment 412

[Deleted effective September 1, 2003.]

APPENDIX F

RCW 9A.44.010
Definitions.

As used in this chapter:

(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.

(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.

(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(8) "Significant relationship" means a situation in which the perpetrator is:

(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;

(b) A person who in the course of his or her employment supervises minors; or

(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.

(9) "Abuse of a supervisory position" means:

(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or

(b) To exploit a significant relationship in order to obtain the consent of a minor.

(10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.

(11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

(12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.

(13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4).

(14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.

(15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.

[2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.]

Notes:

Effective date -- 2007 c 20: See note following RCW 9A.44.050.

Severability -- 2001 c 251: See RCW 18.225.900.

Short title -- Findings -- Construction -- Conflict with federal requirements -- Part headings and captions not law -- 1997 c 392: See notes following RCW 74.39A.009.

Intent -- 1994 c 271: "The legislature hereby reaffirms its desire to protect the children of Washington from sexual abuse and further reaffirms its condemnation of child sexual abuse that takes the form of causing one child to engage in sexual contact with another child for the sexual gratification of the one causing such activities to take place." [1994 c 271 § 301.]

Purpose -- Severability -- 1994 c 271: See notes following RCW 9A.28.020.

Severability -- Effective dates -- 1988 c 146: See notes following RCW 9A.44.050.

Effective date -- 1988 c 145: "This act shall take effect July 1, 1988." [1988 c 145 § 26.]

Savings -- Application -- 1988 c 145: "This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988." [1988 c 145 § 25.]