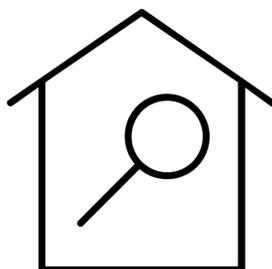


APS Investigations and Findings



-
- ❖ If the police contact you, contact a criminal defense attorney **before** speaking with them.
-

Table of Contents:

Words and Expressions You Need to Know	3
What is APS?	3
Who is a vulnerable adult?	3
What You Need to Know About Investigations	4
Will the police investigate?	4
How long will the investigation take?	4
How does APS investigate?	4
How will I know APS has finished investigating?	4
What happens if the investigator decides the vulnerable adult needs protection?	4
What rights do I have?	5
What You Need to Know About Findings	5
How will a substantiated APS finding affect me?	5
Is an APS finding against me a criminal conviction?	5
Can anyone find out about an APS finding against me?	5
Can I remove my name from the registry?	5
How would employers learn about the APS finding against me?	6
I got a “substantiated initial finding” letter from APS. Now what?	6
What You Need to Know About Hearings	6
What should my hearing request say?	6
What happens after I submit my hearing request?	7
What is a pre-hearing conference?	7
What should I do or say at the pre-hearing conference?	7
What happens after the pre-hearing conference?	7
When will the ALJ set the hearing date?	8
Will the hearing be in person or by phone?	8
What happens after the hearing?	8
What You Need to Know About Appeals	8



Washington
LawHelp

www.WashingtonLawHelp.org

What is the appeal to the Board of Appeals like?8

I disagree with the BOA’s Review Decision. Can I appeal?.....9

Other Things You Need to Know..... 9

APS stopped contacting me. Is the investigation over?9

What is the law about APS investigations and findings?9

Words and Expressions You Need to Know

What is APS?

Adult Protective Services (APS) is a statewide government agency. It is part of the Department of Social and Health Services (DSHS).

APS investigators respond to reports of possible abuse or neglect of vulnerable adults living at home or in a facility.

If APS makes a finding against you of abuse, neglect, financial exploitation, or abandonment, you may be unable to work or volunteer with children or vulnerable adults for the rest of your life. Read this to learn your rights and responsibilities when APS makes a finding against you.

-
- ❖ If you or someone you know may be the victim of abuse, neglect, exploitation or abandonment, read [Protecting Elders and Vulnerable Adults from Abuse and Neglect](#).
-

Who is a vulnerable adult?

If someone reports abuse, neglect, exploitation or abandonment of a **vulnerable adult** to APS, APS must investigate. Vulnerable adults can be any of these:

- 60 years or older and functionally, mentally, or physically unable to care for themselves
- Have a court-appointed guardian
- Have a developmental disability
- Living in a nursing home, adult family home, boarding home, or other facility
- Getting services from home health, hospice, or home care agencies
- Getting services from an individual care provider or a personal aide

-
- ❖ Read [RCW 74.34.020\(22\)](#) for definitions on neglect, abandonment, and other terms
-

What You Need to Know About Investigations

Will the police investigate?

Maybe. If the APS investigator believes what they are investigating is criminal, they could ask the police to conduct their own investigation.

How long will the investigation take?

There is no time limit for APS to finish its investigation.

How does APS investigate?

An APS investigator will make an unannounced home visit. They will interview you, the alleged vulnerable adult, the person who made the allegation, and other witnesses. They may take photos and review records, including bank and other financial documents.

How will I know APS has finished investigating?

They must send you a letter. It will say APS believes the allegation is one of these:

- **Substantiated**—more likely than not the abuse or neglect occurred
- **Unsubstantiated**—more likely than not the abuse or neglect did not occur
- **Inconclusive**—cannot be determined

This letter tells you what APS' "findings" are from its investigation.

❖ **Make sure you get and read this notice!** Give APS an address where you can get mail. APS must notify you by certified and regular mail. You have a short time to challenge a finding.

What happens if the investigator decides the vulnerable adult needs protection?

APS can seek a protection order, file for guardianship itself or advise the adult or someone in the adult's life to do so, or make other referrals for the person to get help.

What rights do I have?

- You have the right **to have a third party with you during the interview**, such as a friend, lawyer, union representative, family member, or guardian.
- If you do not speak or understand English well, **you have the right to a free interpreter**. APS may **not** use your family members as interpreters.
- If you have a disability, you have the **right to accommodations** (such as if you need to take breaks during the interview, have a vision impairment and need to see larger versions of any documents the investigator intends to show you, and so on) necessary to take part in the process.
- You have the right **to stop the interview** at any time and reschedule.
- You have the right **not to take part in the interview**.
- You have the right to **provide APS documents or witnesses** related to the alleged incident.

What You Need to Know About Findings

How will a substantiated APS finding affect me?

It shows up on a background check, even while you are appealing it. **It permanently bars you from any work or volunteer position giving you unsupervised access to children or vulnerable adults.** This includes volunteering at a child's school, housekeeping for a long-term care facility, or caregiver jobs, among others.

Is an APS finding against me a criminal conviction?

No. It is an administrative finding.

Can anyone find out about an APS finding against me?

APS puts the name of everyone with a substantiated finding on the **Abuse Registry**. Anyone who asks APS can find your name listed there.

Can I remove my name from the registry?

Maybe. If you appeal the finding and win, they remove your name from the Registry.



How would employers learn about the APS finding against me?

DSHS's Background Check Central Unit (BCCU) reports APS findings. If you apply to volunteer or work with children or vulnerable adults, you will sign a form letting the employer check with BCCU. The APS finding appears as an **adverse action** of abuse or neglect. You cannot remove an adverse action from a BCCU report.

I got a “substantiated initial finding” letter from APS. Now what?

You have 30 days from the date APS sent this letter to ask the Office of Administrative Hearings (OAH) in writing for a hearing. OAH must **get** your request by 5 p.m. on the 30th calendar day from the date APS mailed the letter.

-
- ❖ File your request early. Prevent OAH from saying it did not get your request on time.
-

Even if you fax your request to OAH, you **must also** mail it, to:

Office of Administrative Hearings
P.O. Box 42488
Olympia WA 98504-2488

You have the right to ask for a free **interpreter**.

-
- ❖ You can only fax your hearing request if you also mail it to OAH on the same day.
-

What You Need to Know About Hearings

What should my hearing request say?

It must include:

- Your full name, current address, and phone number. Update this information with OAH and APS if it changes. Keep proof you sent OAH and APS an update.
- A brief explanation why you disagree with APS' finding.
- If you need an interpreter or other help such as an accommodation for a disability.

Keep a copy of your request for the hearing. Put on it the date you mailed it.

What happens after I submit my hearing request?

OAH will send you and the APS representative notices about your case. Record any dates listed in the notices and appear in person or by phone on all pre-hearing conference and hearing dates.

What is a pre-hearing conference?

Before your hearing, OAH will set a pre-hearing conference with an Administrative Law Judge (ALJ). It will probably be by phone. The ALJ will only call you if the notice says so. **If you do not call OAH on time, you might lose the right to have a hearing.**

-
- ❖ [Representing Yourself at an Administrative Hearing](#) has more about the pre-hearing conference and the hearing.
-

The pre-hearing conference will help you understand the issues better and get ready for your hearing.

What should I do or say at the pre-hearing conference?

Ask the ALJ to order the APS representative to send you a copy of your entire APS file, if they have not already done so. You can ask for a paper or an electronic copy, such as on a thumb drive.

APS will only give you a copy of the APS file if you sign an agreement (a **protective order**) to use the file **only** to fight the findings against you and not to disclose the records to anyone else.

What happens after the pre-hearing conference?

The ALJ will send another letter with the deadlines for you and the APS representative to file evidence, such as documents, pictures, and other papers showing why the finding is wrong, and to provide a list of witnesses. You must send the APS representative an exact copy of everything you send the ALJ by the date in the letter.

If the ALJ does not send you a deadline, your evidence is due to the ALJ and APS representative 5 days before the hearing. Check with your witnesses first. Make sure they can and will testify at the hearing.

When will the ALJ set the hearing date?

At the pre-hearing conference, tell the ALJ about any dates or times you cannot go to the hearing, or send OAH and the APS representative a letter about this. Otherwise, OAH just sets a date. Changing it can be hard.

Will the hearing be in person or by phone?

Like the pre-hearing conference, probably by phone. A hearing might last more than a day. If you do not have a phone with reliable coverage and enough minutes, call OAH or APS to ask for an in-person hearing, or use another phone.

What happens after the hearing?

The ALJ will send you and APS a written decision. If you or APS disagree with the ALJ's Initial Decision, you can appeal to a Review Judge who works for DSHS's Board of Appeals (BOA). The appeal is called a **Petition for Review**. The Initial Decision says

- how to petition for review
- the deadline to do it

❖ You must go through a BOA Review before you can appeal to Superior Court.

What You Need to Know About Appeals

What is the appeal to the Board of Appeals like?

It is in writing only. Neither you nor APS appears before the Review Judge. The Review Judge considers only documents and testimony from your ALJ hearing. **You must present all your documents and testimony at your hearing with the ALJ.** You need special permission from BOA to add new facts or documents on appeal.

If you send the BOA a written appeal, you must send the APS representative a copy. APS will have a chance to respond in writing to your appeal, and vice versa.

The Review Judge will send you and APS a written decision called a Review Decision. APS cannot appeal it.

I disagree with the BOA's Review Decision. Can I appeal?

Yes. You can file a Petition for Review of Administrative Decision to your county's Superior Court or Thurston County Superior Court. You must file this within 30 days of the date of the Review Decision. If you cannot find a lawyer to help, use our [How to Petition for Superior Court Review](#).

Other Things You Need to Know

APS stopped contacting me. Is the investigation over?

Maybe not. It is only over once you get a notice saying the allegation is Substantiated, Unsubstantiated, or Inconclusive.

If you are not sure if APS has an open investigation, contact them and ask. Protect yourself. Follow up in writing. Save a copy for your records.

What is the law about APS investigations and findings?

The key laws are:

- Investigation: [RCW 74.34.067](#), [WAC 388-71-0100](#) through [388-71-01280](#)
- Notice: [RCW 74.34](#), [WAC 388-71-01205](#) through [-01225](#)
- Appeal: [RCW 74.34](#), [WAC 388-71-01235](#) through [-01275](#)
- Background Check: [RCW 43.43.830](#) and [.832](#), [WAC 388-71-01280](#), [388-06](#)

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

© 2021 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)