

HOUSE BILL REPORT

ESHB 1008

As Amended by the Senate

Title: An act relating to the protection of vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Moeller, Lovick, Kagi, Cody, Appleton, Conway, Morrell, Kenney, Simpson, B. Sullivan, Goodman and Lantz).

Brief History:

Committee Activity:

Judiciary: 1/17/07, 2/13/07 [DPS].

Floor Activity:

Passed House: 3/7/07, 97-1.

Senate Amended.

Passed Senate: 4/11/07, 48-0.

Brief Summary of Engrossed Substitute Bill

- Allows certain "interested persons" to petition for an order for protection of a vulnerable adult.
- Requires notice to the vulnerable adult when someone else files a petition for protection on behalf of the vulnerable adult and creates a process for resolving the petition if the vulnerable adult does not consent to the petition.
- Lengthens the maximum time period that an order for protection can extend to five years, and creates a process for a vulnerable adult to modify or terminate a protection order.
- Requires the Administrative Office of the Courts to develop and maintain standard forms, instructions, and a handbook on the protection order process.
- Provides that a deceased vulnerable adult's cause of action for abandonment, abuse, exploitation, or neglect survives to the estate for recovery of the economic losses to the estate if the deceased vulnerable adult has no statutory beneficiaries.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Edie Adams (786-7180).

Background:

The Abuse of Vulnerable Adults Act provides a number of protections for vulnerable adults, including authorizing the Department of Social and Health Services (Department) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults; requiring mandatory reporting and investigations; and allowing vulnerable adults to seek protection orders or file civil suits for damages resulting from abandonment, abuse, exploitation, or neglect.

A vulnerable adult includes a person who:

- is age 60 years or over who has a functional, mental, or physical inability for self-care;
- has been found to be incapacitated;
- has a developmental disability;
- resides in a licensed facility such as a nursing home, adult family home, or residential habilitation center; or
- is receiving hospice or home health services.

A vulnerable adult who is suffering from abandonment, abuse, financial exploitation, or neglect may petition the superior court for an order for protection. The court may order any relief it deems necessary to protect the vulnerable adult for a specified period of time that may not exceed one year. The types of relief the court may order include:

- restraining the respondent from committing acts of abuse, abandonment, exploitation, or neglect;
- prohibiting contact by the respondent;
- prohibiting the respondent from coming within a certain distance of particular locations;
- requiring the respondent to provide an accounting of the disposition of the vulnerable adult's income or resources; and
- restraining the sale of property for a specified time period.

The Department is authorized to file a petition for an order for protection on behalf of a vulnerable adult, but only if the vulnerable adult consents. In addition, there is a provision that states that "where necessary," a petition for a protection order or an action for civil damages may be brought by the vulnerable adult's family members and/or guardian or legal fiduciary.

The civil filing fee for a petition for an order for protection is \$200. The court may waive the filing fee in its discretion.

A vulnerable adult who has suffered abandonment, abuse, financial exploitation, or neglect while residing at a facility or while receiving care from a home health, hospice, or home care agency, may bring a cause of action for civil damages for his or her injuries, pain and suffering, and property loss. Upon the death of the vulnerable adult, the executor or administrator of the deceased may bring the action for damages for the benefit of the following statutory beneficiaries: spouse and children, or parents and siblings who were dependent on the vulnerable adult for support. If a deceased vulnerable adult has no surviving statutory beneficiaries, the estate does not have standing to bring the action, even for recovery of the economic losses to the estate.

Summary of Engrossed Substitute Bill:

A petition for an order for protection for a vulnerable adult may be brought by an interested person on behalf of the vulnerable adult. "Interested person" means a person who is interested in the vulnerable adult's welfare and who has a good faith belief that intervention is necessary to protect the vulnerable adult. An interested person must state in the petition why he or she qualifies as an interested person. The Department of Social and Health Services (Department) may bring a petition on behalf of the vulnerable adult without the consent of the vulnerable adult if the Department believes the vulnerable adult lacks the ability or capacity to consent.

When a petition for an order for protection is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served on the vulnerable adult and must include a standard notice form developed by the Administrative Office of the Courts (AOC). If good faith attempts at personal service are unsuccessful, the court may authorize service by mail, or by publication if personal service or service by mail cannot be obtained.

A process is created for resolving a petition brought on behalf of the vulnerable adult where the vulnerable adult does not consent to the petition. If the vulnerable adult objects to the petition at the hearing, the court may dismiss the petition or the portions with which the vulnerable adult objects, or the court may take additional testimony or order an additional hearing. The court may enter a protection order against the wishes of a vulnerable adult if the court determines that the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition due to incapacity, undue influence, or other factors found by the court. If the court determines a vulnerable adult who does not consent to the petition is capable of protecting himself or herself, the court may dismiss the order, modify the order if agreed to by the vulnerable adult, or enter any other orders the court deems necessary.

The remedies that the court may provide in an order for protection may extend for a maximum period of five years (rather than one year). The court may not charge a filing fee to the petitioner for a petition for an order for protection.

A process is created for a competent vulnerable adult or a vulnerable adult's guardian to petition for a modification or termination of a protection order.

The AOC must develop and maintain: standard petition, temporary order for protection, and permanent order for protection forms; a standard notice form to provide notice to a vulnerable adult if the vulnerable adult is not the petitioner; instructions; and a court staff handbook on the protection order process. The instructions must be designed to assist petitioners in completing the petition and must include a sample of the standard forms. The standard notice form must be designed to explain in clear, plain language the purpose of the petition and that the vulnerable adult has the right to participate and either support or object to the petition.

The AOC may prepare these documents in consultation with members of the Elder Law Section of the Washington State Bar Association, judges, the Department, the Washington Protection and Advocacy System, and law enforcement. In addition, the AOC must translate the instructions and standard forms into the languages spoken by the significant non-English-speaking or limited-English-speaking populations in the state.

Court clerks must make the standard forms and instructions available, free of charge, within 90 days of receiving them from the AOC. The standard petition and order forms must be used for all protection orders sought or issued after October 1, 2007.

A deceased vulnerable adult's cause of action for damages resulting from abandonment, abuse, financial exploitation, or neglect while residing at a facility or receiving care from a home health, hospice, or home care agency survives to the deceased vulnerable adult's estate for recovery of the economic losses to the estate if the deceased vulnerable adult has no surviving statutory beneficiaries.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment clarifies that temporary protection orders are obtained under chapter 7.40 RCW and that notice of a request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition, unless there would be immediate and irreparable injury, loss, or damage before notice could be provided.

With respect to the process for dealing with a vulnerable adult who objects to the petition for an order for protection, the Senate amendment:

- Limits the circumstances under which the court may enter an order over the objections of the vulnerable adult to "incapacity, undue influence, or duress" rather than "incapacity, undue influence, or other factors found by the court."
- Provides that the separate evidentiary hearing process to determine incapacity, undue influence, or duress does not apply where the vulnerable adult has been found to be fully incapacitated under the guardianship laws (rather than "incapacitated").

- Clarifies that the court may enter a temporary protection order (rather than a permanent order) over the objections of the vulnerable adult pending an evidentiary hearing on the issue of incapacity, undue influence, or duress.
- Removes the authority of the court to enter "other orders that are proper or necessary in the court's discretion" when the vulnerable adult objects to the protection order and the court finds that the vulnerable adult is capable of protecting his or her interests.

The Senate amendment also adds a definition of "incapacitated person" and amends the definition of "interested person" to require a showing that the vulnerable adult is unable to protect his or her own interests.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In Support) This bill results from a Clark County Task Force on Vulnerable Adults. This bill is a first step in protecting the rights of the most vulnerable population of the state who currently have no voice. There has been a dramatic increase in the number of cases of abuse and exploitation of vulnerable adults. When individuals start declining in health and cognitive function, people start taking advantage of them. It is imperative that we have the ability for anyone to step in and help stop the abuse of the vulnerable adult or the theft of the vulnerable adult's property before it occurs.

The vulnerable adult protection order is a valuable tool for prosecutors, police, the Department, and private citizens. It is the only thing that can stop immediate exploitation of a vulnerable adult. This bill makes the process easier, which is important because the current law is cumbersome, inefficient, and expensive. Delays in obtaining protection can be insurmountable. If you are looking to prevent the sale of property or the depletion of a bank account by a family member, you have lost the battle if you can't quickly get a protection order. You won't be able to get the property or money back after it has been taken.

From the police perspective, it is important to have uniformity and clear forms like those in domestic violence cases, so a responding officer knows what is a violation of the order. People need help filling out the forms from a third party. They can't do it themselves so they have to hire an attorney which is expensive and creates a roadblock.

(In support with concerns) The Department should have the ability to seek relief for a vulnerable adult who lacks the ability or capacity to consent. The bill should provide notice to the vulnerable adult if someone else is seeking relief on his or her behalf. There may be situations where the vulnerable adult does not want the protection order and the person should be able to reject the petition if he or she has the capacity for independent judgment.

(Concerns) The bill allows any person to petition for a protection order. This is a significant change and creates a potential for many of these petitions to be brought between family members. This will result in an increased workload for the courts. The bill does not adequately balance the need to protect vulnerable adults and the rights of competent persons to make decisions for themselves.

(Opposed) There are already many protections in statute and in agency rules to protect vulnerable adults. Allowing any person to petition raises concerns. This could include a disgruntled employee who decides to file a petition to get back at the employer, or a neighbor who has dementia and is not aware of what is really happening, or an attorney who may benefit by filing a petition. The common law doctrine of standing requires that you have a personal stake in the outcome of the suit.

There is no definition of good faith in the bill which leaves a provider in the position of having to prove that the action is not brought in good faith. The cost to get frivolous cases dismissed is just another burden on an already under funded system and diverts resources from where the money is really needed.

Persons Testifying: (In support) Representative Lantz, prime sponsor; Gary Beagle, Beagle, Burke & Associates; Kathy Leitch, Department of Social and Health Services; Jeff Kipp, Vancouver Police Department; Jessica Dimitrov and James Senescu, Clark County Veteran's Administration Task Force; and John Barnett and Cecilia Saari, King County Long Term Care Ombudsman.

(In support with concerns) Loren Freeman; David Lord, Washington Protection Advocacy System; and Judge Vicki Churchill, Superior Court Judges Association.

(Opposed) Julie Peterson, Association of Housing and Services for the Aging; and Kathy Nevin, Washington Healthcare Association.

Persons Signed In To Testify But Not Testifying: None.