

# FINAL BILL REPORT

## ESHB 1008

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Synopsis as Enacted

**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).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **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:**

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 demonstrates to the court that he or she is interested in the vulnerable adult's welfare and has a good faith belief that intervention is necessary to protect the vulnerable adult, and that the vulnerable adult is unable to protect his or her own interests. 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.

Notice of a request for a temporary protection order 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.

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 to determine whether 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 duress. The additional evidentiary hearing is not necessary if the vulnerable adult has been found to be fully incapacitated under the guardianship laws. The court may enter a temporary protection order pending the evidentiary hearing, which must be held within 14 days.

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 duress. If the court determines a vulnerable adult who does not consent to the petition is capable of protecting himself or herself, the court must dismiss the order or modify the order if agreed to by the vulnerable adult.

The remedies that the court may provide in an order for protection may extend for a maximum period of five years. 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.

**Votes on Final Passage:**

House	97	1	
Senate	48	0	(Senate amended)
House	98	0	(House concurred)

**Effective:** July 22, 2007