

# SENATE BILL REPORT

## SB 5639

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As of February 19, 2009

**Title:** An act relating to vulnerable adults.

**Brief Description:** Expanding provisions relating to vulnerable adults.

**Sponsors:** Senators Hargrove, Brandland, Marr, Sheldon, Regala, Stevens, Shin, Kilmer, Parlette, Kohl-Welles and Tom; by request of Attorney General.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/17/09.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Kevin Black (786-7747)

**Background:** A vulnerable adult is defined in Washington law as being a person 60 years of age or older who has the functional, mental, or physical inability to care for himself or herself, or a person who is incapacitated, who has a developmental disability, who is admitted to a licensed facility, or who receives services from home health, hospice, or home care agencies. The Department of Social and Health Services (DSHS) investigates reports of abuse, abandonment, financial exploitation, and neglect of vulnerable adults. If DSHS makes a finding that abuse has occurred, it may provide a report of this finding to a facility, the alleged perpetrator, and licensing and certification authorities. The vulnerable adult or an interested party may also petition for an order of protection to enjoin the activity.

Exploitation or abuse of a vulnerable adult may also constitute a violation of criminal law. A prosecuting agency may seek an exceptional sentence to enhance the sentence of a person convicted of a crime against a victim who is particularly vulnerable or incapable of resistance, or for an offense in which the defendant abused a position of trust, confidence, or fiduciary responsibility with respect to the victim to facilitate the commission of the offense.

**Summary of Bill:** A sentencing enhancement is created which applies to felony crimes committed against a victim who is a vulnerable adult which would add five years to the sentence of a class A felony, three years to the sentence of a class B felony, and 18 months to the sentence of a class C felony. This enhancement is mandatory and not eligible for early release.

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*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.*

A financial institution may refuse to disburse funds if it reasonably believes that financial exploitation of a vulnerable adult is being attempted, or has occurred. The financial institution is made immune from liability for refusing to disburse funds.

The definitions of abuse, sexual abuse, physical abuse, and exploitation that apply to DSHS investigations of abuse of a vulnerable adult are greatly expanded. The expanded definitions would allow for findings of abuse based on "inappropriate sexual conduct," behavior which is consensual, a willful act which causes pain, or any act which causes a vulnerable adult to act against his or her will.

The Office of the Attorney General is requested to develop training for mandatory reporting of crimes against a vulnerable adult.

A person making a report of abuse, abandonment, financial exploitation, or neglect of a vulnerable adult is made immune from adverse licensure action, criminal liability, and administrative liability.

DSHS is authorized to disclose upon request the fact that it has received a report of abuse, abandonment, financial exploitation, or neglect of a vulnerable adult; the name of the individual who is the subject of the investigation; and the status or outcome of the investigation. If DSHS determines that abuse, abandonment, financial exploitation, or neglect of a vulnerable adult has occurred, DSHS must inform the alleged perpetrator, facility, and licensing and certification authorities.

A financial institution must ensure that all new and existing employees who have contact with customers receive training concerning the financial exploitation of vulnerable adults within one year of the effective date of the legislation.

Financial institutions are authorized to provide access or copies of financial records to DSHS, law enforcement, or a prosecuting attorney's office upon request, including historical financial records, without limitation or requirement of court order, whenever a party suspects that financial exploitation or attempted financial exploitation of a vulnerable adult has occurred. A financial institution is immune from liability for providing financial information in this situation.

DSHS may establish a searchable electronic database containing findings of abuse, neglect, financial exploitation, and abandonment made by DSHS and make it searchable by the public. Summaries of findings are to be provided, and must include the identifying information of the alleged perpetrator, including name, gender, date of birth, home address, telephone number, and other identifying information. The alleged perpetrator must be required to provide his or her social security number. The information must be posted after the alleged perpetrator has been provided with an opportunity to contest the finding at an administrative hearing. DSHS is made immune from liability for placing an individual's name in the database, if done in good faith. A nursing home or other facility serving vulnerable adults is made immune from liability if it relies solely on the information in this database in making hiring decisions.

DSHS must find that abuse, abandonment, financial exploitation, or neglect has occurred on a more probable than not basis, without considering the actual subjective intent of the alleged perpetrator, if it finds that a reasonable person in the position of the alleged perpetrator would have known that an act or omission could reasonably be expected to result in abuse, abandonment, financial exploitation, or neglect.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill is the product of the Attorney General's Vulnerable Adult Summit and work groups. There was a lot of stakeholder input. At the request of the United Financial Lobby, the bill does not require bankers to become mandatory reporters. The sentencing enhancement works in the same way as the firearm enhancement. An enhancement draws attention to the crime, and changes the way it is treated by prosecutors and judges. We prefer sentence enhancements to exceptional sentences because a jury must find an exceptional sentence, enhancement helps prosecutors negotiate plea agreements, and judges do not impose sentences of sufficient length. Due process supports findings of neglect or abuse by DSHS because the accused person has the right to an administrative appeal followed by access to the courts. Abuse findings are currently disclosable through the Public Disclosure Act. The changes to abuse definitions will help to prevent abuse. The goal is to stop abuse and exploitation before it occurs. DSHS should not consider the intent of an accused person, if the person has committed an act which the person reasonably should have known would cause harm. Financial institutions will support an agreed amended bill, and welcome additional certainty in dealing with financial exploitation of vulnerable adults. An improving amendment should be considered to require suspicious deaths of vulnerable adults to be reported to the coroner. A searchable database of abuse findings would be of great assistance to care providers.

Some aspects of the bill raise significant concerns. There should be a time limit on freezing of assets when a financial institution suspects financial exploitation. A finding of abuse, abandonment, exploitation, or neglect is a professional death sentence, and the bill goes too far expanding these findings into areas in which the accused individual reaps no benefit from the alleged activity, or is only alleged to have committed an attempt. The breach of fiduciary duty language is too broad. An heir could be completely disinherited. Stockbrokers as well as bank employees should receive instruction in identification of financial exploitation. A different definition of intent should be applied. Long sentencing enhancements is the wrong approach to the problem of protecting vulnerable adults.

CON: This has a large fiscal impact. The committee should consider changing the sentencing grid rather than employing sentencing enhancements.

OTHER: Stockbrokers have complex issues and should be handled differently from financial institutions, but they are willing to discuss new policies.

**Persons Testifying:** PRO: Chris Johnson, Dawn Cortez, Catherine Hoover, Office of the Attorney General; Page Ulrey, King County Prosecutor's Office; Denny Eliason, Washington Banker's Association; Brad Tower, Bankers of Washington; David Lord, Disability Rights Washington; Louise Ryan, Long Term Care Ombudsman; Allen Morrow, Senior Lobby; Jeff Crollard, Washington State Bar Association, Elder Law Section.

CON: Michael Kahrs, Washington Association of Criminal Defense Attorneys.

OTHER: Gary Gardner, Boeing Employees Credit Union; Bill Stauffacher, Securities & Financial Industries.