

HOUSE BILL REPORT

SHB 1104

As Passed House:
February 23, 2011

Title: An act relating to protection of vulnerable adults.

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Walsh, Billig, Kenney, Maxwell and Dammeier; by request of Department of Social and Health Services).

Brief History:

Committee Activity:

Judiciary: 1/31/11, 2/3/11, 2/10/11 [DPS].

Floor Activity:

Passed House: 2/23/11, 96-0.

Brief Summary of Substitute Bill

- Prohibits wrongful control over or withholding of a vulnerable adult's property and gives examples of situations constituting financial exploitation.
- Requires the Department of Social and Health Services (Department) to provide a statement of rights to vulnerable adults whose cases are under investigation.
- Provides standards for the Department to agree with federally recognized tribes to investigate reported abuse or financial exploitation on tribal land.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Parker Howell (786-5793) and Edie Adams (786-7180).

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.

Background:

Protection of Vulnerable Adults.

Washington law prohibits abandonment, abuse, financial exploitation, and neglect of vulnerable adults and sets forth ways to stop abuse and compensate victims.

Vulnerable adults are people 60 years of age or older who cannot care for themselves, are legally incapacitated, have developmental disabilities, are admitted to facilities, or are receiving services from certain care agencies. The law covers boarding homes, nursing homes, adult family homes, residential rehabilitation centers, and other facilities licensed by the Department of Social and Health Services (Department).

A person commits abuse when he or she intentionally acts or fails to act in a way that causes injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. Financial exploitation occurs when a person illegally or improperly uses property, income, resources, or trust funds of a vulnerable adult for the exploiter's profit or advantage, rather than to benefit the victim.

Various statutes establish a system for the Department to receive reports of and investigate incidents of suspected abuse or financial exploitation of vulnerable adults. Employees of the Department, law enforcement personnel, certain other public employees, and certain people involved in care of vulnerable adults at facilities must report suspected abuse or financial exploitation to the Department or directly to law enforcement. When the Department receives a report of criminal abuse or financial exploitation, the Department must immediately report it to law enforcement. The law allows confidential tipsters to make reports of suspected abuse or financial exploitation, and it protects people who report or testify in good faith from liability for damages arising from those activities.

The Department or interested parties may request judicial protection orders to restrain someone from abusing or financially exploiting an adult.

Slayer Statute.

Washington's "slayer statute" (chapter 11.84 RCW) prohibits anyone who financially exploits a vulnerable adult or who kills a person from inheriting from his or her victim. The slayer statute refers to and incorporates the definition of "financial exploitation" found in the statute protecting vulnerable adults from abuse or financial exploitation.

Under the slayer statute, a party may bring a civil lawsuit to have an alleged abuser effectively disinherited. A defendant can be found to be an abuser if a fact finder determines that the person was convicted of committing certain crimes (such as theft, fraud, or identity theft) against the victim, or if the fact finder determines upon "clear, cogent, and convincing" evidence that the defendant participated in financial abuse. A past conviction for certain crimes not committed against the victim may be used as evidence. An abuser must have participated willfully in the abuse. An abuser may still inherit if clear, cogent, and convincing evidence shows that the victim knew of the exploitation and still wanted that abuser to inherit.

Summary of Substitute Bill:

The definition of "financial exploitation" is expanded beyond illegal or improper use of a vulnerable adult's property to include the illegal or improper control over or withholding of property by a person or an entity. Financial exploitation includes but is not limited to situations where a person:

- in a position of trust and confidence with a vulnerable adult uses deception, intimidation, or undue influence to obtain or use the vulnerable adult's property for that person's benefit;
- breaches a fiduciary duty, such as misusing the power of attorney, trust, or a guardianship appointment, resulting in unauthorized appropriation, sale, or transfer of property of a vulnerable adult for someone else's benefit; and
- who knows or clearly should know a vulnerable adult lacks the capacity to consent to the release of his or her property obtains or uses the vulnerable adult's property without lawful authority.

When the Department opens an investigation into suspected abuse or financial exploitation of an adult, it must provide a written statement of rights under existing law at the time of the initial interview. The statement must include the Department's name, address, and telephone number and may include other appropriate referrals.

The Department may agree with federally recognized tribes to investigate reports of abuse or financial exploitation of vulnerable adults occurring on property over which a tribe has exclusive jurisdiction. If the Department receives information that abuse is occurring on tribal land that is criminal or that creates a potential risk of personal or financial harm to the victim, the Department may notify tribal law enforcement or another tribal representative. The tribe may then take jurisdiction over the matter, in which case neither the Department nor its employees may participate in the investigation. Once a tribe assumes jurisdiction, the Department and its officers or employees are not liable for any action or failure to act on the part of the tribe for harm occurring to any party. The Department's jurisdiction and authority over facilities or entities that the Department licenses or certifies is not limited by these provisions.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill would improve protection of vulnerable adults. Existing law prohibits the use of a vulnerable adult's property, not possession of that property. Washington's long-term care ombudsmen have seen an increase of financial exploitation complaints, often sparked by family members taking liberties with vulnerable adults' funds. Work on a Senate companion bill improves the definition of financial exploitation. The House substitute bill

has been changed substantially and a provision involving information sharing has been stripped because it is too controversial.

A proposed amendment worked on by Disability Rights Washington and the Department would require the Department to provide victims of abuse and financial exploitation with a statement of their rights under existing law. The provision is designed not to give any new rights.

(With concerns) Some stakeholders did not realize the intent of the bill was to accomplish what the Senate companion bill does, and those groups would support the bill if it reflected the Senate changes. Stakeholders have concerns about continuing allowance of donations to 501(c)(3) organizations. They also are concerned that the definition of exploitation and the information-sharing provision are too broad.

(Opposed) None.

Persons Testifying: (In support) Representative Moeller, prime sponsor; David Lord, Disabilities Rights Washington; Louise Ryan, Washington State Long-Term Care Ombudsman; and MaryAnne Lindeblad, Department of Social and Health Services and Aging and Disabilities Services Administration.

(With concerns) Julie Peterson, Aging Services of Washington; and Dave Knutson, Washington Health Care Association.

Persons Signed In To Testify But Not Testifying: None.