

SENATE BILL REPORT

SSB 5042

As Passed Senate, March 1, 2011

Title: An act relating to protection of vulnerable adults.

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, Chase, Kohl-Welles, Conway, Roach, Shin and McAuliffe; by request of Department of Social and Health Services).

Brief History:

Committee Activity: Health & Long-Term Care: 1/19/11, 2/07/11 [DPS].
Passed Senate: 3/01/11, 49-0.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5042 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Becker, Ranking Minority Member; Carrell, Kline, Murray, Parlette and Pflug.

Staff: Rhoda Donkin (786-7465)

Background: Under current state law, the Department of Social and Health Services has a duty to investigate allegations of abuse, abandonment, neglect, self-neglect, and financial exploitation of adults who are vulnerable. Within the department Adult Protective Services (APS) handles cases when the victim resides in their own home, and in facilities where there is an allegation of mistreatment by someone outside the facility. APS staff in six regions statewide, receive and investigate allegations of abuse and neglect, prioritizing action based on potential immediate harm to the alleged victim. The Residential Care Services (RCS) division handles cases when the victim resides in a long-term care facility licensed by the department.

In recent years, allegations of financial exploitation against vulnerable adults have increased substantially, according to the department. These allegations could include a wide variety of activities such as cashing an elderly person's checks without permission or forging signatures, stealing money or belongings, coercing a senior into signing an unfavorable will, or misusing legally obtained guardianships or powers of attorney.

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.

There is concern that state law does not adequately clarify what constitutes financial exploitation and this results in difficulty prosecuting the offense. According to the National Center on Elder Abuse, this is the fastest growing area of abuse, and only a fraction of these cases are prosecuted.

Currently, APS and RCS initiate investigations on tribal lands when asked by tribes to do so. Once the investigations have been conducted, the cases are turned over to the tribal enforcement community to complete.

Summary of Substitute Bill: Financial exploitation is expanded to include the use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to use property, income, resources, or trust funds for a benefit other than the vulnerable adult. Financial exploitation is also the breach of fiduciary duty that results in unauthorized appropriation, sale, or transfer of property, income, resources or trust funds to benefit some person other than the vulnerable adult. It is also obtaining or using the vulnerable adult's property, income, resources, or trust funds without lawful authority by someone who knows or should know that the vulnerable adult lacks the capacity to consent.

Property is further defined as interest in real or personal property income, credit, identity, or resources that are held for the benefit of a vulnerable adult by a fiduciary or representative of the vulnerable adult, including trust accounts, conservatorships, guardianships or other accounts.

Language is added requiring that the department provide an alleged victim of abuse or the victim's guardian with a written statement of the victim's rights afforded under RCW 74.34 at the time when an investigation begins.

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 on Original Bill: PRO: The state needs stronger statutes defining financial exploitation because this kind of abuse of vulnerable adults is increasing in our state and just a fraction of these cases are reported, with even fewer prosecuted. The state needs stronger investigation and information sharing tools to be able to make strong cases against perpetrators. In order to successfully continue to investigate allegations of abuse and neglect on tribal lands, the state needs protection against liability for actions of the tribe or the perpetrator following investigation.

OTHER: Permitting the department to share information before an investigation goes to hearing is a denial of due process and privacy protections, and that's a problem. We want to make sure this bill doesn't prevent people from donating to nonprofits. The expanded

definition of financial exploitation is too broad and is not clear enough. We think the bill should include the requirement that a person who is victimized receive notice of their rights.

Persons Testifying: PRO: MaryAnne Lindeblad, Aging and Disability Services; Cindi Laws, WSRCC.

OTHER: Julie Peterson, Aging Services of Washington; Dave Knutson, Washington Health Care Assn.; Louise Ryan, long-term care ombudsman.