

# HOUSE BILL REPORT

## SB 5510

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### As Passed House - Amended:

April 25, 2013

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

**Brief Description:** Concerning the abuse of vulnerable adults.

**Sponsors:** Senators Becker, Keiser, Kohl-Welles, McAuliffe and Conway; by request of Department of Social and Health Services.

### Brief History:

#### Committee Activity:

Judiciary: 3/26/13, 4/2/13 [DPA].

#### Floor Activity:

Passed House - Amended: 4/25/13, 98-0.

### Brief Summary of Bill (As Amended by House)

- Modifies the definition of "neglect" in the statutes concerning abuse of vulnerable adults to require that, under either set of conduct meeting the definition, the conduct must have been committed by a person or entity with a duty of care.
- Provides the Department of Social and Health Services and law enforcement with access to relevant records related to a vulnerable adult that are in the possession of mandated reporters when conducting an investigation.
- Allows the Department of Social and Health Services, the Certified Professional Guardian Board, and the Office of Public Guardianship to share information contained in reports and investigations concerning vulnerable adults for specified purposes.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Orwall and Roberts.

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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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Nealey and Shea.

**Staff:** Omeara Harrington (786-7136).

**Background:**

The statutes concerning the abuse of vulnerable adults authorize the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, self-neglect, or neglect. A vulnerable adult includes a person who:

- is 60 years of age or older and has the functional, mental, or physical inability to care for himself or herself;
- is found to be incapacitated (meaning the individual is at a significant risk of personal harm based upon a demonstrated inability to adequately care for himself or herself);
- has a developmental disability;
- is admitted to a facility;
- is receiving services from a home health, hospice, or home care agency, or an individual provider; or
- self-directs his or her own care but receives services from a personal aide.

Persons identified as mandated reporters must immediately report to the DSHS, and in some instances to law enforcement, when they have reasonable cause to believe that a vulnerable adult has been abandoned, abused, financially exploited, or neglected. Mandated reporters include DSHS employees, law enforcement officers, various social services and healthcare workers, professional school personnel, county coroners and medical examiners, and Christian Science practitioners. The DSHS must investigate all allegations and immediately report to law enforcement if the alleged conduct may be criminal. In addition, when a report or investigation involves a licensed health care provider, the DSHS must notify the relevant disciplining authority. Reports and documents related to investigations are confidential and not subject to disclosure except in limited circumstances.

Neglect is defined as either: (1) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services necessary to maintain the vulnerable adult's health, or fails to prevent harm or pain to a vulnerable adult; or (2) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to a vulnerable adult's health, welfare, or safety.

Guardians are appointed by the court to care for a person who is unable to care for himself or herself due to incapacity. Professional guardians are certified by the Certified Professional Guardian Board and must meet certain education, experience, and training requirements. The Office of Public Guardianship provides public guardianship services to incapacitated individuals who need the services of a guardian and for whom adequate services may be otherwise unavailable. The Office of Public Guardianship contracts with individuals and organizations to provide guardianship services where there is no one else qualified, willing, and able to serve. A public guardian must be certified by the Certified Professional Guardian Board and must meet minimum standards of practice adopted by the Office of Public Guardianship.

**Summary of Amended Bill:**

The definition of "neglect" in the statutes concerning abuse of vulnerable adults is amended to specify that an act or omission that creates a clear and present danger to the vulnerable adult's health, welfare, or safety must be an act or omission of a person or entity with a duty of care.

In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the DSHS and law enforcement must be given access, upon request, to all relevant records related to the vulnerable adult in the possession of mandated reporters and their employees, unless prohibited by law. Professional review and quality assurance records are not subject to this requirement. The mandated reporter's provision of records in this context does not violate confidential communication privilege. Access to records will not be provided if that access would violate attorney-client privilege, unless required by a court order or otherwise required by law.

The DSHS, the Certified Professional Guardian Board, and the Office of Public Guardianship may share information contained in reports and investigations related to the abandonment, abuse, financial exploitation, self-neglect, or neglect of a vulnerable adult. Access to the information is solely for the purposes of recruiting, monitoring, and disciplining certified professional or public guardians. Secondary disclosure of the information is prohibited.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill will streamline vulnerable adult investigations and help adult protective services investigators. The change to the definition of "neglect" adds consistency among the types of conduct constituting neglect. The section of the bill requiring mandatory reporters to permit law enforcement and DSHS access to records when conducting an investigation only applies when disclosure is not otherwise prohibited by law, so health information would still be protected. Information sharing is important for increasing protection of people who have guardians. Under current law, only final findings related to investigations can be disclosed; however, information that does not ultimately become a substantiated or adjudicated finding is still important for recruitment of guardians.

(With concerns) Language in the bill granting access to records will result in a loss of protection for peer review and quality improvement documents. The language stating that disclosure is required "unless otherwise prohibited by law" is insufficient to protect these records.

(Opposed) None.

**Persons Testifying:** (In support) Bill Moss, Department of Social and Health Services.

(With concerns) Taya Briley, Washington State Hospital Association; and Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.