

HOUSE BILL REPORT

HB 1422

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the protection of vulnerable adults.

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: Representatives Valdez, Harris, Tharinger, Jenkins, Macri, Kilduff, Van Werven, Doglio, Morgan, Fey and Ormsby; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/30/19, 2/8/19 [DPS].

Brief Summary of Substitute Bill

- Modifies various definitions in the statutes governing the protection of vulnerable adults.
- Addresses confidentiality of information and records, and required information sharing between agencies, relating to reports and investigations of vulnerable adult abuse.
- Allows the Department of Social and Health Services (Department) to acknowledge a report and outcome of a vulnerable adult abuse investigation under certain circumstances.
- Requires the Department to conduct quality assurance reviews of responses and investigations of vulnerable adult abuse.
- Requires the Department to maintain a registry of final substantiated findings of vulnerable adult abuse and create a process for removal of persons from the registry.
- Addresses circumstances under which a provider may be prohibited from employment in the care of, or have access to, vulnerable adults.
- Allows autopsies and postmortems to be released to the Department in cases being reviewed under laws for the protection of vulnerable adults.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Edie Adams (786-7180).

Background:

Laws governing the abuse of vulnerable adults provide a number of protections, 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. Vulnerable adults are people 60 years of age or older who cannot care for themselves, and persons who are legally incapacitated, have developmental disabilities, are admitted to facilities, or are receiving services from certain care agencies.

Definitions.

"Abuse" is defined as a willful act or failure to act that causes injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult. "Physical abuse" and "mental abuse" also are both defined to require willful behavior. "Willful" is not defined in statute, but is defined under Department rule. However, a 2017 Court of Appeals decision invalidated the rule, finding it exceeded the scope of legislative intent. Under the court's decision, the willful standard requires a showing that the perpetrator knowingly inflicted injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

Facilities covered under the vulnerable adult laws include assisted living facilities, nursing homes, adult family homes, residential habilitation centers, soldiers homes, and other facilities licensed by the Department and the Department of Health.

Persons identified as mandated reporters must immediately report to the Department, 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 Department employees, law enforcement officers, various social services and healthcare workers, professional school personnel, county coroners, and medical examiners.

Confidentiality and Information Sharing.

A report of abandonment, abuse, financial exploitation, and neglect of a vulnerable adult, and all files, records, and communications used or developed in an investigation or provision of protective services, are confidential and not subject to disclosure, except for a purpose consistent with the vulnerable adult laws or as authorized by specific laws or the long-term care ombuds programs under federal or state law. The Department and law enforcement may share information in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults consistent with other confidentiality laws. The Department also may share this same information with the Department of Children, Youth, and Families (DCYF) unless prohibited by federal law.

Vulnerable Adult Fatality Reviews.

The Department is required to conduct a vulnerable adult fatality review when there is reason to believe the death of a vulnerable adult may be related to abuse, abandonment, exploitation, neglect, or self-neglect and the vulnerable adult was:

- receiving home and community-based services in his or her home or licensed or certified setting within 60 days prior to death; or
- living in his or her own home or licensed or certified settings and was the subject of a report to the Department of abuse, abandonment, financial exploitation, neglect, or self-neglect within 12 months prior to death.

All files, reports, records, communications, and working papers used or developed for the purposes of a fatality review are confidential and not subject to disclosure.

Aging and Disability Services Registry and Employment Restrictions.

The Department maintains an Aging and Disability Services (ADS) Registry that includes the names of individuals who have a final substantiated finding of abuse, abandonment, financial exploitation, or neglect of a vulnerable adult. A person found by the Department to have engaged in abuse, abandonment, financial exploitation, or neglect of a vulnerable adult may seek review of the decision through an administrative review process. A final substantiated finding is permanent and may not be removed from the ADS Registry except in very narrow circumstances, such as if the Department determines the finding was made in error, or the finding is rescinded after judicial review. Persons who are included in the ADS Registry are prohibited from being employed in the long-term care system.

Summary of Substitute Bill:

Definitions.

The definitions for "abuse," "physical abuse," and "mental abuse" are revised to remove the requirement that the behavior is willful and to instead require that the person's action or inaction is intentional, knowing, or reckless. Accidental actions that result in injury are not abuse and actions that are reasonable to protect a person from an immediate and substantial risk of injury are not physical abuse, mental abuse, or improper use of restraint. Definitions are provided for the terms "intentional," "knowing," and "reckless."

Enhanced services facilities are added to the facilities covered under the vulnerable adult laws and "other facilities licensed by the Department of Health" are removed. The list of mandated reporters is revised to include the Department of Children, Youth, and Families (DCYF) and certified residential services and supports agencies and employees.

"Misappropriation of resident property" is defined (consistent with federal regulations) to mean the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident's belongings or money without the resident's consent.

Confidentiality and Information Sharing.

Upon request, the sharing of information concerning vulnerable adult abandonment, abuse, financial exploitation, and neglect is required between the Department of Social and Health Services (Department) and law enforcement agencies and the Department and the DCYF.

In addition, the Department and the DCYF are required to share information concerning self-neglect of vulnerable adults, misappropriation of resident property, and abuse and neglect of children. Information sharing between the Department and the DCYF is allowed only if the information pertains to or may assist with investigating or preventing child abuse or neglect, providing for the health or well-being of foster children, or investigating or preventing abandonment, abuse, financial exploitation, and neglect or self-neglect of vulnerable adults, or misappropriation of resident property.

Information contained in reports and findings that is shared between the Department and law enforcement or the DCYF is not subject to further dissemination nor disclosure under the Public Records Act (PRA).

Upon request, the Department may disclose only the following information regarding a specifically named vulnerable adult: whether or not a report was received; the status of the report; and the outcome of the investigation. This information may not be disclosed under some circumstances, including if the requestor is the alleged perpetrator or disclosure may compromise an investigation or endanger a person.

Confidential information relating to vulnerable adults may be disclosed as authorized by the Office of Developmental Disabilities Ombuds Program.

Quality Assurance Reviews.

The Department must conduct quality assurance reviews (QARs) to monitor processes in responding to reports, quality of investigations, and implementation of protective services related to cases of vulnerable adult abuse, abandonment, neglect, self-neglect, financial exploitation, or misappropriation of resident property. Vulnerable adult fatality reviews are part of this QAR process.

Quality assurance reviews are not subject to discovery in a civil or administrative proceeding and may not be admitted into evidence or otherwise used in a proceeding except as specifically allowed. A Department employee responsible for conducting a QAR and any member of the QAR team may not be examined in a proceeding as to the work of the QAR or the QAR team, the incident under review, or their statements, deliberations, thoughts, analyses, or impressions of the QAR or the QAR team.

Documents prepared by or for a QAR or a QAR team are not subject to discovery and not admissible in a civil or administrative proceeding. A document that existed prior to its consideration in a QAR or that is created independently of the QAR does not become inadmissible because it is reviewed or used by the QAR team. A person who was interviewed by or provided a statement to a QAR does not become unavailable as a witness and may testify regarding the person's knowledge of the incident under review. However, the person may not be examined regarding the person's interactions with the QAR.

Vulnerable Adult Abuse Registry.

Effective January 1, 2020, the Department must maintain a vulnerable adult abuse registry that contains a list of individuals who have a final substantiated finding by the Department of abuse, abandonment, neglect, or financial exploitation of a vulnerable adult. Upon request, the Department may disclose the identity of a person who has been entered on the registry. Provisions governing the Aging and Disability Services Registry of persons who have a final substantiated finding of misconduct are eliminated.

The Department must develop a process in rule for the removal of persons from the registry if not inconsistent with federal law. A person on the registry may petition the Department for removal from the registry after three years have elapsed since the final substantiated finding was entered in the registry. A person may petition for removal from the registry no more than three times and no more often than once per year.

Removal from the registry is not allowed under specifically listed circumstances, including if the misconduct involved sexual abuse or great bodily harm to the vulnerable adult, the person has a conviction for a disqualifying crime, or the person has multiple final substantiated findings of misconduct or a final substantiated finding of misconduct against multiple vulnerable adults. A person denied removal from the registry is entitled to an adjudicative proceeding to challenge the denial and to judicial review of the adjudicative proceeding.

A person who is removed from the registry is no longer disqualified from employment in the long-term care system by reason of the final substantiated finding. The Department must maintain records of persons removed from the registry, and these records are exempt from disclosure under the PRA.

The state and its officers, employees, contractors, agents, and agencies are immune from suit based on the exercise of discretion to remove an individual from the registry; however, an applicant retains the right to seek administrative review of an agency's licensing or certification decision.

Documents prepared by staff of the Department during a review and consideration of a petition for removal from the registry and facts relating to the underlying finding are inadmissible and may not be used in any civil or administrative action related to the hiring of a person who is or was on the registry.

Employment Restrictions.

A provider may not be employed in the care of, or have unsupervised access to, vulnerable adults if:

- The provider is on the vulnerable adult abuse registry or any other registry based on a finding of abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property.
- The DCYF, or its predecessor agency, has made a founded finding of abuse or neglect of a child against the provider.
- A disciplining authority has made a finding of abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property of a minor or vulnerable adult.
- A court order includes a finding that the provider has committed abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property of a minor or vulnerable adult.

"Provider" means: an individual provider; a Department contractor who may have unsupervised access to vulnerable adults; and an employee, licensee, or contractor of home care agencies, nursing homes, assisted living facilities, enhanced services facilities, certified residential services and supports agencies, adult family homes, or other long-term care facilities certified to provide Medicaid or Medicare services.

Other Provisions.

Reports and records of autopsies and postmortems may be disclosed to the Department in cases being reviewed under laws for the protection of vulnerable adults.

A vulnerable adult who is the victim of stalking, or an interested person on behalf of the vulnerable adult, may apply for a stalking protection order.

Substitute Bill Compared to Original Bill:

The substitute bill defines "abuse" in a manner that requires conduct that is intentional, knowing, or reckless and defines each of these terms. Accidental actions that result in injury are not abuse, and actions that are reasonable to protect a person from an immediate and substantial risk of injury are not physical abuse, mental abuse, or improper use of restraint. The substitute bill restores the current law definition of "financial exploitation" and ties the definition of "misappropriation of resident property" to the definition of that term under federal regulation as it exists on the effective date of the act. The substitute bill delays the effective date of the registry until January 1, 2020, and adds a statement that a vulnerable adult who is the victim of stalking may apply for a stalking protection order.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 6, relating to the vulnerable adult abuse registry, which takes effect January 1, 2020.

Staff Summary of Public Testimony:

(In support) The goal of Adult Protection Services (APS) is to investigate abuse, abandonment, financial exploitation, or neglect of vulnerable adults. The bill contains multiple changes to improve protections of vulnerable adults. The bill adopts widely accepted culpability standards for what constitutes abuse. The current culpability standards are not adequate and have resulted in lost cases.

If an allegation of vulnerable adult abuse is substantiated, the person is placed on a registry. This is a lifetime registry with no consideration of the circumstances or severity of the harm. The registry is important to make sure abusive persons do not have access to vulnerable persons. However, parents who are on the registry and who now have a child

with a developmental disability are not able to provide services for their child. The bill will allow a person to be removed from the registry if they show rehabilitation. This will have a positive impact on the shortage of providers in the community. The Department of Social and Health Services (Department) has worked extensively with stakeholders to have balance in this area, and this change achieves that.

The bill also addresses the confidentiality of vulnerable adult abuse investigations. Currently the Department cannot even acknowledge that they have received a report of abuse. The bill would allow limited disclosure while still protecting vulnerable adults. The bill allows APS to share information with the Developmental Disability Ombuds. This will help the Ombuds help people who contact them for assistance.

The current definition of "facility" is too expansive in that it includes facilities licensed by the Department of Health. The bill restores the definition to cover facilities licensed or certified by the Department. As a result of the creation of the Department of Children, Youth, and Families (DCYF) as a separate agency, they are no longer listed as a mandatory reporters. The bill restores the DCYF as a mandatory reporter and allows for the sharing of information between the Department and the DCYF.

(Opposed) None.

Persons Testifying: Representative Valdez, prime sponsor; Kathy Morgan, Department of Social and Health Services; Noah Seidel, Office of Developmental Disabilities Ombuds; and David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.