

SENATE BILL REPORT

SB 6202

As of January 22, 2010

Title: An act relating to vulnerable adults.

Brief Description: Expanding provisions relating to vulnerable adults.

Sponsors: Senators Hargrove, Holmquist, Franklin, Honeyford, McCaslin, Regala, Morton, Keiser, Delvin, Swecker, Rockefeller, Tom, Kline, McAuliffe and Kilmer; by request of Attorney General.

Brief History:

Committee Activity: Human Services & Corrections: 1/22/10.

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; is incapacitated; has a developmental disability; is admitted to a licensed facility; or 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.

Exploitation or abuse of a vulnerable adult may also constitute a violation of criminal law. A prosecutor may seek an exceptional sentence to enhance the sentence of a defendant convicted of a crime against a victim who is particularly vulnerable, incapable of resistance, or who was the victim of an abuse of trust, confidence, or fiduciary responsibility.

A mandated reporter is a person who has a duty to report suspected assault, financial exploitation, abandonment, abuse, or neglect of a vulnerable adult to DSHS. Mandated reporters include social service and health care providers, social workers, and law enforcement.

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

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to the sentence of a Class C felony. The enhancement is mandatory, consecutive, and must be served in total confinement.

A financial institution which reasonably believes that financial exploitation of a vulnerable adult has occurred or is being attempted may, but is not required to, refuse a transaction pending investigation by the financial institution, DSHS, or law enforcement. The financial institution and its employees are immune from civil liability for making this determination in good faith. The financial institution must provide notice to all interested persons if the financial institution has contact information, and notify law enforcement and DSHS. The transaction may not be delayed longer than three business days without a court order.

A financial institution must ensure that existing employees who have contact with customers and account information receive training concerning the financial exploitation of vulnerable adults.

A mandated reporter must report the death of a vulnerable adult to a medical examiner or coroner and law enforcement when the mandatory reporter suspects that the death was caused by abuse, neglect, or abandonment.

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: Statistics show that one of the most common crimes against a vulnerable adult is neglect, but mandatory reporters are only required to report neglect to DSHS, not law enforcement. This can lead to a loss of evidence. Vulnerable adult victims are often unwilling to testify or unable to testify due to disability. An exceptional sentence is not effective in producing a guilty plea and is not predictable. Financial institutions were consulted to achieve balance in this bill. The fiscal notes from DSHS and the Administrative Office of the Courts are based on questionable assumptions and may be too high. We appreciate the prevention value of the training provision, which should be expanded. Living free of abuse, neglect, and abandonment is an important human right.

CON: The sentencing enhancement would apply when the defendant had no knowledge that the victim was a vulnerable adult. An exceptional sentence is already available for crimes against vulnerable adults. This bill would crowd prisons with offenders who are more appropriate for jail sentences or alternative sentences.

OTHER: The sentencing enhancement is duplicative of aggravating factors which are already available to increase the sentence for a crime committed against a vulnerable adult. The flexibility offered by an exceptional sentence allows for a sentence to be tailored which fits the criminal behavior. Three business days is too short for effective investigations of suspected financial abuse. The requirement of a faxed report should be more flexible.

Persons Testifying: PRO: Dawn Cortez, Catherine Hoover, Attorney General's Office; Page Ulley, King County Prosecutor's Office; Carolyn Edmond, Long Term Care Ombudsman Program; David Lord, Disability Rights Washington.

CON: Robert Quillian, Washington Association of Criminal Defense Lawyers.

OTHER: Jean Soliz-Conklin, Sentencing Guidelines Commission; Brad Tower, Community Bankers of Washington.