

HOUSE BILL REPORT

HB 2865

As Reported By House Committee On:
Children & Family Services

Title: An act relating to vulnerable adults.

Brief Description: Providing additional protection for vulnerable adults.

Sponsors: Representatives Carrell, Boldt, Tokuda, Ballasiotes, Kagi, Veloria, Wensman, Koster, Mitchell, Hankins, Mulliken, McDonald and Miloscia.

Brief History:

Committee Activity:

Children & Family Services: 2/3/00 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Social and Health Services (DSHS) to seek an injunction if there is interference in an investigation of allegations of abuse of a vulnerable adult.
- Requires the department to file a petition for the protection of a vulnerable adult if there is reasonable cause to believe there is a serious threat of substantial harm to the vulnerable adult and eliminates department and state immunity for failure to seek the petition.
- Adds state mental hospitals to facilities covered by the abuse of vulnerable adults statutes.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives D. Sommers, Republican Co-Chair; Tokuda, Democratic Co-Chair; Boldt, Republican Vice Chair; Kagi, Democratic Vice Chair; Campbell; Carrell; Dickerson; Eickmeyer; Kastama and Pflug.

Staff: Tracey Taylor (786-7196).

Background:

Frail elders and vulnerable adults, placed in dependent positions, may be subject to abuse, neglect, exploitation or abandonment. The Legislature has passed laws in order to prevent and remedy the abuse, neglect, exploitation, or abandonment of persons, 60 years of age or older, who have a functional, mental, or physical inability to care for or protect themselves.

The current statute covers a variety of facilities where such vulnerable adults may be living, including boarding homes, nursing homes, adult family homes, soldiers' homes, residential habilitation centers, and other facilities licensed by the state.

Investigation procedures and protocol are outlined. The investigation could include a private interview with the vulnerable adult, the complainant, facility staff, and any independent sources of information. The department may photograph the vulnerable adult or their environment in order to document the physical condition of the vulnerable adult or his environment. If the vulnerable adult's legal representative is not the alleged abuser, the department must get permission from the legal representative prior to photographing the vulnerable adult.

If an investigation is being impeded, including a denial of access, the department may seek an injunction to prevent an interference. If the department shows that there is reasonable cause to believe that the person is a vulnerable adult, who is or has been abandoned, abused, financially exploited or neglected, and the department has been denied access to investigate, the court will issue the injunction.

A petition for an order for protection of a vulnerable adult may be appropriate when a vulnerable adult is abused or neglected. A petition is filed in superior court by the vulnerable adult alleging abuse, exploitation or threats of abuse or exploitation. It may be filed regardless of the existence, or not, of a pending lawsuit, complaint, petition, or other action. Neither the department nor the state is liable for the failure to seek a petition for an order for protection of a vulnerable adult. The vulnerable adult, his family, or his legal representative may bring an action for damages as well. This action survives the death of the vulnerable adult, as his executor or administrator has the right to initiate or maintain an action on behalf of a surviving spouse, children, or other heirs. However, an action surviving a vulnerable adult is limited to damages for pain and suffering, anxiety, emotional distress or humiliation personal to and suffered by the vulnerable adult.

The funding of the investigation and reports of abuse, neglect, exploitation, or abandonment, as well as any legal remedies sought on the behalf of a vulnerable adult, is discretionary, and the department is not required to expend funds beyond what is appropriated.

Summary of Substitute Bill:

State mental hospitals are added to the definition of facilities covered by the abuse of vulnerable adults statutes.

Photographing the vulnerable adult or his environment is required, when appropriate.

The DSHS is required to seek an injunction if there is interference in the investigation.

The DSHS is required to file a petition for the protection of a vulnerable adult if there is reasonable cause to believe that there is a serious threat of substantial harm to the vulnerable adult. The DSHS and the state are no longer absolved of liability for failure to seek a petition for the protection of a vulnerable adult. A petition for the protection of a vulnerable adult survives the vulnerable adult's death, but is no longer limited to pain and suffering, anxiety, emotional distress or humiliation personal to, and suffered by, the vulnerable adult.

The funding of the investigations, reports, and legal actions is no longer discretionary, but is required, even if it is beyond the funds appropriated to the department.

Substitute Bill Compared to Original Bill: The original bill made the limitations on damages retroactive to 1995, but the substitute does not have the retroactive section.

Appropriation: None.

Fiscal Note: Requested on January 25, 2000.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The essence of this bill is to require the department to file a petition for the protection of a vulnerable adult if there is reason to believe that they are at risk. This bill will require DSHS to respond to reports of abuse or be subject to liability. Due to the difficulty related to the prosecution of vulnerable adults abuse cases, a responsive investigation with documentation is extremely important.

Testimony Against: None.

Testified: (In support) Representative Mike Carrell, prime sponsor; David Cooper, Arc of Clark County; Andrea Stevenson, The Empower Alliance; Patricia Hanks; and

Catherine Furnia.