

SENATE BILL REPORT

SB 5042

As of January 19, 2011

Title: An act relating to protection of vulnerable adults.

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: 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.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

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.

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.

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.

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 Bill: Exploitation includes causing a vulnerable adult to perform services for the benefit of another, manipulating or grooming a vulnerable adult into making a gift or loan, or executing or changing a will or power of attorney.

New forms of financial exploitation against a vulnerable adult may include: accepting payment for services or goods, and then not providing them; using or benefitting from property or income without such benefit going to the vulnerable adult; soliciting gifts, loans, or use of property or income by any entity involved in the provision of long-term care or personal care services; accepting gifts or loans from a facility resident by that facility.

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.

The department is authorized to share reports of abandonment, abuse, neglect or financial exploitation of a vulnerable adult, and any investigative information, final reports, or findings, with appropriate state or local agencies, law enforcement agencies, the Attorney General's office, federally recognized tribes, or other entities who provide services and support to vulnerable adults. Sharing reports and findings to these entities may be done when it promotes the protection of, or services to vulnerable adults, or promotes criminal or civil investigations against individuals alleged to have mistreated this population.

The department may conduct an investigation of abuse, neglect, abandonment, financial exploitation or self-neglect on property over which a federally recognized tribe has exclusive jurisdiction. The department may notify tribal law enforcement of criminal activity or potential risk to vulnerable adults on tribal property. Upon receipt of this notification the tribe may assume jurisdiction of the matter; if so, the department may not participate further in the investigation. The department may not be held liable from the point when the tribe takes over jurisdiction.

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: 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.