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SENATE BILL 5945

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Rivers, Cleveland, and Benton

Read first time 02/12/15. Referred to Committee on Law & Justice.

1            AN ACT Relating to elder and incapacitated persons protection;  
2 amending RCW 11.88.120; adding new sections to chapter 74.34 RCW;  
3 adding a new section to chapter 9A.56 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 11.88.120 and 1991 c 289 s 7 are each amended to  
6 read as follows:

7            (1) At any time after establishment of a guardianship or  
8 appointment of a guardian, the court may, upon the death of the  
9 guardian or limited guardian, or, for other good reason, modify or  
10 terminate the guardianship or replace the guardian or limited  
11 guardian.

12            (2) Any person, including an incapacitated person, may apply to  
13 the court for an order to modify or terminate a guardianship or to  
14 replace a guardian or limited guardian. If applicants are represented  
15 by counsel, counsel shall move for an order to show cause why the  
16 relief requested should not be granted. If applicants are not  
17 represented by counsel, they may move for an order to show cause, or  
18 they may deliver a written request to the clerk of the court.

19            (3) By the next judicial day after receipt of an unrepresented  
20 person's request to modify or terminate a guardianship order, or to  
21 replace a guardian or limited guardian, the clerk shall deliver the

1 request to the court. The court may (a) direct the clerk to schedule  
2 a hearing, (b) appoint a guardian ad litem to investigate the issues  
3 raised by the application or to take any emergency action the court  
4 deems necessary to protect the incapacitated person until a hearing  
5 can be held, or (c) deny the application without scheduling a  
6 hearing, if it appears based on documents in the court file that the  
7 application is frivolous. Any denial of an application without a  
8 hearing shall be in writing with the reasons for the denial  
9 explained. A copy of the order shall be mailed by the clerk to the  
10 applicant, to the guardian, and to any other person entitled to  
11 receive notice of proceedings in the matter. Unless within thirty  
12 days after receiving the request from the clerk the court directs  
13 otherwise, the clerk shall schedule a hearing on the request and mail  
14 notice to the guardian, the incapacitated person, the applicant, all  
15 counsel of record, and any other person entitled to receive notice of  
16 proceedings in the matter.

17 (4) In a hearing on an application to modify or terminate a  
18 guardianship, or to replace a guardian or limited guardian, the court  
19 may grant such relief as it deems just and in the best interest of  
20 the incapacitated person.

21 (5) The court may order persons who have been removed as  
22 guardians to deliver any property or records belonging to the  
23 incapacitated person in accordance with the court's order. Similarly,  
24 when guardians have died or been removed and property or records of  
25 an incapacitated person are being held by any other person, the court  
26 may order that person to deliver it in accordance with the court's  
27 order. Disobedience of an order to deliver shall be punishable as  
28 contempt of court.

29 (6) Upon receipt of a complaint and investigation thereof, or for  
30 other good reason, the office of attorney general or the department  
31 of social and health services has standing to petition the court to  
32 modify or terminate any guardianship.

33 (7) Any conviction of theft or financial exploitation by a  
34 guardian or certified professional guardian disqualifies that person  
35 from continuing to serve as an appointed guardian in any capacity.

36 (8) All certified professional guardians must annually submit to,  
37 and annually file with the certified professional guardianship board  
38 and also with any court where an active guardianship is pending, a  
39 criminal background check. Any person has standing to petition the

1 court to enforce this subsection, and failure to comply with this  
2 subsection is a basis for modifying or terminating any guardianship.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.34  
4 RCW to read as follows:

5 (1) The office of the attorney general shall investigate any  
6 complaint, and may bring a civil action under the consumer protection  
7 act, for theft or financial exploitation against an incapacitated  
8 person by the appointed guardian, including any unjust compensation  
9 received by the appointed guardian allowed under RCW 11.92.180.

10 (2) The legislature finds that the practices covered by this  
11 section are matters vitally affecting the public interest for the  
12 purpose of applying the consumer protection act, chapter 19.86 RCW. A  
13 violation of this section is not reasonable in relation to the  
14 development and preservation of business and is an unfair or  
15 deceptive act in trade or commerce and an unfair method of  
16 competition for the purpose of applying the consumer protection act,  
17 chapter 19.86 RCW.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.34  
19 RCW to read as follows:

20 The department shall investigate any complaint, and may bring any  
21 action authorized under this chapter to protect a vulnerable adult,  
22 where the vulnerable adult is an incapacitated person and the  
23 complaint alleges theft or financial exploitation against the  
24 incapacitated person by the appointed guardian.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.34  
26 RCW to read as follows:

27 (1) The department shall establish an elder justice center at two  
28 demonstration sites, one of which must be located in Clark county and  
29 the other located in Spokane county. The department may contract  
30 directly with the counties for the implementation of the  
31 demonstration sites in accordance with the requirements in this  
32 section.

33 (2) For the purposes of this section, "elder justice center"  
34 means a senior-focused center that serves to coordinate a  
35 multidisciplinary approach to the prevention, investigation,  
36 prosecution, and treatment of abandonment, abuse, neglect, and  
37 financial exploitation of vulnerable adults.

1 (3) An elder justice center must provide coordinated access to  
2 services including, but not limited to, advocacy and case review by  
3 multidisciplinary teams that include, but are not limited to, adult  
4 protective services, law enforcement officers, a prosecuting  
5 attorney, a victim advocate, and a program coordinator.  
6 Multidisciplinary teams also may include community agencies and  
7 systems that are involved with the prevention and response to elder  
8 abandonment, abuse, neglect, and financial exploitation.

9 (4) Each demonstration site shall develop a written protocol to  
10 address the coordination of investigations between the prosecutor's  
11 office, law enforcement, adult protective services, local advocacy  
12 groups, and any other local agency involved in the criminal  
13 investigation of vulnerable adult abandonment, abuse, neglect, and  
14 financial exploitation. The protocol must be developed by the county  
15 prosecuting attorney with the assistance of the other entities named  
16 in this subsection.

17 (5) The department shall submit, in compliance with RCW  
18 43.01.036, the following reports to the governor and the legislature:

19 (a) By January 10, 2016, a brief progress report describing the  
20 status of implementation at each demonstration site;

21 (b) By January 10, 2017, an interim report outlining the  
22 structure and operation of each site; and

23 (c) By December 1, 2018, a final report discussing the  
24 effectiveness of the elder justice center model in increasing  
25 community capacity to prevent and respond to abandonment, abuse,  
26 neglect, and financial exploitation of vulnerable adults. The final  
27 report also must contain recommendations for modifying or expanding  
28 additional demonstration sites.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 9A.56  
30 RCW to read as follows:

31 (1) Theft by a guardian appointed under chapter 11.88 RCW of an  
32 incapacitated person's property or services is a class B felony when  
33 the value of the property or services exceeds seven hundred fifty  
34 dollars.

35 (2) Theft by a guardian appointed under chapter 11.88 RCW of an  
36 incapacitated person's property or services is a class A felony when  
37 the value of the property or services exceeds five thousand dollars.

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