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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

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

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

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

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

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

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

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

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

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

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

(8) All certified professional guardians must annually submit to, and annually file with the certified professional guardianship board and also with any court where an active guardianship is pending, a criminal background check. Any person has standing to petition the court to enforce this subsection, and failure to comply with this subsection is a basis for modifying or terminating any guardianship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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