

# SENATE BILL REPORT

## SB 5338

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As of January 27, 2020

**Title:** An act relating to the protection of vulnerable adults.

**Brief Description:** Concerning the protection of vulnerable adults.

**Sponsors:** Senators Darneille, Rivers, Conway, Keiser, Van De Wege and Kuderer; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:** Human Services, Reentry & Rehabilitation: 1/30/19, 2/05/19 [DPS-WM]; 1/22/20.

Ways & Means: 2/18/19, 2/25/19 [DPS (HSRR)].

**Brief Summary of Proposed Second Substitute Bill**

- Requires the Department of Social and Health Services (DSHS) to develop a process allowing persons to petition having their names removed from the registry of persons who have abandoned, neglected, abused, or financially exploited vulnerable adults (vulnerable adult registry).
- Lowers the intent standard for finding abuse of a vulnerable adult from willful to intentional, knowing, or reckless.
- Protects information from disclosure to the public or in a civil or administrative hearing related to quality assurance processes by DSHS, reports of abuse relating to a specific named individual, reports of child sexual abuse and fatality, and actions related to the removal of persons from the vulnerable adult registry.

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**SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION**

**Majority Report:** That Substitute Senate Bill No. 5338 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, O'Ban, Wilson, C. and Zeiger.

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*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.*

**Staff:** Kevin Black (786-7747)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Bailey, Becker, Billig, Carlyle, Conway, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

**Staff:** Corban Nemeth (786-7736)

**Background:** DSHS investigates the abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults. Statutes require DSHS to maintain a vulnerable adult registry containing persons subject to substantiated findings of abandonment, abuse, exploitation, or neglect of a vulnerable adult, and prohibit the hiring of persons who appear in the registry or are subject to other similar reports. A person who is subject to a substantiated finding may appeal the decision through an administrative review process. Short of reversal on administrative appeal, there is no process in law for removing a name from the vulnerable adult registry.

A vulnerable adult includes a person who is:

- sixty years of age or older and has the functional, mental, or physical inability to care for themself;
- found incapacitated, meaning the individual is at significant risk of personal harm based upon a demonstrated inability to care for themself;
- a person with a developmental disability;
- admitted to any facility;
- receiving services from a home health, hospice, or home care agency;
- receiving services from an individual provider; or
- self-directing their own care and receiving services from a personal aide.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Second Substitute):** Definitions relating to the civil standard for abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult are modified as follows:

- the level of intent required for a finding of abuse is reduced from willful to intentional, knowing, or reckless;
- reckless is defined to mean disregard of a substantial risk that an action is likely to inflict injury;
- it is specified accidents and reasonable acts to protect a person from risk are not abuse or improper use of restraint;
- facilities are defined to include enhanced services facilities;
- mandated reporters are expanded to include employees of the Department of Children, Youth, and Families (DCYF), the operator of a residential services and support agency, or employees of any facility certified by DSHS; and

- additional definitions are provided for terms including intentional, knowing, misappropriation of resident property, provider, and vulnerable adult abuse registry.

Records shared between DSHS, DCYF, and law enforcement related to findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults must not become subject to public disclosure or further disseminated except as authorized by law. These agencies must share information related to abandonment, abuse, financial exploitation, neglect, or self-neglect with each other upon request. Disclosures are authorized to the Office of the Developmental Disabilities Ombuds program.

DSHS is prohibited from disclosing information relating to a specifically named vulnerable adult if:

- the information relates to a report having been received and an unannounced investigation in response to the report has not been initiated;
- disclosure may compromise investigation by a law enforcement agency, disciplinary authority, DSHS, or DCYF;
- disclosure of information may endanger any person, based on reasonable belief; or
- the requester is the alleged perpetrator.

Quality assurance reviews by DSHS, including vulnerable adult fatality reviews, are protected from discovery or use in a civil or administrative proceeding including all the views and opinions of employees who participate in the reviews and the written documents they generate.

DSHS must develop, by rule, a process to remove individuals from its vulnerable adult registry allowing a person to petition, in writing, for removal after three years have elapsed, provided the person is not subject to a finding:

- they sexually abused a vulnerable adult;
- they caused a vulnerable adult to suffer great bodily harm or death;
- they financially exploited a vulnerable adult with a value exceeding \$5,000; or
- the abuse involved a lethal weapon.

The person applying to have their record removed must not have a conviction for a disqualifying crime, multiple findings in the registry, or multiple victims. DSHS must maintain records of persons who are removed from the registry, which must be exempt from public disclosure. Documents related to applications for the removal of persons from the registry are protected from discovery in any civil or administrative action against DSHS.

For the purpose of investigations of child sexual abuse, online sexual exploitation and commercial exploitation of minors, child fatality, child physical abuse, and criminal neglect cases, DCYF may disclose only those records that pertain to or may assist with investigations by multidisciplinary child protection teams for the well-being of the child.

DSHS may access reports and records of autopsies and postmortems for the purpose of investigating the abuse of vulnerable adults. A cross reference is added advising a vulnerable adult who is the victim of stalking of their right to apply for a stalking protection order.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute (Human Services, Reentry & Rehabilitation) (Regular Session 2019):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill creates new opportunities for people now on a permanent registry that precludes their participation in DSHS functions and services in the community. Someone who wants to volunteer in a school or day care center may be precluded because of something that happened long ago, and was followed by work and change. One young man could not visit his mother in an adult family home because of the other vulnerable people there, even though his infraction was decades earlier. This allows people to move forward. We want to provide additional protections and assure we can operate at the highest levels of efficiency and quality. We worked extensively with stakeholders over the interim to improve last year's bill. We chose widely recognized definitions that exclude accidental or protective activities. We are still working on language. A number of findings have been overturned in administrative hearings based on lack of specific intent to harm. There are 7000 people on the abuse registry with a range of severity. The only tool is a lifetime ban. An amendment to the definition of facility cleans up an error from a 2018 bill that expanded our responsibilities. The registry is important, but we support having a path to get off the registry. There is a work shortage for persons with developmental disabilities and this is a way to address that problem. It affects parents of persons with developmental disabilities who want to be involved with their children's care. This will help the Ombuds get needed information from Adult Protective Services.

OTHER: Please amend the bill to include language protecting vulnerable adults from stalking and harassment. My son was stalked by a predator and the judge denied a vulnerable adult protection order because we were unable to prove abuse, abandonment, financial exploitation, or neglect.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Senator Jeannie Darneille, Prime Sponsor; Bea Rector, DSHS; Noah Seidel, Office of Developmental Disabilities Ombuds.

OTHER: Cheryl Felak, citizen.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony (Human Services, Reentry & Rehabilitation):** PRO: We are seeking changes to enhance protections for vulnerable adults and to operate at the highest levels of quality assurance and efficiency. We want to offer an opportunity for people to petition to be removed from the Vulnerable Adult Registry. There is a wide range of seriousness of abuses on the registry. We worked extensively with stakeholders on the bill's new definitions. The confidentiality change will allow us to acknowledge that a report exists

that we are working on, while still protecting a vulnerable adult from harm. The clarifications to the definitions of abuse and neglect will further protect vulnerable adults.

OTHER: When information is referred to law enforcement we feel the press should have access to the information. The public has a right to see prosecutorial referrals.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Kathy Morgan, Department of Social and Health Services; Robin Dale, Washington Health Care Association.

OTHER: Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means) (Regular Session 2019):** PRO: When a person is found and placed on the registry, it precludes them from ever working in the field of long-term care. This bill is a rational way of moving people off the registry. It will affect our ability to keep a trained workforce over time. It is a department request bill.

We are seeking multiple changes to the statute to continue protecting vulnerable adults. The first amendment addresses issues that we are seeing in administrative hearings when perpetrators are saying that they just did not mean to harm the individual. What this definition does is recognizes the culpability standards in the criminal code and allows the actions that are truly accidental and protective in nature. The second requested amendment is last session SB 1388 changed the definition of facility extending the Department's jurisdiction to all facilities licensed and certified by the Department of Health as well as the Department of Social Health Services. The Department does not believe this was the intent of the Legislature and is requesting restoration of a facility definition. The Vulnerable Adult Registry is a list of names of people who have abandoned, abused, or neglected an individual. Their name goes on this registry. It is a permanent lifetime registry regardless of the extent or the spectrum of harm.

**Persons Testifying (Ways & Means):** PRO: Senator Jeannie Darneille, Prime Sponsor; Kathy Morgan, Chief of Operations, DSHS; Bea Rector, HCS Director, DSHS.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.