
**Public Safety & Emergency Preparedness
Committee**

HB 2426

Brief Description: Expanding provisions relating to vulnerable adults.

Sponsors: Representatives Moeller, Bailey, Van De Wege, Warnick, Jacks, Herrera, Rodne, Johnson, Eddy, Driscoll, Rolfes, Morrell, O'Brien, Sullivan, Conway, Sells, Hurst and Ormsby; by request of Attorney General.

Brief Summary of Bill

- Creates a mandatory sentence enhancement of 18 months to five years, depending on the felony level, for felonies where the victim was a vulnerable adult.
- Permits financial institutions to refuse to disburse funds from the account of a vulnerable adult or the account of a suspected perpetrator of financial exploitation of a vulnerable adult when the financial institution reasonably believes that financial exploitation of a vulnerable adult has occurred, has been attempted, or is being attempted.
- Immunizes a financial institution from liability for certain acts taken in response to the suspected financial exploitation of a vulnerable adult.
- Requires that a report be made to the medical examiner or coroner, the Department of Social and Health Services, and law enforcement when a vulnerable adult's death was due to abuse, neglect, or abandonment.

Hearing Date: 1/20/10

Staff: Alexa Silver (786-7190).

Background:

A. Abuse of Vulnerable Adults Act

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.

The Abuse of Vulnerable Adults Act provides a number of protections for vulnerable adults, including authorizing the Department of Social and Health Services (DSHS) and law enforcement agencies to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults; requiring mandatory reporting and investigations; and allowing vulnerable adults to seek protection orders or file civil suits for damages resulting from abandonment, abuse, exploitation, or neglect.

When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters must immediately report to the DSHS. If there is reason to suspect that sexual or physical assault has occurred, mandated reporters must immediately report to the appropriate law enforcement agency and to the DSHS.

A vulnerable adult includes a person who: is 60 years old or older who is functionally, mentally, or physically unable to care for himself or herself; has been found incapacitated; has a developmental disability; resides in a licensed facility such as a nursing home, adult family home, or residential habilitation center; receives services from a home health, hospice, or home care agency; *or* receives services from an individual home services provider.

Financial exploitation is the illegal or improper use of property, income, resources, or trust funds of the vulnerable adult by any person for the person's profit or advantage other than for the vulnerable adult's profit or advantage.

A mandated reporter is: an employee of the DSHS; a law enforcement officer; a social worker; professional school personnel; an individual provider; an employee or operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; a county coroner or medical examiner; a Christian Science practitioner; or a health care provider.

B. Sentence Enhancements

Under the Sentencing Reform Act, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. Sentencing enhancements may apply if any of the following apply: (1) the offender was armed with a firearm while committing certain felonies; (2) the offender was armed with a deadly weapon while committing certain felonies; (3) the offender committed certain felonies while incarcerated; (4) the offender committed certain drug offenses; (5) the offender committed Vehicular Homicide while under the influence of alcohol or drugs; or (6) the offender committed a felony crime that was committed with sexual motivation. In *Blakely v. Washington*, the U.S. Supreme Court held that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment.

Summary of Bill:

A. Financial Institutions

If a financial institution reasonably believes that financial exploitation of a vulnerable adult has occurred, has been attempted, or is being attempted, the financial institution may refuse to disburse funds from certain bank accounts pending an investigation by the DSHS or law enforcement. The bank accounts from which the financial institution may refuse to disburse funds are the vulnerable adult's account, an account on which the vulnerable adult is a beneficiary, and an account belonging to a person suspected of perpetrating financial exploitation of a vulnerable adult. The financial institution may also refuse to disburse funds if notified by the DSHS, law enforcement, or the prosecuting attorney's office that it is reasonable to believe that exploitation has occurred, has been attempted, or is being attempted.

1. Notification

If the institution refuses to disburse funds, it must notify any person claiming an interest on the account, including depositors and beneficiaries, for whom contact information is available. The notice may be oral or in writing. The institution must also fax a report to the DSHS and local law enforcement.

2. Expiration and Court Order

The refusal to disburse funds expires either three business days after the first refusal, or when the institution is satisfied that disbursement will not result in financial exploitation, whichever is sooner. A court may enter an order extending the refusal to disburse funds.

3. Training

A financial institution must ensure that employees who have regular contact with customers and account information receive training on financial exploitation of vulnerable adults within one year of the act's effective date. The Office of the Attorney General must develop a standardized training, but a financial institution may develop its own training. The training must include recognition of indicators of financial exploitation, reporting obligations, and prevention of financial exploitation.

4. Access to Records

A financial institution may provide access to recent and historical records relevant to financial exploitation of a vulnerable adult to the DSHS, law enforcement, or the prosecuting attorney's office.

5. Immunity

The determination of whether to refuse to disburse funds is within the financial institution's discretion. The institution and its employees are immune from criminal, civil, and administrative liability for their good faith determination of whether to refuse to disburse funds.

The institution and its employees are immune from criminal, civil, and administrative liability for conduct conforming with the reporting or prevention of financial exploitation, or the provision of access to records as provided in the laws on vulnerable adults or the institution's customer agreements.

B. Death of a Vulnerable Adult

When a vulnerable adult dies and the circumstances indicate the death was due to abuse, neglect, or abandonment, a mandated reporter must report the death to the medical examiner or coroner,

law enforcement, and the DSHS in the most expeditious manner possible. If abuse, neglect, or abandonment contributed to the death, it is a death caused by unnatural or unlawful means, and the body is in the jurisdiction of the coroner or medical examiner.

C. Sentence Enhancement

For felonies committed after July 1, 2009, where the victim was a vulnerable adult at the time of the offense, a mandatory sentence enhancement is added to the standard sentence range.

- If the offense was a **class A felony** or a felony with a statutory maximum sentence of at least 20 years, **five years** are added.
- If the offense was a **class B felony** or a felony with a statutory maximum sentence of 10 years, **three years** are added.
- If the offense was a **class C felony** or a felony with a statutory maximum of five years, **18 months** are added.

The enhancement is added to the total period of confinement, runs consecutively to other sentencing provisions, and must be served in total confinement. If the standard sentence range with the vulnerable adult sentence enhancement is greater than the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence, unless the offender is a persistent offender. If adding the vulnerable adult enhancement causes the sentence to exceed the statutory maximum, the vulnerable adult enhancement may not be reduced.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.