

SENATE BILL REPORT

ESHB 1422

As of May 20, 2020

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

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Valdez, Harris, Tharinger, Jinkins, Macri, Kilduff, Van Werven, Doglio, Morgan, Fey and Ormsby; by request of Department of Social and Health Services).

Brief History: Passed House: 1/20/20, 97-0.

Committee Activity: Human Services, Reentry & Rehabilitation: 2/26/20, 2/26/20 [DP-WM].

Ways & Means: 2/29/20.

Brief Summary of Bill

- Requires the Department of Social and Health Services (DSHS) to develop a process allowing persons to petition to have 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.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: 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.

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)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Maria Hovde (786-7474)

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:

- 60 years of age or older and has the functional, mental, or physical inability to care for themselves;
- found incapacitated, meaning the individual is at significant risk of personal harm based upon a demonstrated inability to care for themselves;
- 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: 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;
- 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. This procedure must allow a person to petition in writing for removal after three years have elapsed, provided the person is not subject to a finding that:

- 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 are 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 (Human Services, Reentry & Rehabilitation): PRO: In 2017, DSHS' definition of willful abuse was invalidated by the Court of Appeals so this provides a fix. It allows DSHS to work with other agencies such as law enforcement during

an investigation. This will allow DSHS to put a process in place to petition to be removed from the vulnerable adults registry. We are seeking to further enhance protections for vulnerable adults and operate at the highest levels of quality and efficiency. The registry is a permanent registry. We think an opportunity to petition for removal is appropriate, allowing people to work in the long-term care field again. Adult Protective Services (APS) wants to be able to acknowledge that a report exists and that we are investigating. This bill will allow the Developmental Disabilities Ombuds to work with APS to better assist and coordinate activities. We support the modification to the registry structure.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Representative Javier Valdez, Prime Sponsor; Kathy Morgan, Department of Social and Health Services; Noah Seidel, Office of Developmental Disabilities Ombuds.

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

Staff Summary of Public Testimony (Ways & Means): PRO: We are seeking multiple changes to law to ensure transparency and protection to vulnerable adults. Currently, the vulnerable adult registry is a lifetime registry and we are requesting an opportunity for individuals to petition for removal from the registry under certain criteria and circumstances. The change to the definition of abuse in this bill is consistent with criminal code and involves the feedback of stakeholders. Currently, DSHS is unable to acknowledge that a report exists and we would like the ability to share limited information while still protecting vulnerable adults.

Persons Testifying (Ways & Means): PRO: Kathy Morgan, Department of Social and Health Services.

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