
Judiciary Committee

HB 1104

Title: An act relating to protection of vulnerable adults.

Brief Description: Concerning the protection of vulnerable adults.

Sponsors: Representatives Moeller, Walsh, Billig, Kenney, Maxwell and Dammeier; by request of Department of Social and Health Services.

Brief Summary of Bill

- Allows the Department of Social and Health Services (DSHS) to share reports of and investigations into suspected abuse or exploitation of vulnerable adults with other entities.
- Prohibits wrongful use, control, transfer, withholding, or possession of a vulnerable adult's property and gives examples of situations constituting financial exploitation.
- Provides standards for the DSHS to agree with federally recognized tribes to investigate reported abuse or financial exploitation on tribal land.

Hearing Date: 1/31/11

Staff: Parker Howell (786-5793).

Background:

Protection of Vulnerable Adults.

Washington law prohibits abandonment, abuse, financial exploitation, and neglect of vulnerable adults and sets forth ways to stop abuse and compensate victims.

Vulnerable adults are people sixty years of age or older who cannot care for themselves, are legally incapacitated, have developmental disabilities, are admitted to facilities, or are receiving

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services from certain care agencies. The law covers boarding homes, nursing homes, adult family homes, residential rehabilitation centers, and other facilities licensed by DSHS.

A person commits abuse when he or she intentionally acts or fails to act in a way that causes injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. Financial exploitation occurs when a person illegally or improperly uses property, income, resources, or trust funds of a vulnerable adult for the exploiter's profit or advantage, rather than to benefit the victim. General exploitation occurs when someone forces, compels, or exerts undue influence over a victim, causing him or her to act in a way inconsistent with past behavior, or causes the victim to perform services for the benefit of another.

Various statutes establish a system for the DSHS to receive reports of and investigate incidents of suspected abuse or financial exploitation of vulnerable adults. Employees of the DSHS, law enforcement personnel, certain other public employees, and certain people involved in care of vulnerable adults at facilities must report suspected abuse or financial exploitation to the DSHS or directly to law enforcement. When the DSHS receives a report of criminal abuse or financial exploitation, the DSHS must immediately report it to law enforcement. The law allows confidential tipsters to make reports of suspected abuse or financial exploitation, and it protects people who report or testify in good faith from liability for damages arising from those activities.

The DSHS or interested parties may request judicial protection orders to restrain someone from abusing an adult.

Slayer Statute.

Washington's "slayer statute" (chapter 11.84 RCW) prohibits anyone who financially exploits an elderly adult or who kills a person from inheriting from his or her victim. The slayer statute refers to and incorporates the definitions of "financial exploitation" and "vulnerable adult" found in the statute protecting vulnerable adults from abuse or financial exploitation.

Under the slayer statute, a party may bring a civil lawsuit to have an alleged abuser effectively disinherited. A defendant can be found to be an abuser if a fact finder determines that the person was convicted of committing certain crimes (such as theft, fraud, or identity theft) against the victim, or if the fact finder determines upon "clear, cogent, and convincing" evidence that the defendant participated in financial abuse. A past conviction for certain crimes not committed against the victim may be used as evidence. An abuser must have participated willfully in the abuse. An abuser may still inherit if clear, cogent, and convincing evidence shows that the victim knew of the exploitation and still wanted that abuser to inherit.

Summary of Bill:

The DSHS may share reports of abuse, financial exploitation, abandonment, or neglect of a vulnerable adult to appropriate state or local agencies, law enforcement, the Office of the Attorney General, federally recognized tribes, or other entities or businesses providing services or support to vulnerable adults or licensing people who provide such services. The agency may share this information when it would promote protection of, provision of services to, or investigations of abuse or financial exploitation of vulnerable adults.

The definition of "exploitation" of a vulnerable adult is expanded to include manipulating or grooming a vulnerable adult to make a gift or loan, or executing or changing a will, power of attorney, or other document that establishes an agency relationship.

The definition of "financial exploitation" is expanded beyond illegal or improper use of property of a vulnerable adult to include the illegal, wrongful, or improper control, transfer, withholding, or possession of property by a person or an entity. Property includes interest in real or personal property, income, credit, identity, other resources, and property or other resources held for the benefit of a vulnerable adult by a fiduciary or representative, such as in a trust. Financial exploitation may include:

- accepting payment for but failing to provide goods or services to a vulnerable adult;
- use of or benefit from property or income of a vulnerable adult for purposes not benefiting the adult, by a person who is a representative of or who owes a fiduciary duty to the vulnerable adult;
- solicitation or attempted solicitation of a vulnerable adult for gifts, loans, or use of the vulnerable adult's property or income by a person or entity involved in providing long-term care or personal-care services; and
- acceptance of a gift or loan from a resident of certain facilities by a provider of facilities or its employees or contractors.

The DSHS may agree with federally recognized tribes to investigate reports of abuse or financial exploitation of vulnerable adults occurring on property over which a tribe has exclusive jurisdiction. If the DSHS receives information that abuse is occurring on tribal land at potential risk of personal or financial harm to the victim, the DSHS may notify tribal law enforcement or another tribal representative. The tribe may then take jurisdiction over the matter, in which case neither the DSHS nor its employees may participate in the investigation. Once a tribe assumes jurisdiction, the DSHS and its officers or employees are not liable for any action or failure to act on the part of the tribe for harm occurring to any party. The DSHS jurisdiction and authority over facilities or entities that the DSHS licenses or certifies is not limited by these provisions.

Appropriation: None.

Fiscal Note: Available.

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