

Vulnerable Adult Justice Project

2009 Minnesota Legislative Initiative

S.F. 758 (Moua)/H.F. 818 (Hilstrom)

Minnesota first created a report and response system for the maltreatment of the elderly and persons with disabilities in 1980. This Vulnerable Adult Act was substantially revised in 1995. For the past year, stakeholders from more than 20 organizations have been meeting regularly with an even greater number of staff from ombudsman offices, the Attorney General's office, as well as state and county protection and regulatory agencies, to identify priorities for bringing the law in line with contemporary practice and communities' needs.

S.F.758/H.F.818, the consensus product of extensive priority-setting, research, and debate,

- ✓ **tackles the growing problem of financial exploitation of vulnerable adults,**
- ✓ **identifies a lifeline when vulnerable adults are missing and endangered,**
- ✓ **streamlines the reporting system to expedite the response system, and**
- ✓ **advances social services and justice for a growing and changing population.**

Section 1 (13A.02, subdivision 1) authorizes disclosure of a vulnerable adult's financial records in a case investigating the financial exploitation of the vulnerable adult. Under current law, such records may be released in a limited number of circumstances. The new language specifies that law enforcement, a lead investigative agency, as defined by the Vulnerable Adult Act, or a prosecuting authority may obtain access to those records, with written certification that the information is a component of their investigation of financial exploitation of a vulnerable adult. This is one of several sections in the bill that is intended to give financial institutions clear guidelines for cooperating and immunity for their assistance in these cases.

Section 2 (13A.04, subdivision 1) specifies that suspected financial exploitation of a vulnerable adult is a basis on which financial institutions may notify a governmental authority with information and may provide access to pertinent information.

Section 3 (256B.0595, subdivision 4b) creates a standard by which counties will determine medical assistance eligibility for an applicant who is a victim of financial exploitation, has lost access to resources that were improperly transferred by another, and faces an imminent threat to health and well-being. The local agency will grant a hardship waiver when there is a criminal conviction of a third party who wrongfully disposed of the resources or when the medical assistance applicant (the victim) provides satisfactory demonstration that the uncompensated transfer was a result of the financial exploitation, fraud, or theft by a third party.

Section 4 (299A.61, subdivision 1) inserts language to conform law to current practice in Minnesota's criminal alert network. The network is used to mobilize public response in the event of missing and endangered children and vulnerable adults. This section adds the phrase "and vulnerable adults" to the law. This change is intended to support education about systems in place to aid vulnerable adults and their caregivers in life-threatening emergencies.

Section 5 (388.23, subdivision 1) enables county attorneys to subpoena the banking and financial records of a vulnerable adult. Currently, county attorneys have subpoena power only for account numbers at financial institutions. By expediting intervention in cases of financial exploitation, there is a greater opportunity to preserve some of the victim's resources and financial self-sufficiency, thus avoiding reliance upon government assistance for housing or health care. This direct access is to the vulnerable adult's records only. For others, a court-issued subpoena or search warrant will continue to be required.

Section 6 (609.2335) amends the definition of criminal financial exploitation of a vulnerable adult using the guidance of 2008 Minnesota case law (State of Minnesota v. Campbell, 756 N.W.2d 263) to clarify actions that will be prevented and punished. The section retains a distinction between those acts that occur when a fiduciary obligation exists and when it does not. Criminal acts in a breach of fiduciary duty include failing to use the real or personal property or financial resources of the vulnerable adult to provide for basic needs; using, managing, or taking those assets for the interest of someone other than the vulnerable adult, and depriving the vulnerable adult of those assets for the benefit of someone else. In the absence of legal authority, financial exploitation will include acquiring possession or control of the vulnerable adult's finances or property, forcing them to perform services for the profit of someone else, and establishing a fiduciary relationship with the vulnerable adult by such pressure as undue influence. This section further establishes that the actor cannot claim consent as a defense if (s)he knew or had reason to know that the vulnerable adult lacked capacity to consent. The new definition replaces outmoded, vague language with a behavioral definition of criminal financial exploitation.

Section 7 (609.52, subdivision 3) raises the penalty for financial exploitation of a vulnerable adult, when the value taken exceeds \$35,000, aligning this crime with the crimes of theft by swindle, theft by false representation, and corporate theft in the first and second degrees.

Section 8 (611A.033) establishes an opportunity, in a criminal proceeding concerning a vulnerable adult victim, for the state to request a speedy trial because of the age and health of the victim. The language is permissive to give a court discretion in granting the request.

Section 9 (626.557, subdivision 4) streamlines the vulnerable adult reporting process for mandated reporters in nursing homes, boarding care homes, and hospital swing beds. This change will satisfy current federal reporting requirements and state common entry point reporting requirements with a single electronic report to the commissioner of health (federal requirement) and the common entry point (replacing the oral report with an electronic one).

Section 10 (626.557, subdivision 5) amends the immunity section of the vulnerable adult act to assure immunity from liability for anyone making a report in good faith. The new provision confirms that the "person" who has immunity includes a business or legal entity, such as a bank. This provision is a counterpart to the changes in sections 1 and 2, clarifying sections 13A.02, subdivision 1 and 13A.04, subdivision 1.

Section 11 (626.557) adds a subdivision 5a to the vulnerable adult act and requires financial institutions to cooperate in the investigation of financial exploitation cases with the reasonable production of financial records, as authorized in 13A.02, subdivision 1.

Section 12 (626.557, subdivision 9) streamlines Minnesota's system for reporting suspected maltreatment. Under current law, each of the 87 county boards establishes a common entry point telephone number or numbers for the receipt and disposition of these reports. Effective 2010, Minnesota will have a centralized common entry point system, operated under the department of human services, to improve public awareness and action. From that centralized system, cases will immediately be dispatched to local agencies for the fitting emergency response and investigation. At

the local level, staff will be able to focus their work on case investigations and response, rather than the intake and entry of information .

Section 13 (626.557, subdivision 9b) clarifies current language related to interagency cooperation in vulnerable adult investigations.

Subdivision 14 (626.557, subdivision 9e) promotes cooperation to improve educational requirements and opportunities for vulnerable adult case investigators. The Commissioners of health, human services, and public safety will consult with lead investigative agency representatives, advocates for vulnerable adults, and providers of care and services to update and coordinate curricula and the use of technology for education programs. Education is a priority for assuring quality, given the reality of staff turnover, as well as emerging models of practice and new technology.

Section 15 (626.557) adds a subdivision 10b that establishes the fundamental elements of vulnerable adult investigations, applicable to all lead agencies. The six criteria in these guidelines provide a basis for accountability and quality assurance, and will serve to help the public gain realistic expectations and understanding of these investigations.

Section 16 (626.557) adds a subdivision 20 and creates a private right of action for the financial exploitation of a vulnerable adult. In such an action, the vulnerable adult can recover treble damages or \$10,000, whichever is greater. The vulnerable adult will also be entitled to recover reasonable attorney fees and fees for a guardian, conservator, or guardian *ad litem*, incurred in connection with the claim. The action will not be contingent on a report or disposition of a vulnerable adult case or a criminal complaint or conviction. This is a means to recover assets or property that the vulnerable adult needs for health care and the expenses of daily life.

Section 17 (626.5572, subdivision 5) changes the definition of “common entry point” from county-specific entities that receive vulnerable adult maltreatment reports to a statewide system. Like section 12 that streamlines the system, this section is effective July 1, 2010.

Section 18 (626.5572, subdivision 21) amends the functional definition of a vulnerable adult to respond to the growing number of vulnerable adults who are living in home and community settings. Current law emphasizes the medical aspects of “care.” This change reflects the “services” people use to maintain their well-being at home. For boundaries, the new definition limits the “care or services” to those required for the health, safety, welfare, or maintenance of an individual.

Section 19 (628.26) increases the statute of limitations from three to five years for indictments and complaints for the financial exploitation of a vulnerable adult, where the loss exceeds \$35,000. This aligns with the limitation periods for the crimes of theft by swindle, theft by false representation, and corporate theft in the first and second degrees.