

HOUSE BILL REPORT

HB 1499

As Reported by House Committee On:
Public Safety

Title: An act relating to vulnerable adults.

Brief Description: Concerning vulnerable adults.

Sponsors: Representatives Goodman, Jinkins, Johnson, Orwall, Appleton, Lytton and Tharinger.

Brief History:

Committee Activity:

Public Safety: 1/28/15, 1/30/15 [DPS].

Brief Summary of Substitute Bill

- Makes it a Criminal Mistreatment offense when a person, with criminal negligence (instead of recklessly), withholds the basic necessities of life from the child or dependent person.
- Creates the crime of Theft from a Vulnerable Adult in the first and second degree.
- Adds the crimes of Criminal Mistreatment and Theft from a Vulnerable Adult to the list of crimes against persons.
- Provides that the statute of limitations for the crime of Theft from a Vulnerable Adult is six years.
- Creates multidisciplinary personnel teams to consult with one another and share records that are relevant to the prevention or treatment of abuse, neglect, or exploitation of vulnerable adults.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

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: Yvonne Walker (786-7841).

Background:

Criminal Mistreatment. A person commits Criminal Mistreatment if he or she:

- is the parent of a child, is a person entrusted with the physical custody of a child or dependent person, or is employed to provide a child or dependent person with the basic necessities of life; and
- withholds the basic necessities of life from the child or dependent person.

The penalty for Criminal Mistreatment depends on the intent of the perpetrator and the harm caused to the victim. For example, it is:

- Criminal Mistreatment in the first degree, a class B felony offense, if the perpetrator recklessly causes great bodily harm to the child or dependent person;
- Criminal Mistreatment in the second degree, a class C felony offense, if the person recklessly creates an imminent and substantial risk of death or great bodily harm or causes substantial bodily harm; and
- Criminal Mistreatment in the third degree, a gross misdemeanor offense, if the person with criminal negligence, creates an imminent and substantial risk of substantial bodily harm or negligently causes substantial bodily harm.

Theft. Washington's Theft statute punishes a person based upon the value of the property stolen. A person commits Theft if he or she:

- wrongfully obtains or exerts unauthorized control over the property or services of another with intent to deprive him or her of the property or services;
- by deception, obtains control over the property or services of another with the intent to deprive him or her of the property or services; or
- appropriates lost or misdelivered property or services of another with intent to deprive him or her of the property or services.

Theft in the first degree, a class B felony offense, occurs when a person commits Theft of property or services valued in excess of \$5,000. Theft in the second degree, a class C felony offense, occurs when a person commits theft of property or services valued in excess of \$750, but not exceeding \$5,000. Theft in the third degree, a gross misdemeanor offense, occurs when a person commits Theft of property or services valued less than \$750.

Crimes Against Persons. The standards for prosecutorial discretion in the Sentencing Reform Act contain a list of "crimes against persons." Some of the crimes on this list include: Aggravated Murder; first and second degree Murder; first and second degree Manslaughter; first and second degree Kidnapping; first, second, and third degree Rape; first and second degree Robbery; first degree Arson; first degree Burglary; and first, second, and third degree Assault. If a crime is designated as a crime against persons additional restrictions may be imposed on the convicted person at sentencing. Such restrictions include that the convicted person cannot have his or her record of conviction cleared, may be subject to a mandatory term of community custody, and his or her earned release may be limited.

Statute of Limitations. Statutes of limitations are legislative declarations of the period after the commission or discovery of an offense within which actions may be brought on certain

claims, or during which certain crimes may be prosecuted. Once a statute of limitations has expired, there is in place an absolute bar to prosecution.

Statutes of limitations vary according to the crime. In general, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felony offenses must be prosecuted within three years of the commission of the crime. However, the limitation period may be varied by statute, and there is no limitation on the time within which a prosecution must commence for the crimes of Murder, Homicide by Abuse, Vehicular Homicide, or for the crimes of Vehicular Assault, Hit and Run injury-accident, or Arson, if death results. If no period of limitation is statutorily declared for a felony offense, no prosecution may be commenced more than three years after its commission.

Summary of Substitute Bill:

Criminal Mistreatment. Criminal Mistreatment in the first degree occurs if the person with criminal negligence (instead of recklessly) causes great bodily harm to the child or dependent person. Criminal Mistreatment in the second degree occurs if the person with criminal negligence (instead of recklessly) creates an imminent and substantial risk of death or great bodily harm or causes substantial bodily harm.

Theft. An additional element is added to the crime of Theft. A person can also commit Theft if he or she obtains control over the property or services of a vulnerable adult using undue influence. "Undue influence" is defined as excessive persuasion that causes a vulnerable adult to act or refrain from acting by overcoming that vulnerable adult's free will. It does not include the normal influence that one member of a family has over another member of the family.

Two new crimes relating to Theft from a Vulnerable Adult are created. Theft from a Vulnerable Adult in the first degree (a seriousness level VI, class B felony offense) occurs if the value of the property or services exceed \$5,000 in value. Theft from a Vulnerable Adult in the second degree (a seriousness level IV, class C felony offense) occurs if the value of the property exceeds \$750, but is \$5,000 or less.

A "vulnerable adult" is a person 18 years or older who is particularly vulnerable or incapable of resistance. A person is particularly vulnerable if he or she is more vulnerable to the commission of a crime than the typical victim of that same crime. The defendant must have known or should have known that the victim was a vulnerable adult.

Crimes Against Persons. The crimes of Criminal Mistreatment in the first and second degree, and Theft from a Vulnerable Adult in the first and second degree, are added to the list of crimes against persons.

Statute of Limitations. The statute of limitations for the crime of Theft from a Vulnerable Adult is limited to six years after the commission of the offense.

Multidisciplinary Personnel Teams. The bill creates multidisciplinary personnel teams consisting of two or more persons who are trained in the prevention, identification, management, investigation, prosecution, or treatment of abuse, neglect, or exploitation of vulnerable adults and who are qualified to provide a broad range of services related to abuse, neglect, or exploitation of vulnerable adults.

The teams may disclose to each other relevant information and records, however, such information obtained must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

Substitute Bill Compared to Original Bill:

The substitute bill makes a technical amendment to exclude the new crimes of Theft from a Vulnerable Adult from the current Theft statutes to ensure that a person could not be charged for two offenses.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is brought to the Legislature from the Joint Legislative Committee on Aging and Disability Services. There are many people who get themselves appointed as guardians or as a person of trust but then they abuse and exploit vulnerable adults. This bill will keep the elderly safe.

Adult protective cases have increased over the years as the population has continued to rise. Each year there are many cases involving elder and vulnerable adults that have been abused, exploited, neglected, sexually assaulted, and physically abused. These crimes are happening in increasing numbers. The Cornell Medical School recently reported that the elderly are three times more likely to die a premature death due to neglect and mistreatment.

This bill will make it easier to prosecute and will close the loopholes. It creates the crime of Theft from a Vulnerable Adult that improves the ability to prosecute undue influence cases. In addition, juries have a hard time understanding the intent element of reckless. This bill will reduce the intent element for felony level criminal mistreatment from reckless to criminal negligence. Lastly, the bill encourages the creation of multidisciplinary teams by allowing information sharing between team members across disciplines to address elder and vulnerable adult abuse.

Many times it is hard to prosecute cases involving exploitation of a vulnerable adult because it has been more than three years since the crime took place. When the crime is prosecuted,

the person is usually convicted of a Theft crime and may only receive zero to 90 days of incarceration for a crime that involved thousands and thousands of dollars. This bill will increase the sentence up to a minimum of 12 months.

This bill will make sure justice is served to help those with developmental and intellectually disabilities and will ensure that they will not be exploited. The mere presence of these types of prosecutions can diminish incidents of these types of occurrences for others. This will help those people who cannot take care of themselves.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Page Ulrey, King County Prosecutor's Office; Cathy MacCaul, American Association of Retired Persons; Jerry Reilly, Washington State Long Term Care Ombudsman Program; David Lord, Disability Rights Washington; and Ivanova Smith, People First of Washington.

Persons Signed In To Testify But Not Testifying: None.