

SENATE BILL REPORT

3SHB 1499

As Reported by Senate Committee On:
Law & Justice, February 26, 2016

Title: An act relating to vulnerable adults.

Brief Description: Concerning vulnerable adults.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Goodman, Jinkins, Johnson, Orwall, Appleton, Lytton and Tharinger).

Brief History: Passed House: 2/16/16, 70-27.

Committee Activity: Law & Justice: 2/24/16, 2/26/16 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

Staff: Tim Ford (786-7423)

Background: Criminal Mistreatment. A person commits Criminal Mistreatment if the person:

- 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;
- second degree, a class C felony offense, if the person recklessly creates an imminent and substantial risk of death or great bodily harm or recklessly causes substantial bodily harm to the child or dependent person; and
- 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 to the child or dependent person.

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.

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.

Statutes 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 a 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 Bill (Recommended Amendments): The Legislature finds that seniors and people with disabilities face a growing threat of financial exploitation and abuse. It is the intent of the act to hold accountable those perpetrators who commit theft from seniors and people with disabilities by increasing penalties, reducing barriers to prosecution, and expanding the scope of protection for vulnerable adults.

Criminal Mistreatment. Criminal Mistreatment in the third degree is limited to instances where a person with criminal negligence creates an imminent and substantial risk of substantial bodily harm (the element of negligently causing substantial bodily harm is eliminated).

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 unfair persuasion that seriously impairs the free exercise of judgment.

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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): The current legal standard of recklessness would remain unchanged for the offense of Criminal Mistreatment in the 1st and 2nd degrees when a person withholds the basic necessities of life from a child or dependent person.

Removes the new crime of theft from a vulnerable adult.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There are lots of stories of senior citizens being victimized through criminal mistreatment and theft. In 2014 over 19,000 referrals were made to the state regarding vulnerable adults. When seniors are the victims of financial exploitation, they often end up on state support.

CON: The definition of a "vulnerable adult" is vague and there is a better definition in Ch 74.34 RCW.

Persons Testifying: PRO: Rep. Goodman, Prime Sponsor; Julian Bray, Attorney General's Office; David Lord, Disability Rights of WA; Cathy MacCaul, AARP; Tom McBride, WAPA.

CON: Amy Muth, WA Assoc. of Criminal Defense Lawyers & WA Defender Assoc.

Persons Signed in To Testify But Not Testifying: No one.