
Public Safety Committee

HB 1153

Brief Description: Concerning crimes against vulnerable persons.

Sponsors: Representatives Goodman, Klippert, Pellicciotti, Hayes, Orwall, Griffey, Chapman, Holy, Kilduff, Stanford, Fey, Haler, Doglio and Frame; by request of Attorney General.

Brief Summary of Bill

- Lowers the requisite mental state for the crimes of Criminal Mistreatment in the first and second degree from recklessness to criminal negligence.
- Creates the crimes of Theft from a Vulnerable Adult in the first degree and second degree, applicable when a person commits theft of property or services from a person the defendant knows or should know is a vulnerable adult.
- Categorizes Criminal Mistreatment (first and second degree) and Theft from a Vulnerable Adult as crimes against persons.
- Encourages counties to develop written protocols for handling criminal cases involving vulnerable adults, and outlines requirements for vulnerable adult advocacy teams.

Hearing Date: 1/16/17

Staff: Omeara Harrington (786-7136).

Background:

Requisite Mental State for Criminal Culpability. In most instances, a person must possess a certain guilty state of mind in order to be convicted of a crime. Four general states of mind for criminal culpability are outlined in statute:

- A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.
- A person knows or acts knowingly or with knowledge when: (1) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (2) he

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or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

- A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.
- A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

A required state of mind may be established by proof of that state of mind or by proof of any higher degree of mental culpability.

Criminal Mistreatment. A person commits the crime of Criminal Mistreatment if he or she: (1) 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 (2) 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. 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 causes substantial bodily harm to the child or dependent person.

Theft. 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.

The punishment for Theft varies according to the value of the property stolen. 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." If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. For

instance, he or she may be subject to a mandatory term of community custody and his or her earned release may be limited.

Statutes of Limitation. Statutes of limitation are statutory time limits within which a criminal prosecution must commence after commission of a crime. Expiration of the statute of limitations for an offense is an absolute bar to prosecution.

Statutes of limitation vary according to the severity of the crime. In general, simple misdemeanors must be prosecuted within one year, gross misdemeanors must be prosecuted within two years, and felonies must be prosecuted within three years. However, the statute of limitations for certain specified felony offenses has been extended to five years, six years, or 10 years, and there is no limit on the time within which a prosecution must commence for the crime of Murder, and various other crimes in which a death results.

Summary of Bill:

Criminal Mistreatment. The mental culpability element of the crimes of Criminal Mistreatment in the first degree and second degree is satisfied if the person acts with criminal negligence, as opposed to requiring proof of recklessness. Criminal Mistreatment in the third degree is limited to instances in which a person, with criminal negligence, creates an imminent and substantial risk of substantial bodily harm (the alternative grounds based on negligently causing substantial bodily harm qualify as Criminal Mistreatment in the second degree).

Theft from a Vulnerable Adult. Two new crimes relating to Theft from a Vulnerable Adult are created, and apply when a person commits the theft of property or services from a person the defendant knows or should know is a vulnerable adult. Theft from a Vulnerable Adult in the first degree (a seriousness level VI, class B felony offense) is committed if the value of the property or services exceeds \$5,000 in value. Theft from a Vulnerable Adult in the second degree (a seriousness level I, 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:

- has the functional, mental, or physical inability to care for himself or herself; or
- is suffering from a cognitive impairment other than voluntary intoxication.

The statute of limitations for the crime of Theft from a Vulnerable Adult runs for six years from the commission or discovery of the offense.

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.

Response to Crimes Against Vulnerable Adults. "Vulnerable adult advocacy teams" are teams of three or more persons who coordinate a multidisciplinary process for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults. Members of vulnerable adult advocacy teams must disclose information to other team members that is relevant to the duties of the advocacy team. Team members must agree to abide by all governing federal and state confidentiality laws, and

information and records obtained must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights. Information and records communicated to team members, or created during the course of an investigation, are private and confidential and are protected from discovery and disclosure.

Counties are encouraged to develop written protocols for handling criminal cases involving vulnerable adults. Protocols must:

- address coordination of investigations among various criminal justice system participants and representatives of other interested groups, including: prosecutors, law enforcement, adult protective services, advocacy programs, professional guardians, medical examiners and coroners, financial analysts and forensic accountants, social workers, medical personnel, applicable ombuds offices, the Attorney General, and other local agencies involved in the criminal investigation of vulnerable adult mistreatment;
- be developed by the local prosecuting attorney with assistance of other agencies;
- provide that participation as a member of a vulnerable adult advocacy team is voluntary;
- include a brief statement from the state Long-Term Care Ombuds that describes the confidentiality laws and policies applicable to the ombuds program;
- require the development of a confidentiality agreement outlining the sharing of information, existing confidentiality obligations of team members, and circumstances in which disclosure of information is allowed; and
- require vulnerable adult advocacy teams to attempt to obtain participation of the state Long-Term Care Ombuds prior to addressing any issue related to abuse, neglect, or financial exploitation of a vulnerable adult residing in a long-term care facility.

Appropriation: None.

Fiscal Note: Requested on January 11, 2017.

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