

SENATE BILL REPORT

ESHB 1153

As Reported by Senate Committee On:
Law & Justice, March 29, 2017

Title: An act relating to crimes against vulnerable persons.

Brief Description: Concerning crimes against vulnerable persons.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Goodman, Klippert, Pellicciotti, Hayes, Orwall, Griffey, Chapman, Holy, Kilduff, Stanford, Fey, Haler, Doglio and Frame; by request of Attorney General).

Brief History: Passed House: 2/27/17, 92-4.

Committee Activity: Law & Justice: 3/28/17, 3/29/17 [DP-WM].

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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frock and Wilson.

Staff: Aldo Melchiori (786-7439)

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.

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:

1. A person acts with intent or intentionally when the person acts with the objective or purpose to accomplish a result which constitutes a crime.
2. A person knows or acts knowingly or with knowledge when: (1) the person is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or (2) the person 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.
3. A person is reckless or acts recklessly when the person knows of and disregards a substantial risk that a wrongful act may occur and the person's disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.
4. A person is criminally negligent or acts with criminal negligence when the person fails to be aware of a substantial risk that a wrongful act may occur and the person's 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 the person: (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 the person:

- wrongfully obtains or exerts unauthorized control over the property or services of another person with intent to deprive the other person of the property or services;
- by deception, obtains control over the property or services of another person with the intent to deprive the other person of the property or services; or
- appropriates lost or misdelivered property or services of another person with intent to deprive the other person 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; and
- 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. Generally, a prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question, or would result in decreased respect for the law. Crimes against persons, however, must be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. If a crime is designated as a crime against persons, additional restrictions may be imposed on the convicted person at sentencing. For instance, the convicted person may be subject to a mandatory term of community custody and the convicted person's 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. 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:

- is functionally, mentally, or physically unable 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. 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: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This will greatly impact the threat of financial exploitation facing seniors and people with disabilities. Incidents of these crimes are

reaching epidemic proportions. They are difficult to prosecute given the high recklessness standard. Our priority should be to protect the most vulnerable. The statute of limitations needs to be six years because the cases take time to discover and investigate. There has been a 70 percent increase in complaints for these crimes. Relying on aggravating circumstances rather than creating a specific crime could result in inconsistent and unpredictable sentences. Twenty-six percent of these cases of abuse involve financial exploitation. However, only one in forty-four are ever reported.

CON: We live in a time that calls for greater government accountability. DSHS should be accountable for criminal mistreatment.

OTHER: The elements of the new crimes are the same as for regular theft except for the identity of the victim. Theft from a vulnerable adult can already be sentenced more severely if the jury finds an aggravating circumstance. The advocacy team is essentially surrounded by secrecy with no oversight.

Persons Testifying: PRO: Representative Rodger Goodman, Prime Sponsor; Representative Brad Klippert; Robert Crawford, SGF/PUB Int; Natalie King, Attorney General's Office; Amanda Frou, King County Prosecutor's Office; Tom McBride, WAPA; Theresa M. King, citizen; Joanna Grist, AARP.

CON: Loren M. Freeman, citizen.

OTHER: Bob Cooper, WACDL/WDA.

Persons Signed In To Testify But Not Testifying: No one