

HOUSE BILL REPORT

ESHB 1153

As Passed Legislature

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:

Committee Activity:

Public Safety: 1/16/17, 1/19/17 [DPS];
Appropriations: 2/8/17, 2/15/17 [DPS(PS)].

Floor Activity:

Passed House: 2/27/17, 92-4.
Passed Senate: 4/10/17, 47-0.
Passed Legislature.

Brief Summary of Engrossed Substitute 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.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger, Vick, Volz and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative Condotta.

Staff: Rachelle Harris (786-7137).

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 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 Engrossed Substitute 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. 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: Available.

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

Staff Summary of Public Testimony (Public Safety):

(In support) Physical and financial abuse of older adults and other vulnerable adults is at epidemic proportions. There are cases of people being left lying in bed and developing compression sores; more common are cases of financial abuse. This bill would help juries convict based on negligence, which is neglect based, rather than recklessness. With respect to lengthening the statute of limitations, under current law it is often too late to go back and hold the guilty person accountable. Adding these crimes to the list of crimes against persons increases supervision and accountability.

Washington has an aging population. Statistically, many will become victims of elder abuse, neglect, or exploitation. Financial exploitation is a growing area. A typical exploitation case involves the loss of the victim's life savings to someone they trusted. Often the victim does not report the crime due to shame, fear, or dementia. Because of this, more time is needed for prosecution. The extended statute of limitations in the bill matches the statute of limitations for Theft by deception. Currently, the standard range sentence for theft is zero to 90 days. It is possible to file a vulnerable victim aggravator, but prosecutorial discretion leads to inconsistency. Under the new crime created in the bill, the offender will receive a higher sentence of 12 to 14 months without the need to file a vulnerable victim aggravator. The change to the mens rea element for criminal mistreatment is necessary because juries do not equate failure to provide care as recklessness. Even when the victim dies, the conviction is usually for the lesser included offense requiring criminal negligence. Adult Protective Services reports that adult exploitation cases are increasing. Relative to the number of adult protective services investigations, few criminal cases are prosecuted and very few reach a guilty verdict.

Financial exploitation erodes the nest egg of the aging population. When people lose their savings, they become more dependent on public assistance and Medicaid. Also, many seniors are forced into guardianships and are paying exorbitant fees for guardian services. The disability community, as well as the perpetrators, know these crimes are not prosecuted. People with disabilities often have multiple different caregivers. When abuse happens it stays with the person a long time. The bill provides a penalty, but is also a deterrent. People need to be on notice that these are serious crimes. Addressing this problem is everyone's responsibility.

The bill should contain language that acknowledges that individuals that receive hospice care may have the same symptoms as those who are being neglected or abused. It is important to ensure that grief is not compounded by initiating a review.

(Opposed) These cases are not always as dramatic as the examples given, and they do not always involve intentional acts of exploitation. Removal of the recklessness standard does not take into account families that fail while doing their best. It is not accurate that juries are consistently confused by this. If juries are convicting based on negligence, a better approach may be to enhance the penalty for that crime. Going from zero to 90 days to a prison sentence is too far. An amendment should be considered to lower the seriousness by a level.

There is inconsistency in the definition of vulnerable adult in different places in the bill. Additionally, the bill states that the information that vulnerable adult advocacy teams is exempt from discovery, but prosecutors are required to turn over any exculpatory information.

Staff Summary of Public Testimony (Appropriations):

(In support) Individuals with developmental disabilities are frequently taken advantage of by the people entrusted with their care. This mistreatment often happens with no available guardian or other person to help. In terms of punishment, the cost to the perpetrator is very low. The stiffer penalties in this bill will help act as a deterrent. We need to establish safeguards so that there are more consequences for those who take advantage of the most vulnerable among us. The financial exploitation that takes place can devastate people's entire life savings and leave them with nothing. Research indicates that victims turn to public assistance and are more likely to end up in costly nursing homes or other places that are also costly. There is very little state data on this issue, but studies estimate a roughly \$36 billion impact nationwide in terms of the loss of the victims' money and the burden placed on the community.

Abuse of this sort also results in immense trauma for the families of the victims. Please keep in mind that even legislators could one day become the victims of this type of crime; it can happen to anyone. Even in instances where there is large theft in terms of dollar amount, prosecutors can often only file one count of theft which results in a very short stay in jail for the perpetrator as well as inconsistent results across the state.

The bill allows for information to be released via authorization by a vulnerable adult, and it would be better to see that language stricken from the bill so that it can only be done via a court order.

(Opposed) None.

Persons Testifying (Public Safety): (In support) Representative Goodman, prime sponsor; Lanna Weinmann, Office of the Attorney General; Page Ulrey, King County Prosecuting Attorney's Office; Mike Tucker and Cathy MacCaul, American Association of Retired Persons of Washington; Demas Nesterenko, Service Employees International Union 775; Leslie Emetic, Washington State Hospice & Palliative Care Organization; Noah Seidel, Self Advocates in Leadership; David Lord, Disability Rights Washington; Jennifer Roach; and Sylvia Matayoshi, Operation Underground Railroad.

(Opposed) Brad Meryhew, Washington Defender Association.

Persons Testifying (Appropriations): Diana Stadden, The Arc of Washington State; Noah Seidel, Self Advocates in Leadership; Ivanova Smith, People First of Washington; Bill Moss, Department of Social and Health Services Aging and Long-Term Support Administration; Cathy MacCaul, AARP-Washington State; Jennifer Roach; Page Ulrey, King County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys; and Mike Webb, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.