

**FELONY MURDER: ADD
VULNERABLE ADULT ABUSE**

**House Bill 5104 (Substitute H-1)
First Analysis (11-5-03)**

**Sponsor: Rep. William Van Regenmorter
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Public Act 149 of 1994 created the crime of vulnerable adult abuse and established penalties for varying degrees of abuse. The law applied to caregivers of vulnerable adults, whether that caregiver was a family member, person watching over the vulnerable adult, or operator or employee of a nursing home, home for the aged, or adult foster care facility. A conviction of first degree vulnerable adult abuse (intentionally causing serious physical or mental harm to a vulnerable adult) is a felony punishable by up to 15 years imprisonment and/or a fine of up to \$10,000 or both.

Though it was hoped that the legislation would deter abuse against individuals such as the elderly or developmentally disabled, according to media reports and members of the law enforcement community, abuse of the elderly and vulnerable is increasing. In particular, testimony presented before the House Criminal Justice Committee detailed how an Alpena County woman starved her elderly mother to death by withholding food. Death by starvation can be a painful and slow process. According to the county prosecutor, because vulnerable adult abuse is not included in the listed offenses constituting felony murder, a charge of open murder had to be brought against the daughter. Apparently, an open murder charge is more difficult to prove.

The point was made that if this woman had starved a child, she could have been charged with felony murder. However, even though the elderly, physically handicapped, or developmentally disabled may be just as vulnerable as a young child, prosecutors cannot currently charge persons responsible for their deaths under the felony murder provision. Legislation has been offered to address this concern.

THE CONTENT OF THE BILL:

Under the Michigan Penal Code's "felony murder" provision, murder committed in the perpetration or

attempt of certain listed felonies constitutes first-degree murder, which requires a sentence of life in prison without possibility of parole.

The bill would amend the code to include vulnerable adult abuse under Section 145n in the code's felony murder provision. (Section 145n establishes the crime of vulnerable adult abuse and distinguishes four degrees of it. See Background Information for more information.)

The bill would take effect 60 days after enactment.

MCL 750.316

BACKGROUND INFORMATION:

Vulnerable adult. Chapter XXA of the Michigan Penal Code defines "vulnerable adult" as an adult who because of age, developmental disability, mental illness, or physical handicap, requires supervision or personal care, or lacks the personal and social skills required to live independently; an adult as defined in the Adult Foster Care Facility Licensing Act; or, an adult as defined by Section 11(b) of the Social Welfare Act.

Crimes against vulnerable adults. The code establishes four degrees of vulnerable adult abuse. Penalties for 1st degree vulnerable adult abuse (intentionally causing serious physical or mental harm by a caregiver) is a felony punishable by up to 15 years imprisonment and/or a fine of up to \$10,000; 2nd degree vulnerable adult abuse (serious physical or mental harm caused by a reckless act or reckless failure to act by a caregiver or other person with authority over the vulnerable adult) is a felony punishable by up to four years in prison and/or a fine up to \$5,000; 3rd degree (intentionally causing physical harm by a caregiver) is a misdemeanor punishable by imprisonment for up to two years and/or a fine of up to \$2,500; and 4th degree vulnerable adult abuse (physical harm caused by a

reckless act or reckless failure to act by a caregiver or other person with authority over the vulnerable adult) is a misdemeanor offense punishable by imprisonment for up to one year and/or a fine of up to \$1,000. In addition, there are felony penalties against the operator of an unlicensed facility that is otherwise subject to licensure for licensing or rule violations that lead to the death of a vulnerable adult. These provisions do not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming another, nor do they apply to an act or failure to act that was carried out in connection with a durable power of attorney for health care.

“Caregiver” or “other person with authority over a vulnerable adult”. A “caregiver” is defined in the penal code as an individual who directly cares for or has physical custody of a vulnerable adult. According to a House Legislative Analysis Section analysis of enrolled House Bill 4716, which became Public Act 149 of 1994, this definition of “caregiver” encompasses licensed home operators such as nursing homes, homes for the aged, and adult foster care facilities as well as family members or other persons caring for a vulnerable adult.

An “other person with authority over a vulnerable adult” includes, but isn’t limited to, a person with authority over a vulnerable adult in a long-term care unit of a hospital.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate impact on state correctional costs; there are no statewide data on numbers of convictions for first-degree murder that could be obtained as a result of the bill’s provisions. (10-28-03)

ARGUMENTS:

For:

Legislation enacted in 1994 created the crime of vulnerable adult abuse and established four degrees of it. However, heinous acts against the elderly continue to happen, with some incidents resulting in death. As the population of older adults continues to increase, a concern is that abuse, and abuse causing death, against the elderly and infirm may also increase. Currently, a caregiver who causes the death of the person in his or her care can be charged with second degree murder, but some feel that given the

nature of the crime, it should be elevated to felony murder. This would put abuse or neglect against a vulnerable adult on a par with abuse and neglect of a child.

Against:

Lately, there appears to be a trend by the legislature to increase criminal penalties. Where many believe that increased penalties deter criminal acts, statistics do not always support that belief. At a time when prisons are facing overcrowding and state and local governments are experiencing budget shortages, it must be questioned whether adding a death connected with vulnerable adult abuse to the list of crimes that constitute felony murder is the best approach.

Besides the expense of housing an offender for life without parole, the need for such a change must also be questioned. Reportedly, the impetus behind the bill is a single act of death by starvation committed by the daughter of an elderly woman. There is no question that vulnerable adults need to be protected, or that crimes against a vulnerable adult shouldn’t result in stiff penalties. However, though the elderly woman’s death was discussed in the committee hearing as a heinous offense, no details of the incident were presented. For example, was the death premeditated, how long did the daughter act as caregiver, how much care did the mother require, was collecting on an insurance policy or inheriting property a motive in the starvation, did the daughter fail to avail herself of available support services, and so forth?

These questions are important because research has shown that caregivers suffer increased levels of physical and mental illnesses. Family members in rural areas or caregivers who have low incomes may not have access to support services. A stressed out or exhausted caregiver may not make the best choices. Yet, a caregiver who unintentionally, though perhaps due to recklessness, caused physical harm that led to his or her charge’s death would be punished the same as a caregiver who intentionally caused physical or mental harm leading to the charge’s death.

If the intent of the legislation is to prevent deaths of the elderly or otherwise vulnerable adults at the hands of their caregivers, perhaps more attention should be given to educating the public about available support services and encouraging communities to explore low cost options for assisting caregivers. A sentence of life in prison may not be sufficient.

Response:

Though it may seem to some that elevating all four degrees of vulnerable adult abuse to felony murder is harsh, all larceny offenses, including misdemeanor shoplifting offenses, can also be charged as felony murder if a death occurs. Also, just because a prosecutor could charge someone with felony murder because the death involved abuse against a vulnerable abuse, it doesn't mean that that is the charge that would be brought. As with any charge, a prosecutor must fit the charging offense with the elements of the case. Therefore, the bill would enable a prosecutor to bring a charge of felony murder, along with the punishment of life in prison without parole, for those offenders whose actions deserve such punishment.

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bill. (11-3-03)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.