

Legislative Analysis



CRIME OF 4TH DEGREE VULNERABLE ADULT ABUSE: REVISE ELEMENTS

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House Bill 5422 as reported from committee w/o amendment
Sponsor: Rep. John Chirkun
Committee: Criminal Justice
Complete to 3-21-16

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 480 of 2016)

BRIEF SUMMARY: House Bill 5422 would expand the elements constituting fourth degree vulnerable adult abuse to include an intentional act by a caregiver or by certain other individuals that pose an unreasonable risk or harm or injury to the vulnerable adult.

FISCAL IMPACT: To the extent that the bill results in a greater number of convictions, it could increase costs on local correctional systems. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

THE APPARENT PROBLEM:

Public Act 149 of 1994 created the crime of vulnerable adult abuse within the Michigan Penal Code and established penalties for varying degrees of abuse. (See [Background Information](#).) The law applies to a caregiver of a vulnerable adult whether that caregiver is 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.

There are times, however, that certain negligent acts on the part of caregivers do not necessarily result in physical harm to the vulnerable adult, especially if caught early enough. That can make charging under the current four-tiered penalty structure difficult, with prosecutors ending up charging as a felony what should be a misdemeanor offense.

For example, vulnerable adults have been found tied down, or restrained, for so long that the chair cushions or mattresses are soaked in urine and/or feces. Leaving a person in such conditions for too long can result in serious health issues such as pressure wounds, skin irritation and sores from soiled clothing, and other illnesses. If discovered before physical harm occurs, a prosecutor seeking to punish such clearly negligent behavior ends up overcharging to a felony because the conduct doesn't meet the elements of the available misdemeanor offenses.

One solution offered is to revise the elements constituting the lowest level of vulnerable adult abuse so that the offense also applies to situations in which a caregiver or person with authority over a vulnerable adult deliberately performs an act that poses a risk of harm or injury, but does not necessarily result in physical harm.

THE CONTENT OF THE BILL:

House Bill 5422 amends the Michigan Penal Code to expand the acts that constitute the crime of vulnerable adult abuse in the fourth degree (MCL 750.145n). Currently, fourth degree applies if the reckless act or reckless failure to act on the part of the caregiver or other person with authority over a vulnerable adult causes physical harm to the vulnerable adult.

The bill would add: *an act knowingly or intentionally committed by a caregiver or other person with authority over the vulnerable adult that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results.*

House Bill 5422 would take effect 90 days after enactment.

BACKGROUND INFORMATION:

Vulnerable adult. Section 145m of the Michigan Penal Code defines "vulnerable adult" as a person age 18 or over 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. Section 145n of the Michigan Penal Code establishes four degrees of vulnerable adult abuse.

- 1st degree vulnerable adult abuse (intentionally causing serious physical or mental harm by a caregiver) is a felony punishable by up to 15 years of 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.
- 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 is not limited to, a person with authority over a vulnerable adult in a long-term care unit of a hospital.

ARGUMENTS:

For:

The bill closes a loophole, or gap, in current law as it pertains to conduct rising to the level of vulnerable adult abuse. Apparently, some clearly negligent behaviors on the part of caregivers do not fit the conduct established in the four degrees of vulnerable adult abuse, making it difficult for prosecutors to find an appropriate penalty. Justice is only served when the punishment fits the crime; charging someone with an offense that carries a harsher penalty than the person deserves increases costs to the criminal justice and corrections systems and does not necessarily rehabilitate the offender more successfully. Because certain acts on the part of a caregiver can pose a risk of harm to the person being cared for, it is appropriate for the caregiver to face some level of accountability.

Prosecutors say that the two misdemeanor-level penalties do not fit certain bad acts by caregivers toward those in their care because the violations require the vulnerable adult to suffer physical harm. If no physical harm had occurred, a prosecutor must look to first- or second-degree vulnerable adult abuse which can be applied if mental harm caused by a caregiver's act or acts can be proved. But these offenses carry significant terms of imprisonment and high fines and are not appropriate in situations where the caregiver was not intending to harm the person or did not physically harm that person. Simply put, the bill provides prosecutors more flexibility in appropriately charging someone who put a vulnerable adult at risk of harm.

POSITIONS:

The Prosecuting Attorneys Association indicated support for the bill. (3-15-16)

Elder Law of Michigan indicated support for the bill. (3-15-16)

The Michigan Catholic Conference indicated support for the bill. (3-15-16)

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