

Legislative Analysis



REVISE ELEMENTS OF CRIME OF FOURTH DEGREE VULNERABLE ADULT ABUSE

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House Bill 5420 (Proposed H-1 Substitute)

Sponsor: Rep. Peter J. Lucido

Committee: Criminal Justice

Complete to 3-14-16

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

SUMMARY:

The bill would expand the elements constituting *fourth degree vulnerable adult abuse* to include an intentional act by a caregiver or certain other individuals that poses an unreasonable risk of harm or injury to the vulnerable adult.

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.

House Bill 5420 amends the Michigan Penal Code to expand the acts that constitute the crime of vulnerable adult abuse in the fourth degree (MCL 750.145n). 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.* The bill takes effect 90 days after enactment.

BACKGROUND INFORMATION:

The proposed H-1 substitute for House Bill 5420 is identical to House Bill 4550 (H-1) as reported by the House Criminal Justice Committee.

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.

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.

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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.