

# Legislative Analysis

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## 1ST-DEGREE MURDER: REVISE REFERENCE TO VULNERABLE ADULT ABUSE

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House Bill 4177 as enrolled  
Public Act 39 of 2013  
Sponsor: Rep. Jim Ananich  
House Committee: Criminal Justice  
Senate Committee: Judiciary

### Second Analysis (6-26-13)

**BRIEF SUMMARY:** A reference to vulnerable adult abuse in the list of crimes constituting first-degree murder would be revised to refer to the commission of vulnerable adult abuse in the first *or* second degree rather than in the first *and* second degree.

**FISCAL IMPACT:** The bill would codify the current interpretation of the statute by the Michigan Court of Appeals.

### **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 for more 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. Though it was hoped that the legislation would deter abuse against individuals such as the elderly or developmentally disabled, incidents involving abuse of the elderly and vulnerable continued to increase.

After one particularly heinous case in which a daughter starved her elderly mother to death, the law was amended by Public Act 58 of 2004 to include first- and second-degree vulnerable adult abuse in the list of predicate felonies (meaning, the underlying crime) that constitutes first-degree murder. First-degree murder, also referred to as felony murder, carries a mandatory punishment of life without parole.

Recently, a man appealed his conviction for felony degree murder after his elderly wife, who was in his care, died from blunt-force impact to the head. He appealed for multiple reasons, one of which was that the prosecutor based the charge of first-degree murder on the predicate offense of vulnerable adult abuse in the second degree. He argued that under the felony murder statute, a person had to have committed both first- and second - degree vulnerable adult abuse, not one or the other.

The Michigan Court of Appeals disagreed and pointed out that first-degree vulnerable adult abuse is an intentional act, whereas second-degree is one of recklessness. Therefore, it would be contradictory to require a prosecutor to prove both offenses. The

court concluded "that the requirements for felony murder are satisfied by committing either first-degree vulnerable-adult abuse *or* second-degree vulnerable-adult abuse," People v Comella, No. 301458, p. 4 (May 24, 2012). Legislation has been offered to clarify the felony murder statute in line with the court's decision.

### ***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 Michigan Penal Code to revise the reference to vulnerable adult abuse as contained in the list of crimes that constitute first-degree murder. Included in the current definition of first-degree murder is murder that is perpetrated in the commission of "vulnerable adult abuse in the first **and** second degree" (or in the attempt to perpetrate such vulnerable adult abuse) under Section 145n of the code.

House Bill 4177 would refer instead to the commission (or the attempt) of "vulnerable adult abuse in the first **or** second degree."

MCL 750.316

### ***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; 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 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 would clarify that for the purposes of bringing a charge of felony murder based on the predicate offense of vulnerable adult abuse, a prosecutor could proceed on the theory of either first- *or* second-degree vulnerable abuse, not both. In coming to its conclusion, the Michigan Court of Appeals in *Comella* stated that it would be impossible to commit both an intentional act (first-degree) and a reckless act (second-degree) in the same act. Therefore, the bill does not change the original intent of the 2004 legislation making first- or second-degree vulnerable adult abuse a predicate offense for felony murder; it merely clarifies it.

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