

House Research Act Summary

CHAPTER: 175

SESSION: 2012 Regular Session

TOPIC: Felony deprivation of a vulnerable adult; unreasonable restraint of children

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1 Criminal neglect of a vulnerable adult.

Subd. 1. Gross misdemeanor crime. No changes.

Subd. 1a. Felony deprivation. Creates the new crime of felony deprivation of a vulnerable adult. Felony deprivation occurs when a caregiver or operator intentionally neglects a vulnerable adult and is reasonably able to make the necessary provisions, if:

- (1) the caregiver or operator knows or has reason to know the deprivation could likely result in substantial or great bodily harm; or
- (2) the deprivation occurred over an extended period of time.

Subd. 2. Exemptions. Conforming changes.

Subd. 2a. Felony penalties. Creates felony penalties for a violation of subdivision 1a that results in substantial or great bodily harm. If the conduct results in great bodily harm, the maximum penalty is a ten-year felony. If the conduct results in substantial bodily harm, the maximum penalty is a five-year felony.

Subd. 2b. Affirmative defenses. Provides affirmative defenses to prosecution under subdivision 1 or 1a, if proven by the preponderance of the evidence, that:

- (1) defendant is an individual employed by a facility or operator and does not have managerial or supervisory authority, and was unable to reasonably make the necessary provisions due to inadequate staffing levels, inadequate supervision, or institutional policies;
- (2) defendant is a facility or operator, or an employee in a position of managerial or supervisory authority, and did not knowingly, intentionally, or recklessly permit the criminal acts; or
- (3) the caregiver failed to perform the acts necessary to prevent the applicable level of harm because the caregiver was acting reasonably and necessarily to provide care to another

vulnerable adult.

Clarifies that these affirmative defenses place only the burden of production on the defendant, and a defendant's failure to meet that burden does not relieve the state of its burden of persuasion as to all elements of the offense.

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Unreasonable restraint of children. Amends the crime of unreasonable restraint of a child by creating a new two-year felony offense. Currently, it is a gross misdemeanor for a parent, guardian, or caretaker to use unreasonable restraint against a child. If the confinement or restraint results in substantial bodily harm, the offense is a five-year felony. The new two-year felony applies if confinement or restraint results in "demonstrable bodily harm."

Notes:

"Great bodily harm" is defined as "bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm." Minn. Stat. § 609.02, subd. 8.

"Substantial bodily harm" is defined in statute as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a.

"Demonstrable bodily harm" is not defined in statute. The courts have defined it as proof of harm between "bodily harm" and "substantial bodily harm," or more specifically, harm that is capable of being perceived by someone else - a visible or apparent injury.

"Bodily harm" is defined as "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7.