

Staff Issue Paper

Recommendation to the Legislature – Clarify Felony Penalty Reference for Deprivation of Vulnerable Adult

February 1, 2023

The Commission has a [standing mandate](#) to make, from time to time, recommendations to the Legislature regarding changes to criminal law, criminal procedure, and other aspects of sentencing.

[Minn. Stat. § 609.233](#) (“Criminal Neglect”) establishes crimes for caregivers of, and operators of care facilities for, vulnerable adults. The basic neglect crime is a gross misdemeanor (subd. 1), but there is also a felony deprivation crime (subd. 1a), with different maximum penalties depending on the degree of harm resulting (subd. 3).

It has come to staff’s attention that the elements of the felony offense do not match its penalty provisions, creating confusion. In this paper, staff recommends that the Commission recommend that the Legislature clarify the felony offense’s elements or penalty provisions.

Felony Deprivation of Vulnerable Adult – Offense Structure

Minn. Stat. § 609.233, subdivision 1a, states that a caregiver or facility operator who intentionally deprives a vulnerable adult of necessary food, clothing, shelter, health care, or supervision, despite being reasonably able to provide it, “is guilty of a felony and may be sentenced as provided in subdivision 3” if—

- (1) The caregiver or facility operator knows or has reason to know the deprivation could likely result in [substantial bodily harm](#) (SBH) or [great bodily harm](#) (GBH) to the vulnerable adult; or
- (2) The deprivation occurred over an extended period of time.

Subdivision 1a does not require either SBH or GBH to result.

The statute’s felony penalty provision is subdivision 3, which establishes two alternative maximum penalties for violating subdivision 1a:

- (1) If the conduct results in GBH to the vulnerable adult, up to 10 years and/or a \$10,000 fine.
- (2) If the conduct results in SBH to the vulnerable adult, up to 5 years and/or a \$5,000 fine.

Subdivision 3 provides no penalty when neither SBH nor GBH results.

This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

Confusion Resulting from the Offense Structure

The confusion arises when a caregiver or facility operator intentionally deprives a vulnerable adult of necessary provisions in violation of subdivision 1a—over an extended period of time, as in the case presented to staff—but neither SBH nor GBH results. In such a case, the phrase, “is guilty of a felony and may be sentenced as provided in subdivision 3” seems to be at odds with itself: If the caregiver is guilty of a felony, why is no penalty provided in subdivision 3?

In the case presented to staff, the prosecutor believed the catch-all felony penalty of [Minn. Stat. § 609.03\(1\)](#) applies to violations of subdivision 1a when neither SBH nor GBH results:

609.03 PUNISHMENT WHEN NOT OTHERWISE FIXED.

If a person is convicted of a crime for which no punishment is otherwise provided the person may be sentenced as follows:

(1) If the crime is a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both

As an alternative to the prosecutor’s view, one might reasonably read subdivision 3 as adding another element to the crime established in subdivision 1a: that unless SBH or GBH results, subdivision 1a has not been violated.

Staff Recommendation

Staff recommends that the Commission recommend that the Legislature clarify whether it intends substantial or great bodily harm to be a necessary element of felony Deprivation of a Vulnerable Adult, Minn. Stat. § 609.233, subd. 1a.

- If the Legislature intends for the felony to occur only when substantial or great bodily harm results, it should add an element of substantial or great bodily harm to subdivision 1a.
- If the Legislature intends that subdivision 1a describes a felony offense regardless of what harm results, it should establish in subdivision 3 a third penalty tier that encompasses violations of subdivision 1a other than those resulting in substantial or great bodily harm.

609.233 CRIMINAL NEGLECT.

Subdivision 1. **Gross misdemeanor crime.** A caregiver or operator who intentionally neglects a vulnerable adult or knowingly permits conditions to exist that result in the abuse or neglect of a vulnerable adult is guilty of a gross misdemeanor. For purposes of this section, "abuse" has the meaning given in section 626.5572, subdivision 2, and "neglect" means a failure to provide a vulnerable adult with necessary food, clothing, shelter, health care, or supervision.

Subd. 1a. **Felony deprivation.** A caregiver or operator who intentionally deprives a vulnerable adult of necessary food, clothing, shelter, health care, or supervision, when the caregiver or operator is reasonably able to make the necessary provisions, is guilty of a felony and may be sentenced as provided in subdivision 3 if:

(1) the caregiver or operator knows or has reason to know the deprivation could likely result in substantial bodily harm or great bodily harm to the vulnerable adult; or

(2) the deprivation occurred over an extended period of time.

Subd. 2. **Exemptions.** A vulnerable adult is not neglected or deprived under subdivision 1 or 1a for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or 524.5-101 to 524.5-502, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult; or

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with: (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Subd. 3. **Penalties.** A person who violates subdivision 1a may be sentenced as follows:

(1) if the conduct results in great bodily harm to the vulnerable adult, imprisonment for not more than ten years or payment of a fine of not more than \$10,000, or both; or

(2) if the conduct results in substantial bodily harm to the vulnerable adult, imprisonment for not more than five years or payment of a fine of not more than \$5,000, or both.

Subd. 4. **Affirmative defenses.** It shall be an affirmative defense to a prosecution under subdivision 1 or 1a, if proven by a preponderance of evidence, that:

(1) the 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 because of inadequate staffing levels, inadequate supervision, or institutional policies;

(2) the defendant is a facility, an operator, or an employee of a facility or operator in a position of managerial or supervisory authority, and did not knowingly, intentionally, or recklessly permit criminal acts by its employees or agents that resulted in the harm to the vulnerable adult; or

(3) the defendant is a caregiver and failed to perform acts necessary to prevent the applicable level of harm, if any, to the vulnerable adult because the caregiver was acting reasonably and necessarily to provide care to another identified vulnerable adult.

For these affirmative defenses, a defendant bears only the burden of production. A defendant's failure to meet the burden of production does not relieve the state of its burden of persuasion as to all elements of the offense.

History: 1995 c 229 art 2 s 4; 2004 c 146 art 3 s 44; 2012 c 175 s 1; 2013 c 125 art 1 s 85

Statute Number	Offense Title	Severity Level
609.228	Great Bodily Harm Caused by Distribution of Drugs	8
609.229 subd. 3(a)	Crime Committed for Benefit of Gang	See Note ³
609.229 subd. 3(c)	Crime Committed for Benefit of Gang	1
609.2325 subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)	9
609.2325 subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	8
609.2325 subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
609.233, subd. 3(1)	Deprivation of Vulnerable Adult (Great Bodily Harm)	8
609.233, subd. 3(2)	Deprivation of Vulnerable Adult (Substantial Bodily Harm)	5
609.2335	Financial Exploitation of Vulnerable Adult (Over \$35,000)	7
609.2335	Financial Exploitation of Vulnerable Adult (Over \$5,000)	5
609.2335	Financial Exploitation of Vulnerable Adult (\$5,000 or Less)	4
609.235	Use of Drugs to Injure or Facilitate Crime	4
609.24	Simple Robbery	5
609.245 subd. 1	Aggravated Robbery 1st Degree	8
609.245 subd. 2	Aggravated Robbery 2nd Degree	6
609.25 subd. 2(1)	Kidnapping (Safe Release/No Great Bodily Harm)	6
609.25 subd. 2(2)	Kidnapping (Great Bodily Harm)	9
609.25 subd. 2(2)	Kidnapping (Unsafe Release)	8
609.25 subd. 2(2)	Kidnapping (Victim Under 16)	8
609.255 subd. 2	False Imprisonment (Restraint)	3
609.255 subd. 3(b)	False Imprisonment (Demonstrable Bodily Harm)	3
609.255 subd. 3(c)	False Imprisonment (Substantial Bodily Harm)	4
609.26 subd. 6(a)(1)	Depriving Another of Cust. or Parental Rights	1

³ See section 2.G.10 to determine the presumptive sentence.