



1999 ASSEMBLY BILL 111

February 9, 1999 - Introduced by Representatives SUDER, ALBERS, AINSWORTH, FREESE, HANDRICK, HOVEN, HUEBSCH, KELSO, LADWIG, F. LASEE, MONTGOMERY, MUSSER, NASS, OLSEN, PLALE, POWERS, TURNER and VRAKAS, cosponsored by Senators DARLING, FITZGERALD, LAZICH, ROESSLER, WELCH and ZIEN. Referred to Committee on Criminal Justice.

- 1 **AN ACT to create** 939.627 of the statutes; **relating to:** committing theft against
2 certain persons and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits various forms of theft. One form of theft is sometimes known as embezzlement. A person commits theft by embezzlement if all of the following apply: 1) by virtue of his or her office, business or employment, or by virtue of being a trustee or other person to whom property is entrusted, the person has possession of money or a negotiable security or other negotiable instrument that is owned by another; 2) the person intentionally uses, transfers, conceals, or retains possession of, the money or negotiable instrument without the owner's consent; and 3) the person uses, transfers, conceals, or retains possession of, the money or negotiable instrument with the intent to convert it to his or her own use or to the use of any person other than the owner.

Under current law, the penalties for theft are generally based on the value of the property stolen. If the value of the property taken does not exceed \$1,000, the theft is a misdemeanor. If the value of the property is more than \$1,000 but not more than \$2,500, the theft is a less serious class of felony. If the value of the property exceeds \$2,500, the theft is a more serious class of felony. For instance, if a person is convicted of theft by embezzlement and the value of the property embezzled exceeds \$2,500, the person may be imprisoned for not more than ten years or fined not more than \$10,000 or both, if the theft is committed before December 31, 1999. If the theft is committed on or after December 31, 1999, the person may be imprisoned for not more than 15 years or fined not more than \$10,000 or both.

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However, current law also provides that theft is a more serious felony if the value of the property taken does not exceed \$2,500 but the theft occurs under certain circumstances. One such circumstance is if the property is taken either from: 1) a patient or resident of a protective facility or program (such as an adult day care center, a hospice, a group home, a community-based residential facility, an inpatient health care facility or a treatment facility); or 2) a vulnerable adult (a disabled adult who is substantially mentally incapable of caring for himself or herself). Thus, if a theft by embezzlement of less than \$2,500 is committed against a vulnerable adult or a patient or resident of a protective facility or program before December 31, 1999, the person committing the theft may be fined not more than \$10,000 or imprisoned for not more than five years or both. If the theft is committed on or after December 31, 1999, the person may be imprisoned for not more than ten years or fined not more than \$10,000 or both.

This bill provides for an increased penalty for the theft by embezzlement of property worth more than \$2,500 from a vulnerable adult or from a patient or resident of a protective facility or program if the theft by embezzlement is committed by a caretaker of that vulnerable adult or patient or resident. The bill defines “caretaker” to mean a guardian, custodian or trustee of a vulnerable adult or a patient or resident of a protective facility or program, whether or not appointed by a court, or any other person in a position of trust with a vulnerable adult or a patient or resident of a protective facility or program. If a caretaker is convicted of theft by embezzlement under the circumstances covered by the bill, the maximum period of imprisonment is increased by five years and the maximum fine is increased by \$5,000.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 939.627 of the statutes is created to read:

2 **939.627 Increased penalty; theft by caretaker of vulnerable adult. (1)**

3 In this section:

4 (a) “Caretaker” means a guardian, custodian, trustee or other person, whether
5 or not appointed by a court, who is responsible for the care, custody or control of a
6 vulnerable adult or the estate of a vulnerable adult, or any other person who stands
7 in a position of trust with a vulnerable adult. “Caretaker” includes a person acting
8 under a durable power of attorney.

9 (b) “Developmentally disabled person” has the meaning given in s. 55.01 (2).

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- 1 (c) "Durable power of attorney" has the meaning given in s. 243.07 (1) (a).
- 2 (d) "Infirmities of aging" has the meaning given in s. 55.01 (3).
- 3 (e) "Mental illness" has the meaning given in s. 55.01 (4m).
- 4 (f) "Other like incapacities" has the meaning given in s. 55.01 (5).
- 5 (g) "Vulnerable adult" means a person who meets any of the following criteria:
- 6 1. The person is 18 years of age or older, is a developmentally disabled person
- 7 or has infirmities of aging, mental illness or other like incapacities, and is
- 8 substantially mentally incapable of providing for his or her needs for food, shelter,
- 9 clothing or personal or health care.
- 10 2. The person is a patient or resident of a facility or program specified in s.
- 11 940.295 (2).
- 12 **(2)** (a) If a person commits a violation of s. 943.20 (1) (b) under all of the
- 13 following circumstances, the penalties are increased as provided in par. (b):
- 14 1. The person who commits the violation is a caretaker.
- 15 2. The victim of the violation is a vulnerable adult for whom the person is a
- 16 caretaker.
- 17 3. The value of the property taken exceeds \$2,500.
- 18 (b) If par. (a) applies, the maximum period of imprisonment may be increased
- 19 by 5 years and the maximum fine may be increased by \$5,000.
- 20 **(3)** This section provides for the enhancement of the penalties applicable for
- 21 the underlying crime. The court shall direct that the trier of fact find a special verdict
- 22 as to all of the issues specified in sub. (2).
- 23 **SECTION 2. Initial applicability.**
- 24 (1) This act first applies to acts occurring on the effective date of this subsection.