

HOUSE BILL ANALYSIS

HB 1186

Title: An act relating to criminal law.

Brief Description: Changing duties for aiding injured persons and the penalties for second degree murder.

Sponsors: Representatives Hickel and Mitchell.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Pat Shelledy (786-7149)

Background:

Duty to Rescue a victim

The question whether a person should be legally obligated to rescue another person in distress has troubled courts, legislatures, legal scholars, and others for a long time.

Under common law, a person generally has no duty to rescue another person in distress. An exception to this rule is when a special relationship exists between the parties and that relationship creates a duty to assist. For example, a special relationship was found to exist in one Washington case when the state undertook to render aid to avalanche victims but failed to follow through with the proper warning.

Some statutes in Washington have departed from common law in limited ways and have established an affirmative duty to assist another. One example is the duty to report suspected child abuse or neglect. Another is to report child pornography that is presented for developing. A third is to summon aid for a peace officer when requested. A violation of any of these statutes carries criminal penalties.

Duty to rescue statutes exist in thirteen European countries. Some courts have shifted from the traditional rule disallowing imposition of criminal liability for failing to assist another. In a famous California case, the California Supreme Court, in absence of a statute, created a special relationship between the psychotherapist of a psychotic patient and the patient's foreseeable victims. Since 1968, four states have enacted duty-to-rescue statutes: Vermont, Minnesota, Rhode Island, and Massachusetts. The penalties are generally either a fine, a limited possible term of confinement (up to one year), or both.

A misdemeanor— is a crime that carries a maximum jail term of ninety days, a one thousand dollar

fine, or both.

One concern that has been raised about duty-to-rescue statutes is that a good Samaritan— is often subject to a lawsuit when something goes wrong during the rescue attempt and the victim sustains injuries or dies. State statute protects a person from civil liability for damages resulting in acts or omissions while rendering aid to an injured person in an emergency, provided the person is doing so without compensation and acts without gross negligence or wanton misconduct.

Rendering criminal assistance

A person commits the crime of rendering criminal assistance if the person, in any of a variety of ways, tries to hinder the apprehension or prosecution of a person who has committed an offense.

The ways in which a person may commit the crime include: harboring or concealing the offender; warning the offender of impending apprehension; giving the offender money, transportation, or disguise; committing an act of force, threat, or deception to prevent apprehension; concealing, altering, or destroying physical evidence; and giving the offender a weapon.

Failing to assist a victim of the offender's crime is not listed as one of the ways in which a person may commit the crime of rendering criminal assistance.

Rendering criminal assistance is a class C felony if the person is not related to the offender and the crime the offender committed is a class A felony. The crime is a gross misdemeanor when the person is related to the offender. Rendering criminal assistance is a gross misdemeanor if the person is not related to the offender and the crime the offender committed is a class B or C felony. If the person is a relative, the crime is a misdemeanor.

Murder in the second degree

Under the Sentencing Reform Act (SRA), the presumptive standard range penalty for an offender who is convicted of murder in the second degree is 123 to 164 months in prison if the offender does not have any criminal history. The actual sentence an offender may receive depends on the offender's prior criminal history. In contrast, the standard range penalty for an offender convicted of murder in the first degree who does not have a criminal history is 240 to 320 months in prison. This disparity exists across all the presumptive sentence ranges for offenders with various criminal histories.

Murder in the first degree involves the premeditated intent to cause the death of another. Murder in the second degree involves the intent to cause the death of another without premeditation.

The Sentencing Reform Act rules require that, when establishing presumptive prison ranges, the minimum term of confinement must be no less than seventy-five percent of the maximum term.

Summary:

Duty to rescue a victim

A new crime of failing to give reasonable assistance– is created.

A person is guilty of the new crime if:

The person knows that another person (victim) has suffered or is about to suffer substantial bodily harm and needs help;

The person could give reasonable assistance– (i.e. help) to the victim without placing himself or herself in danger and without interfering with a duty the person owes to a third party;

The person fails to help the victim; and

Another person is not helping the victim.

A person satisfies the requirement to provide reasonable assistance by seeking emergency aid. The person may also satisfy the requirement in other ways.

A violation is a misdemeanor.

Persons who provide reasonable assistance are immune from civil liability as others who provide emergency care or transportation at the scene of an emergency.

Rendering criminal assistance

A person commits the crime of rendering criminal assistance if the person fails to give reasonable assistance to the victim of an offense to prevent the apprehension or prosecution of the perpetrator.

A relative who commits the crime of rendering criminal assistance is guilty of a class C felony instead of a gross misdemeanor when the crime the offender commits is a class A felony and is guilty of a gross misdemeanor instead of a misdemeanor when the crime the offender commits is a class B or C felony.

Murder in the second degree

The presumptive standard range for murder in the second degree under the Sentencing Reform Act is broadened so that the top of the ranges are just one month below the bottom of the ranges for comparable murder in the first degree ranges. For example, a first time offender has a standard range of 123 months to 239 months for murder in the second degree and 240 to 320 months for murder in the first degree. These changes are made across all standard ranges for offenders with various criminal histories.

The rule that requires the minimum term of a presumptive range be no less than seventy five percent of the maximum term does not apply to the range for murder in the second degree. Instead, the minimum term must be no less than fifty percent of the maximum term.

Fiscal Note: Requested January 22, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.