

HOUSE BILL REPORT

HB 2509

As Reported By House Committee On:

Criminal Justice & Corrections

Title: An act relating to dependent persons.

Brief Description: Protecting dependent persons.

Sponsors: Representatives O'Brien, Ballasiotes, Dickerson, Lovick, Conway, Ogden, Ruderman, Kessler, McDonald, Regala, Stensen, Hurst, Veloria, Santos, Wood, Lantz, Edmonds, Keiser and Kenney; by request of Attorney General.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/28/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Creates a hearsay exception for certain statements made by vulnerable adults;
- Creates a mandatory sentencing enhancement for offenses committed against vulnerable adults; and
- Creates a new gross misdemeanor offense of criminal mistreatment in the third degree.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Lovick, Democratic Vice Chair; Constantine and Kagi.

Minority Report: Do not pass. Signed by 3 members: Representatives Cairnes, Republican Vice Chair; B. Chandler and Koster.

Staff: Trudes Hutcheson (786-7384).

Background:

I. Hearsay

Generally, hearsay involves a person re-stating in court what somebody else has said outside of court, for the purpose of asserting that the statement is true. Under the rules of evidence, hearsay is usually inadmissible because it is presumed to be unreliable. Whenever hearsay is offered against a criminal defendant, the constitutional right to confrontation is triggered, and courts generally will not admit hearsay unless there exists a well recognized exception or some other assurance of reliability.

Exceptions to the hearsay rule exist both in court rules and in statute. The Legislature created a statutory exception to the hearsay rule permitting the introduction under certain conditions, of hearsay statements by a child relating to sexual abuse. The child must be under the age of 10 and must either testify or be unavailable as a witness.

II. Sentencing

The Sentencing Reform Act (SRA) specifies a standard sentence range for an offender based on the seriousness of the offense and the offender's prior criminal history score. The sentencing judge will sentence the offender to a period of confinement within that standard range. Under certain circumstances, the sentencing judge may impose an exceptional sentence that falls below or above the standard range sentence if the judge finds either mitigating circumstances or aggravating circumstances. One of the aggravating factors the judge may consider is whether the offender knew that the victim was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

In some circumstances the sentencing judge must impose a sentencing "enhancement" on the offender's sentence. A sentencing enhancement is a specified amount of time that is added to the offender's presumptive sentence. The length of the enhancement generally varies depending upon the level of the felony.

III. Criminal Mistreatment

There are two degrees of the crime of criminal mistreatment. The first degree offense, a class B felony, is committed when a parent of a child, a person entrusted with the physical custody of a child or dependent person, or a person employed to provide a child or dependent person with the basic necessities of life, recklessly causes great bodily harm to the child or dependent person by withholding the basic necessities of life.

Criminal mistreatment in the second degree, a class C felony, involves recklessly creating an imminent and substantial risk of death or great bodily harm, or recklessly causing substantial bodily harm by withholding the basic necessities of life.

Basic necessities of life means food, water, shelter, clothing, and medically necessary health care. Dependent person means a person who, because of physical or mental disability or extreme advanced age, is dependent upon another person to provide the basic necessities of life.

The crimes of criminal mistreatment do not apply to (a) the decision to withdraw life support systems; and (b) situations when a terminally ill person requests palliative care and such care is received from a licensed home health agency, hospice agency, nursing home, or hospital providing care under the direction of a physician.

The Natural Death Act authorizes a person to execute a directive to withhold or withdraw life-sustaining treatment if the person is in a terminal condition or a permanent unconscious condition.

Summary of Substitute Bill:

The Legislature finds that crimes and abuse against vulnerable adults are increasing, and the state has a compelling interest to hear cases involving vulnerable adults.

I. Hearsay

A hearsay exception is created for statements made by a vulnerable adult describing a crime committed against the vulnerable adult or describing neglect, exploitation, abuse, or sexual abuse of the vulnerable adult. The statement is admissible if:

- (a) the court finds after a hearing that the time, content, and circumstances of the statement demonstrate the statement is sufficiently reliable based on certain factors; and;
- (b) the vulnerable adult either: (i) testifies; or (ii) is unavailable as a witness and there is corroborative evidence of the act.

The party seeking to use the statement must first notify the other party in advance so the other party has an opportunity to challenge the admissibility of the statement. The hearsay exception applies to criminal and civil proceedings.

For the purposes of the hearsay exception, "vulnerable adult" is defined as a person:

- (a) 60 years or older who has the functional, mental, or physical inability to care for himself or herself or his or her finances;
- (b) 18 years or older and has been found by a court to be incapacitated as defined under the existing guardianship laws;

- (c) 18 years or older and who has a developmental disability as defined under the existing disability laws;
- (d) 18 years of age or older and who is a resident of an adult facility required to be licensed by the department of social and health services, including nursing homes, adult family homes, and boarding homes; or
- (e) 18 years or older and receives services from a home health, hospice, or home care agency or receives similar services from an individual.

Abuse means willfully or negligently causing any bodily injury, pain, or mental anguish to a vulnerable adult. Exploitation means using deception, intimidation, undue influence, or force to obtain or use, or make the vulnerable adult use, the vulnerable adult's property or services for the benefit of a third person. Neglect means the failure of a person to provide the goods or services necessary to maintain the physical or mental health of a vulnerable adult when the person has a duty of care to the vulnerable adult. Sexual abuse means any form of non-consensual sexual contact, including harassment, indecent liberties, and sexually explicit photographing. Sexual abuse also means sexual contact, whether or not consensual, between: (a) any person and an incapacitated or physically helpless person; or (b) a vulnerable adult living in a facility and a staff person or employee of the facility.

II. Sentencing

A mandatory sentencing enhancement is created in the SRA for offenses committed against vulnerable adults. The following additional times must be added to the presumptive sentence:

- 24 months when the underlying offense is a class A felony;
- 18 months when the underlying offense is a class B felony; or
- 12 months when the underlying offense is a class C felony.

III. Criminal Mistreatment

A new crime of criminal mistreatment in the third degree is created as a gross misdemeanor. Criminal mistreatment in the third degree requires only that the parent or person entrusted with the care of a child or dependent person act with criminal negligence, as opposed to recklessness, and: (a) creates an imminent and substantial risk of substantial bodily harm by withholding any of the basic necessities of life; or (b) causes substantial bodily harm to the child or dependent person by withholding any of the basic necessities of life.

The exemptions for the offense of criminal mistreatment (withdrawing life support and providing palliative care) are amended to include third-degree criminal mistreatment and to reference the Natural Death Act. In addition, the palliative care exemption is amended to include permanently unconscious persons and to define the

terms "terminally ill" and "permanently unconscious" by referencing the Natural Death Act.

Substitute Bill Compared to Original Bill: Changes were made to clarify the language and make technical corrections.

Appropriation: None.

Fiscal Note: Received on January 31, 2000.

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

Testimony For: This bill is designed to prevent the abuse of those people who cannot take care of themselves and who depend on others for assistance. Law enforcement need additional tools to help prosecute crimes against vulnerable adults. Often the vulnerable adult is the only witness to the crime, and the adult's disability or advanced age makes it harder later on to prosecute the offender. Offenders know that vulnerable adults are easy victims because of the problems with having them testify or remember events. The existing aggravating factor for vulnerable victims in the sentencing reform act does not create a sufficient deterrent.

Testimony Against: The hearsay exception is very broad and will likely be challenged on constitutional grounds. There are already laws that protect vulnerable adults and dependent persons. The cost of this bill does not warrant what little benefits it will bring.

Testified: (In support) Christine Gregoire, Attorney General's Office, Ed Holen, Developmental Disabilities Council; Lynn Pronhober, King County Prosecuting Attorney Fraud Division; Janet Adams, The Arc of Washington; Ron Berg, AARP; and Kary Hyre, Long Term Care Ombudsman.

(Opposed) Eric Weight, Washington Defender Association.