

# HOUSE BILL REPORT

## HB 2610

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to endangerment of children and dependent persons with a controlled substance.

**Brief Description:** Providing criminal penalties for endangerment of children and dependent persons with a controlled substance.

**Sponsors:** Representatives Darneille, Morell, Tokuda, O'Brien, Upthegrove, Kirby and Campbell.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/5/02, 2/6/02 [DPS].

#### Brief Summary of Substitute Bill

- Creates the crime of "endangerment with a controlled substance," a class B felony, when a person knowingly or intentionally permits a child or dependent adult to be exposed to methamphetamine-types of drugs.

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## HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

**Staff:** Yvonne Walker (786-7841).

### Background:

*Controlled Substances around Children:* Controlled substances can ordinarily be defined as a drug, substance, or immediate precursor that is included in the Uniform Controlled Substance Act and are listed in various schedules with regards to their potential for abuse.

Generally, under the Uniform Controlled Substance Act, it is illegal for any person to possess, sell, manufacture, or deliver controlled drugs. A person convicted of a

controlled substance offense receives a sentence within the standard range for the offense which, under the Sentencing Reform Act, is calculated using the seriousness level of the current offense and the extent of the offender's criminal history.

Two-year sentence enhancements are often added to an offender's sentence when certain crimes involving controlled substances are manufactured, sold, delivered, or possessed in public areas such as at or near schools, parks, public transit, drug free zones, or civic centers.

Furthermore, in methamphetamine cases, if a court makes a finding of fact or in a jury trial if the jury finds a special verdict that: (1) an offender manufactured methamphetamine or possessed ephedrine or pseudoephedrine with intent to manufacture methamphetamine and (2) the underlying crime was committed when a person under the age of 18 was present in or on the premises of the place where the methamphetamine was being manufactured, then an additional two-year enhancement is to be added to the offender's presumptive sentence.

*Termination of Parental Rights:* The court may order a termination of a parent-child relationship. Terminations arise primarily in two contexts: 1) terminations for neglect of a dependent child, governed by the juvenile court statutes and heard in juvenile court; and 2) terminations to allow the child to be adopted, governed by the adoption statutes. In addition, a court may order that a petition seeking termination of a parent's rights be filed in instances where immediate danger to a child may be alleviated, where it may be in the best interest of the child, and where aggravated circumstances may exist. Aggravated circumstances that a court generally considers includes whether the parent has been convicted of a crime, such as rape of a child, criminal mistreatment of a child, assault, manslaughter, murder, or homicide by abuse of the child's other parent, sibling, or another child.

*Background checks:* Employers may require background checks on any prospective employee or volunteer who may have unsupervised access to children or vulnerable adults. If requested by a business or organization, the Washington State Patrol must disclose certain conviction records relating to the prospective employee. One of those records that must be disclosed are any convictions for "crimes committed against children or other persons" which include such offenses as murder, assault, robbery, rape, kidnapping, arson, burglary, and child abuse or neglect.

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### **Summary of Substitute Bill:**

A new crime is created within the Criminal Mistreatment Act called "endangerment with a controlled substance."

*Controlled Substances around Children:* Endangerment with a controlled substance is

committed if a person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with:

- methamphetamine or
- ephedrine, pseudoephedrine, or anhydrous ammonia, that are being used in the manufacture of methamphetamine.

Endangerment with a controlled substance is a seriousness level V, class B felony. A person with no prior criminal history would receive a presumptive sentence range of six to 12 months in jail.

*Termination of Parental Rights:* The list of aggravating circumstances is expanded to include endangerment with a controlled substance. A court may order that a petition seeking termination of a parent's rights be filed in instances where the parent has been convicted of endangerment with a controlled substance.

*Background checks:* The list of "crimes committed against children or other persons" is expanded to include endangerment with a controlled substance.

### **Substitute Bill Compared to Original Bill:**

The substitute bill limits the crime of "endangerment with a controlled substance" to only methamphetamine and precursor type of crimes instead of all controlled substances and drug paraphernalia. More specifically, the substitute bill does the following:

- Creates a new crime of "endangerment with a controlled substance," a seriousness level V, class B felony;
- Eliminates the "endangerment with a controlled substance" crime in the second degree (as a result, there are no degrees);
- Defines "endangerment with a controlled substance" as any person who knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, that are being used in the manufacture of methamphetamine; and
- Eliminates the definition of a chemical substance.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 31, 2002.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** Pierce County has seen an increase in the number of methamphetamine cases it prosecutes each year. As a result, Pierce County has taken on a special project to recruit foster families to take in the children that have been taken out of homes where methamphetamine sites have been found. This bill is about the safety of children and how to protect them from methamphetamine types of drugs.

There was one particular case where a child fell into a bucket of methamphetamine chemicals. The mother failed to seek medical care for her child because she feared that her methamphetamine-user boyfriend would get prosecuted. In this particular case, the boyfriend could have been prosecuted because the chemicals belonged to him, but the mother could not have been prosecuted. This bill is an attempt to get at those mothers who subject their children to methamphetamine drugs.

Children are the victims of Washington's methamphetamine epidemic.

**Testimony Against:** The bill as presently drafted is overly broad. This may have a chilling effect on people seeking treatment or pregnant mothers who may be living with a drug addicted mate and with whom they may be economically dependent on. Also, the definition of exposure needs to be fully clarified. Furthermore, there is no exception for educational purposes and as a result, a Drug Awareness and Resistance Education (DARE) officer, teacher, or counselor could be prosecuted for exposing children to paraphernalia. This is a well intentioned piece of legislation that needs to be clarified and should be redrafted to directly relate to methamphetamine types of crimes.

This bill should also be combined with HB 2338 (the drug bill). If this bill is combined with the drug bill then this new crime of endangerment with a controlled substance could be ranked on the new drug grid and drug offenders would be eligible for drug treatment.

**Testified:** (In support) Representative Darneille, prime sponsor; Helen Myrick, Greater Pierce County Community Network; Stephanie Burbach, Families for Kids Recruitment Residence; and Elaine Keavney, Good Samaritan Hospital.

(Opposed) Jon Komorowski, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

(Opposed with concerns) Sarajane Siegfriedt, Association of Alcoholism and Addiction Programs.