

HOUSE BILL REPORT

2SSB 5417

As Reported By House Committee On:
Law & Justice

Title: An act relating to abandonment of dependent persons.

Brief Description: Revising penalties for criminal mistreatment.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Fraser, Winsley, Wojahn, Oke and Kohl).

Brief History:

Committee Activity:

Law & Justice: 2/21/96, 2/23/96 [DPA].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 15 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Sterk and Veloria.

Staff: Pat Shelledy (786-7149).

Background: A parent of a child or a person entrusted with the physical custody of a child or a dependent person commits the crime of criminal mistreatment if the person withholds the basic necessities of life. Criminal mistreatment is a class B felony if withholding the basic necessities of life recklessly causes great bodily harm. Criminal mistreatment is a class C felony if withholding the basic necessities of life recklessly either (a) creates an imminent and substantial risk of death or great bodily harm; or (b) causes substantial bodily harm.

A "dependent person" is a person who is dependent upon another to provide the basic necessities of life due to extreme advanced age or physical or mental disability.

"Basic necessities of life" means food, shelter, clothing, and health care.

Some elderly or disabled people who are "dependent," or other persons or organizations acting on behalf of the dependent person or a dependent child, may employ or entrust someone to take care of the dependent person or child.

If the caregiver leaves the dependent person without the means or ability to obtain one or more of the basic necessities of life, the dependent person or child may die or be injured. Existing law allows the court to issue a protection order to protect a "vulnerable adult" from abuse, neglect, or exploitation, but does not specifically provide that abandoning a dependent person is a crime if the dependent person is injured as a result of being abandoned. The criminal mistreatment statutes have generally been invoked when a parent or custodian withholds needed care but does not abandon the dependent person or child.

Summary of Amended Bill: A person is guilty of the crime of "abandonment of a dependant person" if the person **recklessly** abandons a child or other dependent person and, as a result of being abandoned, the child or other dependent person is injured, or an imminent and substantial risk of injury is created. Three degrees of the crime are created, a class B, class C, and a gross misdemeanor. The seriousness of the crime depends on the seriousness of the injury.

The crime applies to a parent of a child, a person entrusted with the physical custody of a child or other dependent person, or a person employed to provide to the dependent child or person the basic necessities of life.

It is a defense that the employed caretaker gave reasonable notice of termination of services and did not leave the person until after the date of termination. The Department of Social and Health Services and the Department of Health must establish procedures for terminating services to children and other dependent adults.

"Employed" means that the person was hired to provide the dependent person or child with the basic necessities of life, but does not necessarily mean that the person is compensated financially for the services.

"Abandons" means leaving a child or other dependent person without the means or ability to obtain one or more of the basic necessities of life.

The definition of "basic necessities of life" is expanded to include water, health-related treatment or activities, hygiene, oxygen, and medication.

The crime of abandonment of a dependent person in the first degree is ranked on the Sentencing Reform Act grid at seriousness level V, which is the same level at which the comparable offense of criminal mistreatment in the first degree is ranked. Abandonment of a dependent person in the second degree is ranked on the Sentencing Reform Act grid at seriousness level III, which is the same level at which the crime of criminal mistreatment in the second degree is ranked.

Amended Bill Compared to Second Substitute Bill: The bill is rewritten to conform to the title, remove the provisions from the criminal mistreatment statutes,

try to remove some potential unintended consequences, and to rank the offenses on the Sentencing Reform Act grid.

Appropriation: None.

Fiscal Note: Requested on February 16, 1996.

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

Testimony For: The bill should not apply to home health care providers who give reasonable notice of termination of their services. The underlying bill exempts licensed home care providers, but there are numerous unlicensed home care providers who are not specifically exempted from the bill.

Testimony Against: None.

Testified: Margaret Casey, Washington State Chore Home Care Coalition (pro, with concerns); and Skip Dreps, Veterans Legislative Coalition (pro).