

HOUSE BILL REPORT

SHB 2532

*As Passed House
February 13, 1992*

Title: An act relating to creating the crimes of first, second, and third degree assault against a child.

Brief Description: Creating the crime of assault against a child.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Ebersole, Franklin, H. Myers, Heavey, Vance, Winsley, Wineberry, Jones, Orr, Wang, Scott, J. Kohl, Haugen, Morris, Ludwig, Roland, Ogden, Pruitt, Sheldon, Belcher, O'Brien, Hine, Rasmussen and Nelson).

Brief History:

Reported by House Committee on:
Judiciary, February 4, 1992, DPS;
Passed House, February 13, 1992, 96-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: The same elements of and penalties for crimes of first, second, and third-degree assault apply to adults and children regardless of the child's age or whether the parent has engaged in a history of abusing the child. Parents or adults who batter children may injure a child repeatedly through a series of intentional minor assaults before the adult assaults the child seriously enough to bring the child to the attention of the medical profession and law enforcement.

First-degree Assault. First-degree assault is committed when a person intends to inflict great bodily harm: and (a) assaults another with a firearm or any deadly weapon likely

to produce great bodily harm or death; or (b) poisons a person; or (c) assaults another and inflicts great bodily harm. "Great bodily harm" means bodily injury which creates a probability of death, significant serious permanent disfigurement, or a significant permanent loss or impairment of the function of a body part.

Second-degree Assault. Second-degree assault can be committed in a number of ways. The most common methods are as follows: The offender (a) intentionally assaults another and recklessly inflicts substantial bodily harm; (b) assaults another with a deadly weapon; or (c) knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture. "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any body part, or causes a fracture.

Third-degree Assault. Third-degree assault can also be committed in a number of ways. The pertinent provisions are as follows: The offender: (a) with criminal negligence, causes bodily harm to another person by a weapon, or (b) with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.

Restrictions on inflicting injury that results in more than minor or temporary marks. Certain disciplinary actions used against children are permissible and are defenses to charges of assault. Prohibited actions are specified in the statute. In general, force is excessive if it causes bodily harm greater than transient pain or minor temporary marks.

Seriousness levels. Seriousness levels for assault crimes are as follows: First-degree assault is seriousness level XII which carries a penalty of 62-82 months in prison for a first offense; second-degree assault is seriousness level IV which carries a penalty of 3-9 months in the county jail for a first offense; and third-degree assault is seriousness level III which carries a penalty of 1-3 months in the county jail for the first offense.

Summary of Bill: New crimes of assault of a child in the first, second, or third degree are created. The crimes apply to adults age 18 and over who assault children under age 13.

Assault of a child in the first degree. Assault of a child in the first degree is committed when the person commits: 1) first-degree assault under current law; or 2) intentionally assaults the child and either: a) recklessly

inflicts great bodily harm; or b) causes substantial bodily harm and the person has previously engaged in a pattern or practice of assaulting the child or of causing the child pain or agony that is equivalent to torture. The seriousness level for assault of a child in the first degree is the same as the seriousness level for first-degree assault. The primary change for a single assault is that the abuser does not have to intend to inflict great bodily harm but only has to intentionally assault the child and recklessly inflicts great bodily harm.

Assault of a child in the second degree. Assault of a child in the second degree is committed if the adult commits: 1) second-degree assault under current law; or 2) intentionally assaults the child and causes bodily harm that is greater than transient pain or minor temporary marks and the person has previously engaged in a pattern or practice of assaulting the child or of causing such pain or agony that is equivalent to that produced by torture. Assault of a child in the second degree is placed at seriousness level IX, which carries a penalty of 31-41 months in prison.

Assault of a child in the third degree. Assault of a child in the third degree is committed if the adult commits third-degree assault under current law against a child under age 13.

Technical cross-reference changes. Several technical changes are made to the sentencing code and other statutes that reference the assault statutes to now reference the equivalent assault of a child statutes.

Fiscal Note: Available.

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

Testimony For: Parents who abuse their children repeatedly will be punished more severely than under current law. Abusive parents will be appropriately labeled.

Testimony Against: None.

Witnesses: Terry Amhrein, Tennis Shoe Brigade (in favor); John Ladenburg, Prosecutor, Pierce County (in favor); and Paul Stern, Deputy Prosecutor, Snohomish County (in favor).