

HOUSE BILL REPORT

HB 1737

As Reported By House Committee On:
Judiciary

Title: An act relating to crimes involving minors or developmentally disabled persons.

Brief Description: Changing provisions relating to crimes against minors and developmentally disabled persons.

Sponsors: Representatives Ballasiotes, Campbell, Dyer, Morris, Thomas, Schoesler, Chappell, Dorn, Riley, Anderson, H. Myers, Mielke, Van Luven, Cooke, Scott, Foreman, Jones, Ballard, Jacobsen, Brough, Kremen, Silver, Rayburn, G. Fisher, Orr, Long, Johanson, Schmidt and Wood.

Brief History:

Reported by House Committee on:
Judiciary, February 16, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: If a stranger tries to order or entice a child into a car, sufficient facts may support a criminal charge of attempted kidnapping, or in some cases, communicating with a minor for immoral purposes. Communicating with a minor for immoral purposes has also been charged when a person makes comments of a sexual nature to a child that: (1) may be an attempt to "groom" the child for later sexual abuse that is prohibited in statutes governing sex offenses; (2) may be the beginning of an attempt to complete a sex offense at the time of the communication but the communication did not result in a completed sex offense or an attempt to commit a sex offense because the person was interrupted or the child ran away from the person; or (3) are communicated for the sexual gratification of the person

but insufficient evidence exists to demonstrate that the person intended to commit a sex offense with the child.

Issues concerning communicating with a minor for immoral purposes. The crime of communicating with a minor for immoral purposes has been found to be unconstitutionally vague as interpreted in one appellate court case and has been given a very narrow interpretation in another appellate case.

In a recent case, the Washington Court of Appeals held that a jury instruction stating that the communication must be for "immoral purposes of a sexual nature" was unconstitutionally vague. The Washington Supreme Court heard the case June 18, 1992, but the court has not yet rendered its decision.

The Supreme Court denied review of the other case, which held that the communicating with a minor statute only applied to communications made in an attempt to complete other sex crimes which are prohibited in the same chapter in the Revised Code of Washington as is the communicating with a minor for immoral purposes statute. That chapter concerns crimes involving sexual exploitation of children. Other chapters in the code prohibit sex offenses against children such as rape and incest. The appellate court held that a conviction for communicating with a minor for the purposes of committing other sex offenses, such as rape of a child or child molestation, would be unconstitutional because those offenses are not included in the "core" of the statutory provision and therefore, as applied, the statute would be too vague.

Issues concerning incidents of attempts to lure children into cars. Apparently some incidents that involve apparent attempts to lure children into cars have not been prosecuted under the attempted kidnapping statutes.

The crime of kidnapping applies to all persons, but the crime of communicating with a minor for immoral purposes only applies to minors and not developmentally disabled adults.

Summary of Substitute Bill: The bill provides a definition of communicating with a minor for immoral purposes to address constitutional defects, and creates a new crime of "luring."

New definition of communicating with a minor for immoral purposes. An intent section provides that the Legislature intends to clarify that the offense of communicating with a minor for immoral purposes occurs whenever a person

communicates with a minor for the sexual gratification of the perpetrator or, for purposes which, if completed, would be a sex offense. The Legislature also intends to prohibit communications for the sexual exploitation of minors and for the grooming of minors to facilitate sex abuse. The Legislature also intends to protect developmentally disabled adults from communications with them for immoral purposes.

The communicating with a minor for immoral purposes statutes is amended to correct the constitutional inadequacies described by the appellate courts.

"Immoral purposes" means:

- (1) Any act which, if completed, would constitute a violation of the chapters governing sexual exploitation of children, rape and child molestation, incest, or indecent exposure and prostitution; or
- (2) Conduct or communication with a minor or developmentally disabled person when committed for the sexual gratification of the perpetrator and the minor or developmentally disabled person is the object of the sexual gratification.

"Minor" means a person under age 18 when communicating with the minor for immoral purposes prohibiting certain conduct with minors under age 18, such as the sexual exploitation provisions, incest, indecent exposure, prostitution, and sexual misconduct with a minor. In all other cases, "minor" means a person under age 16, which is the upper age limit for committing sex offenses against a child, such as rape of a child. "Developmentally disabled person" is defined according to the definition in statutes governing the developmentally disabled.

The new crime of "luring." A new crime of "luring" is created. A person who lures a minor or a developmentally disabled person into a structure that is obscured from or inaccessible to the public or into a motor vehicle without the consent of the minor's parent or the developmentally disabled person's guardian, and the person is unknown to the child or developmentally disabled person, is guilty of a class C felony.

It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the safety, health, or welfare of the minor or the developmentally disabled person. For the purposes of the luring statute, a

"minor" is a person under age 16. "Developmentally disabled person" is defined according to the definition in statutes governing the developmentally disabled.

A severability clause is added.

Substitute Bill Compared to Original Bill: A technical correction adds the penalty provision to the crime of luring. The failure to add the penalty provision in the original bill was a drafting error.

Fiscal Note: Not requested.

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

Testimony For: Many strangers approach children on the street and try to lure the children into the stranger's car. The cases are not being charged as attempted kidnapping. A separate crime should be created to address these incidents. (This testimony was given on a related bill, HB 1279, which concerned similar provisions concerning creating the crime of luring.)

Testimony Against: None.

Witnesses: Donna Deleno, Washington Coalition of Sexual Assault Programs (pro); Mike Patrick, Washington State Council of Police Officers (pro); and Craig Sarver, King County Police Department and Washington State Council of Police Officers (pro).