

# HOUSE BILL REPORT

## EHB 1186

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**As Passed House**

January 21, 1998

**Title:** An act relating to criminal law.

**Brief Description:** Changing duties for aiding injured persons and the penalties for second degree murder.

**Sponsors:** By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Hickel, Mitchell, Ballasiotes, Dickerson, Robertson, Blalock, Benson, Quall, Sheahan, Delvin, Lisk, Carrell, Cairnes, McDonald, Johnson and DeBolt).

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 1/29/97 [DP].

**Floor Activity:**

Passed House: 3/11/97, 87-10;

Passed House: 1/21/98, 84-14.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 12 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Quall, Ranking Minority Member; O'Brien, Assistant Ranking Minority Member; Blalock; Cairnes; Delvin; Dickerson; Hickel; Mitchell; Robertson and Sullivan.

**Staff:** Pat Shelledy (786-7149).

**Background:**

Duty to Rescue a victim.

Under common law, a person generally has no duty to rescue another person in distress. An exception to this rule is when a special relationship exists between the parties and that relationship creates a duty to assist.

Some statutes in Washington have departed from common law in limited ways and have established an affirmative duty to assist another. One example is the duty to report suspected child abuse or neglect. Another is to report child pornography film

that is presented for developing. A third is to summon aid for a peace officer when requested. A violation of any of these statutes carries criminal penalties.

Since 1968, four states have enacted duty-to-rescue statutes: Vermont, Minnesota, Rhode Island, and Massachusetts. The penalties are generally either a fine, a limited possible term of confinement (up to one year), or both. Duty to rescue statutes exist in 13 European countries.

A misdemeanor— is a crime that carries a maximum jail term of 90 days, a one thousand dollar fine, or both.

#### Rendering criminal assistance.

A person commits the crime of rendering criminal assistance if the person, in any of a variety of ways, tries to hinder the apprehension or prosecution of a person who has committed an offense. Failing to assist a victim of the offender's crime is not listed as one of the ways in which a person may commit the crime of rendering criminal assistance.

Rendering criminal assistance is a class C felony if the person is not related to the offender and the crime the offender committed is a class A felony. The crime is a gross misdemeanor when the person is related to the offender. Rendering criminal assistance is a gross misdemeanor if the person is not related to the offender and the crime the offender committed is a class B or C felony. If the person is a relative, the crime is a misdemeanor.

#### Murder in the second degree.

Under the Sentencing Reform Act (SRA), the presumptive standard range penalty for an offender who is convicted of murder in the second degree is 123 to 164 months in prison if the offender does not have any criminal history. The actual sentence an offender may receive depends on the offender's prior criminal history. In contrast, the standard range penalty for an offender convicted of murder in the first degree who does not have a criminal history is 240 to 320 months in prison. This disparity exists across all the presumptive sentence ranges for offenders with various criminal histories.

Murder in the first degree involves the premeditated intent to cause the death of another. Murder in the second degree involves the intent to cause the death of another without premeditation.

#### **Summary of Bill:** Duty to summon assistance.

A new crime of failing to summon assistance— is created.

A person is guilty of the new crime if the person knows that another person (victim) has suffered substantial bodily harm and needs help; the person could reasonably summon assistance for the victim without placing himself or herself in danger and without interfering with a duty the person owes to a third party; the person fails to summon assistance for the victim; and another person is not summoning assistance for the victim.

A person satisfies the requirement to summon assistance by making reasonable efforts to summon emergency aid to the victim's location.

A violation is a misdemeanor.

Rendering criminal assistance.

A person commits the crime of rendering criminal assistance if the person fails to summon assistance for the victim of an offense to prevent the apprehension or prosecution of the perpetrator.

A relative who commits the crime of rendering criminal assistance is guilty of a class C felony instead of a gross misdemeanor when the crime the offender commits is a class A felony, and is guilty of a gross misdemeanor instead of a misdemeanor when the crime the offender commits is a class B or C felony.

Murder in the second degree.

The presumptive standard ranges for murder in the second degree under the Sentencing Reform Act are broadened so that the top of the ranges are just one month below the bottom of the ranges for murder in the first degree ranges. For example, a first time offender has a standard range of 123 months to 239 months for murder in the second degree and 240 to 320 months for murder in the first degree. These changes are made across all standard ranges for offenders with various criminal histories.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** People who have knowledge that a crime has been committed and a victim has suffered substantial bodily harm, and who fail to help the person, should be held criminally liable. People who know that someone has suffered substantial bodily harm should have a duty to aid the person. The bill is not over-broad and not

overly onerous. The prosecutors have the obligation to prove knowledge and reasonableness of conduct. The bill may influence some people to behave differently and call 911 if they know they may face criminal sanctions if they do not render assistance. If this law was in place when Joey Levick was attacked, he may be alive today. There is too great a gap in the sentencing ranges between murder in the first degree and murder in the second degree.

**Testimony Against:** The bill makes us all our brothers' and sisters' keepers. This is contrary to general criminal law principles which prohibits engaging in certain acts. The bill will discourage people from getting involved because of the fear that the assistance provided will not be considered reasonable— and subject them to criminal liability. The bill is over-broad.

**Testified:** Representative Hickel, prime sponsor; Representative Mitchell (pro); Joe Levick (pro); Melva Levick (pro); Anita Scheurhoff (pro); Norm Maleng (pro); Jim Tarr (pro); and Jeff Ellis, Washington Defender Association (con).