

HOUSE BILL ANALYSIS

HB 1666

Title: An act relating to protecting unborn children from abuse.

Brief Description: Protecting unborn children from abuse.

Sponsors: Representatives Mulliken, Sheahan, Mielke, Sherstad, Koster, Boldt, Sterk, Thompson and Bush.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: The crimes of manslaughter in the first degree and assault in the second degree contain provisions regarding the killing or injuring of an unborn quick child.— An unborn child is said to be quick— when fetal motion becomes detectable. These manslaughter and assault crimes require a showing of an intentional and unlawful infliction of an injury upon the mother of the child. Both crimes are class B felonies.

The crime of criminal mistreatment of a child applies to a parent who, by withholding any of the basic necessities of life,— recklessly causes great bodily harm or substantial bodily harm. The basic necessities of life is defined to mean food, water, shelter, clothing, and health care, including but not limited to, health-related treatment or activities, hygiene, oxygen, and medication. Causing great bodily harm by withholding any of these necessities is a class B felony. So causing substantial bodily harm is a class C felony. Great bodily harm consists of any injury creating a high probability of death, or causing serious permanent disfigurement, or causing permanent or protracted loss or impairment of the function of a body part or organ. Substantial bodily harm consists of any injury involving a temporary but substantial disfigurement, or causing a temporary but substantial loss of impairment of the function of a body part or organ, or causing a fracture of any body part.

In a recent decision, the court of appeals held that the crime of criminal mistreatment does not apply to the case of a pregnant woman who uses cocaine and thereby injures her unborn child. *State v. Dunn*, 82 Wn App 122 (1996). The court held that the statute, unlike the manslaughter and assault statutes, does not apply to unborn children. The court also implied that even if the criminal mistreatment statute did apply to unborn children, it might be difficult for the prosecution to show that taking drugs amounts to withholding the necessities of life.—

Summary of Bill: For purposes of the criminal mistreatment statutes, a child is redefined to include an unborn quick child. Withholding the basic necessities of life from an unborn quick child constitutes criminal mistreatment.

In addition, if a mother recklessly causes harm to her unborn child in either of two ways, she is guilty of criminal mistreatment. Those ways are:

- o Use of any drug, including alcohol; or
- o Acquisition of any sexually transmitted disease, including HIV/AIDS.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.