

HOUSE BILL ANALYSIS

HB 2585

Title: An act relating to mistreatment of unborn children.

Brief Description: Making it a crime to harm an unborn child by the use of drugs or alcohol.

Sponsors: Representatives Boldt, Mulliken, Carrell, Sump, Clements and Thompson.

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. 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 or impairment of the function of a body part or organ, or causing a fracture of any body part.

It is a defense to a charge of "withholding any of the basic necessities of life" that the defendant was financially unable to pay for the necessities.

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, a mother who recklessly causes the required level of harm to her unborn child by the use of drugs or alcohol is guilty of criminal mistreatment in the first or second degree.

Fiscal Note: Not requested.

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

Office of Program Research