

HOUSE BILL REPORT

HB 2763

As Passed House:

February 13, 1998

Title: An act relating to dependent persons.

Brief Description: Revising laws on dependent persons.

Sponsors: Representatives McDonald, Sheahan, Lantz and Costa; by request of Attorney General.

Brief History:

Committee Activity:

Law & Justice: 2/4/98, 2/5/98 [DP].

Floor Activity:

Passed House: 2/13/98, 98-0.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Staff: Edie Adams (786-7180).

Background: A parent of a child, a person entrusted with the physical custody of a child or dependent person, or a person employed to provide to a child or dependent person the basic necessities of life may be guilty of the crime of criminal mistreatment in the first or second degree. The parent or person is guilty of the first-degree offense, a class B felony, if he or she recklessly causes great bodily harm to the child or dependent person by withholding any of the basic necessities of life. The parent or person is guilty of the second-degree offense, a class C felony, if he or she either recklessly creates an imminent and substantial risk of death or great bodily harm to the child or dependent person, or recklessly causes substantial bodily harm to the child or dependent person by withholding any of the basic necessities of life. "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care.

The crimes of first- and second-degree criminal mistreatment do not apply to the following situations:

- A decision to withdraw life support systems if made in accordance with law by a health care professional and family members or other persons who have a legal duty to care for the patient; and
- When a terminally ill person or his or her designee requests and receives palliative care from a licensed home health agency, hospice agency, nursing home, or hospital who is providing care under a physician's direction.

The Natural Death Act authorizes a person to execute a directive directing the withholding or withdrawal of life-sustaining treatment if the person is in a terminal condition or a permanent unconscious condition. "Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness, that within reasonable medical judgment will cause death within a reasonable period of time, and where the application of life-sustaining treatment serves only to prolong the process of dying. "Permanent unconscious condition" means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

Summary of Bill: A new crime of criminal mistreatment in the third degree is created. A person commits criminal mistreatment in the third degree if the person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, or is a person employed to provide to the child or dependent person the basic necessities of life, and the person, with criminal negligence, either: creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life. Criminal mistreatment in the third degree is a gross misdemeanor.

The exemption from the offense of criminal mistreatment for a decision to withdraw life support is amended to apply to the third-degree offense, and to provide that the decision to withhold life support must be made in accordance with the medical informed consent law and the Natural Death Act.

The exemption from the offense of criminal mistreatment for a situation where the person is terminally ill and receiving palliative care is amended to apply to the third-degree offense. In addition, this provision is amended to apply to a permanently unconscious person or his or her legal surrogate, as determined under the medical informed consent law. "Permanently unconscious" has the same meaning as "permanent unconscious condition" under the Natural Death Act. "Terminally ill" under this provision is clarified to mean the same as "terminal condition" under the Natural Death Act.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: There have been terrible cases of abuse and neglect in nursing homes that cannot be prosecuted because the current law requires recklessness. The bill is aimed at a small number of care-givers. The current law is deficient and needs to cover abuse or neglect cases involving criminal negligence.

Testimony Against: The bill is not needed because current law is already sufficient. In addition to state laws covering abuse and neglect, there are federal guidelines that can lead to taking the license or closing down a home. The bill presents concerns for hardworking and dedicated nursing assistants. It is too broad and could take on a life of its own once passed and have unintended application.

Testified: Irene Robbins, Senior Lobby (pro); Melissa DeGross, Attorney General's Office (pro); Art Curtis, Washington Association of Prosecuting Attorneys, Clark County Prosecuting Attorney (pro); and Susan Messenger, CRISTA, Senior Community Nursing Center (con).