

SENATE BILL REPORT

ESHB 1471

As Reported By Senate Committee On:
Health & Long-Term Care, March 28, 1997

Title: An act relating to vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: House Committee on Health Care (originally sponsored by Representatives Dyer, Cody, Zellinsky, Conway, Ogden, Linville, Tokuda, Kessler, Scott, Blalock, Gombosky, Costa and Dickerson; by request of Attorney General).

Brief History:

Committee Activity: Health & Long-Term Care: 3/21/97, 3/28/97 [DPA].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Deccio, Chair; Wood, Vice Chair; Benton, Fairley, Franklin and Wojahn.

Staff: Jonathan Seib (786-7427)

Background: A 1996 report by the Long-term Care Ombudsman (Resident Rights, Quality of Care and Regulatory Enforcement) identified concerns with current law regarding the protection of vulnerable persons. The report noted that police departments are not interested in referrals involving residents of long-term care facilities and that criminal prosecutions rarely occur. Two major reasons were cited for this. Many of the potential witnesses are not competent to testify and the current criminal code does not have readily applicable provisions that cover mistreatment of frail or vulnerable adults. The Attorney General's Office reviewed the criminal code and developed suggested legislation.

Summary of Amended Bill: A resident of a nursing home, an adult family home, or a frail elder or vulnerable adult is presumed to be a dependent person for purposes of the criminal mistreatment statutes.

A new crime of criminal mistreatment in the third degree is established for a person who, while caring for a child or dependent person, negligently creates a risk of bodily injury or negligently causes bodily injury by withholding the basic necessities of life.

The existing crimes of criminal mistreatment in the first and second degree are defined to also apply to a person employed to provide a child or dependent person the basic necessities of life where a risk of bodily harm or actual harm is caused by the reckless withholding of those necessities.

A person is guilty of rape in the second degree when the person engages in sexual intercourse with a frail elder or vulnerable adult where the person has a significant relationship with the victim and is not married to them. A person is guilty of indecent liberties when the person knowingly causes a frail elder or vulnerable adult to have sexual contact where the person has a significant relationship with the victim and is not married to them. A significant relationship is defined to include a person who professionally or voluntarily provides assistance, personal care or organized recreational activities to frail elders or vulnerable adults, but does not include a consensual sexual partner.

A person associated with a licensed agency or facility which provides care or treatment of vulnerable adults and who has direct contact with vulnerable adults is required to truthfully disclose his or her criminal background history or be liable for perjury.

The penalty for violating the existing law requiring those aware of incidents of abuse or neglect at nursing homes and state mental hospitals to report the incident to law enforcement officials or the Department of Social and Health Services (DSHS) is increased from a misdemeanor to a gross misdemeanor. Whistleblower provisions are provided to protect those who report under this statute from retaliation.

A criminal penalty is provided in the existing law which requires certain persons to report suspected abuse or neglect of a vulnerable adult to DSHS. Knowingly failing to report is a gross misdemeanor. Whistleblower provisions are provided to protect those who report under this statute from retaliation.

Amended Bill Compared to Substitute Bill: The proposed amendment adds the crime of criminal mistreatment in the third degree. It clarifies that a "significant relationship" in the sex crimes statute does not include a consensual sexual partner of a frail elder or vulnerable adult. It removes language which would have added employees of adult family homes to the existing statute requiring reporting of abuse or neglect at nursing homes and state mental hospitals. Other technical changes are made.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Because of some loopholes in current law, someone responsible for subjecting a vulnerable adult to life threatening abuse or neglect may escape criminal prosecution. Current law does not give prosecutors enough flexibility to appropriately address these situations. This bill addresses these loopholes and gives the Attorney General and prosecutors more tools to respond to cases of abuse and neglect.

Testimony Against: None.

Testified: PRO: Melissa DeGraff, Attorney General's Office; Pat Lashway, Department of Social and Health Services; Vera Granberg, AARP; Liz Lindley, Lifetime Advocacy Plus, WAPG; Rob Menaul, Washington State Hospital Association; Terry Kohl, Washington Protection and Advocacy System; Gail McGaffick, Home Care Association of Washington;

Kary Hyre, Jeff Crollard, Long-Term Care Ombudsman Program; Bruce Reeves, Senior Citizens Lobby; Bill Day.