

HOUSE BILL ANALYSIS

HB 2509

Brief Description: Protecting dependent persons.

Sponsors: Representatives O'Brien and Ballasiotes.

Hearing: January 28, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

STAFF: Trudes Hucheson (786-7384).

BACKGROUND:

I. Hearsay

Generally, hearsay involves a person re-stating in court what somebody else has said outside of court, for the purpose of asserting that the statement is true. Under the rules of evidence, hearsay is usually inadmissible because it is presumed to be unreliable. Whenever hearsay is offered against a criminal defendant, the constitutional right to confrontation is triggered, and courts generally will not admit hearsay unless there exists a well recognized exception or some other assurance of reliability.

Exceptions to the hearsay rule exist both in court rules and in statute. The legislature created a statutory exception to the hearsay rule permitting the introduction, under certain conditions, of hearsay statements by a child relating to sexual abuse. The child must be under the age of ten and must either testify or be unavailable as a witness.

II. Sentencing

The Sentencing Reform Act (SRA) specifies a standard sentence range for an offender based on the seriousness of the offense and the offender's prior criminal history score. The sentencing judge will sentence the offender to a period of confinement within that standard range. Under certain circumstances, the sentencing judge may impose an exceptional sentence that falls below or above the standard range sentence if the judge finds either mitigating circumstances or aggravating circumstances. One of the aggravating factors the judge may consider is whether the offender knew that the victim was particularly vulnerable or incapable of resistance due to extreme youth, advanced

age, disability, or ill health.

In some circumstances the sentencing judge must impose a sentencing enhancement— on the offender’s sentence. A sentencing enhancement is a specified amount of time that is added to the offender’s presumptive sentence. The length of the enhancement generally varies depending upon the level of the felony.

III. Criminal Mistreatment

There are two degrees of the crime of criminal mistreatment. The first degree offense, a class B felony, is committed when a parent of a child, a person entrusted with the physical custody of a child or dependent person, or a person employed to provide a child or dependent person with the basic necessities of life, recklessly causes great bodily harm to the child or dependent person by withholding the basic necessities of life.

Criminal mistreatment in the second degree, a class C felony, involves recklessly creating an imminent and substantial risk of death or great bodily harm, or recklessly causing substantial bodily harm by withholding the basic necessities of life.

Basic necessities of life means food, water, shelter, clothing, and medically necessary health care. Dependent person means a person who, because of physical or mental disability or extreme advanced age, is dependent upon another person to provide the basic necessities of life.

The crimes of criminal mistreatment do not apply to (a) the decision to withdraw life support systems; and (b) situations when a terminally ill person requests palliative care and such care is received from a licensed home health agency, hospice agency, nursing home, or hospital providing care under the direction of a physician.

The Natural Death Act authorizes a person to execute a directive to withhold or withdraw life-sustaining treatment if the person is in a terminal condition or a permanent unconscious condition.

SUMMARY OF BILL:

The Legislature finds that crimes and abuse against vulnerable adults are increasing, and the state has a compelling interest to hear cases involving vulnerable adults.

I. Hearsay

A hearsay exception is created for statements made by a vulnerable adult describing a crime committed against the vulnerable adult or describing neglect, exploitation, abuse, or sexual abuse of the vulnerable adult. The statement is admissible if:

- (a) the court finds after a hearing that the time, content, and circumstances of the

statement demonstrate the statement is sufficiently reliable based on certain factors; and;

(b) the vulnerable adult either (i) testifies; or (ii) is unavailable as a witness and there is corroborative evidence of the act.

The party seeking to use the statement must first notify the other party in advance so the other party has an opportunity to challenge the admissibility of the statement. The hearsay exception applies to criminal and civil proceedings.

For the purposes of the hearsay exception, vulnerable adult– is defined as a person:

(a) 60 years or older who has the functional, mental, or physical inability to care for himself or herself or his or her finances;

(b) 18 years or older and has been found by a court to be incapacitated as defined under the existing guardianship laws;

(c) 18 years or older and who has a developmental disability as defined under the existing disability laws;

(d) 18 years of age or older and who is a resident of an adult facility required to be licensed by the department of social and health services, including nursing homes, adult family homes, and boarding homes; or

(e) 18 years or older and receives services from a home health, hospice, or home care agency or receives similar services from an individual.

Abuse means willfully or negligently causing any bodily injury, pain, or mental anguish to a vulnerable adult. Exploitation means using deception, intimidation, undue influence, or force to obtain or use, or make the vulnerable adult use, the vulnerable adult's property or services for the benefit of a third person. Neglect means the failure of a person to provide the goods or services necessary to maintain the physical or mental health of a vulnerable adult when the person has a duty of care to the vulnerable adult. Sexual abuse means any form of non-consensual sexual contact, including harassment, indecent liberties, and sexually explicit photographing. Sexual abuse also means sexual contact, whether or not consensual, between: (a) any person and an incapacitated or physically helpless person; or (b) a vulnerable adult living in a facility and a staff person or employee of the facility.

II. Sentencing

A mandatory sentencing enhancement is created in the Sentencing Reform Act for offenses committed against vulnerable adults. The following additional times must be added to the presumptive sentence:

- 24 months when the underlying offense is a class A felony;
- 18 months when the underlying offense is a class B felony;
- 12 months when the underlying offense is a class C felony.

III. Criminal Mistreatment

A new crime of criminal mistreatment in the third degree is created as a gross misdemeanor. Criminal mistreatment in the third degree requires only that the parent or person entrusted with the care of a child or dependent person act with criminal negligence, as opposed to recklessness, and (a) creates an imminent and substantial risk of substantial bodily harm by withholding any of the basic necessities of life; or (b) causes substantial bodily harm to the child or dependent person by withholding any of the basic necessities of life.

The exemptions for the offense of criminal mistreatment (withdrawing life support and providing palliative care) are amended to include third-degree criminal mistreatment and to reference the Natural Death Act. In addition, the palliative care exemption is amended to include permanently unconscious persons and to define the terms terminally ill– and permanently unconscious– by referencing the Natural Death Act.

FISCAL NOTE: Requested on January 19, 2000.

EFFECTIVE DATE: Ninety days after adjournment of session in which bill is passed.