

SENATE BILL REPORT

SB 6382

As Reported By Senate Committee On:
Health & Long-Term Care, February 3, 2000

Title: An act relating to dependent persons.

Brief Description: Protecting dependent persons.

Sponsors: Senators Thibaudeau, McCaslin, Long, Costa, Winsley, Rasmussen, Kohl-Welles and McAuliffe; by request of Attorney General.

Brief History:

Committee Activity: Health & Long-Term Care: 1/25/2000, 2/3/2000 [DPS]

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6382 be substituted therefor, and the substitute bill do pass.

Signed by Senators Thibaudeau, Chair; Wojahn, Vice Chair; Costa, Franklin, Johnson and Winsley.

Staff: Jonathan Seib (786-7427)

Background: Recent published reports identified numerous occasions in the past several years where, without consequence to the perpetrator, an elderly or disabled person in this state was subject to abuse or neglect, sometimes over an extended period of time. Often the abuse or neglect occurred at the hands of someone paid by the state to provide these persons with care.

Blame for this, it is suggested, lies in part with existing criminal laws that fail to deter such acts, and make them difficult to prosecute when they occur. Among these are hearsay rules which limit the use of out-of-court statements to circumstances frequently not present in cases involving vulnerable adults; crimes defined in such a way that it is difficult to apply them to the circumstances in which these acts frequently occur; and sentences which do not take into account the vulnerable nature of the person against whom the crime was committed.

Summary of Substitute Bill: A new crime of criminal mistreatment in the third degree is created. This crime is committed when a person entrusted with the care of a dependent person or child, with criminal negligence creates a risk of substantial bodily harm by withholding the basic necessities of life, or with criminal negligence causes substantial bodily harm by withholding the basic necessities of life. Criminal mistreatment in the third degree is a gross misdemeanor.

It is clarified that the new crime does not apply in situations covered by the natural death act.

Substitute Bill Compared to Original Bill: The substitute removes provisions from the original bill: (1) which provided an exception to the hearsay rule in circumstances involving vulnerable adults; and (2) which provided for mandatory enhanced sentences for felonies committed against vulnerable adults.

Appropriation: None.

Fiscal Note: Requested on January 24, 2000.

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

Testimony For: Crimes against the elderly are growing. This bill is the product of an Attorney General's workgroup, consisting of a variety of stakeholders, and charged with examining the system in the state for preventing and responding to crimes against vulnerable adults. The bill's hearsay exception would only allow reliable hearsay. It is necessary because traditional hearsay rules are inappropriate in cases involving vulnerable adults who may, over time, more easily forget crimes committed against them. The hearsay exceptions in the bill are similar to the existing exception for children, which was found to be constitutional. The current criminal code does not cover situations where a vulnerable adult is neglected. The bill is needed to allow prosecution in these situations.

Testimony Against: The creation of a new crime is unnecessary because the criminal code already provides proper protection. The adverse impact on nursing homes will not outweigh any perceived benefits of the statute. The proposed hearsay exception is unconstitutional. The mandatory sentencing enhancement is disproportionate to the nature of the offense. There is no need for new laws, but a need for better enforcement of existing laws.

Testified: PRO: Lynn Pronhuber, King County Prosecutor; Melissa DeGroff, Scott Blonien, Office of the Attorney General; Sue Elliot, ARC of Washington; Donna Patrick, Developmental Disabilities Council; Kary Hyre, Long Term Care Ombudsman; CON: Sherry Appleton, Washington Defender Association, Washington Association of Criminal Defense Lawyers.