

HOUSE BILL REPORT

ESHB 1080

As Amended by the Senate

Title: An act relating to protecting dependent persons by changing the crimes of criminal mistreatment and abandonment of a dependent person.

Brief Description: Protecting dependent persons.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives McDonald, O'Brien and Morrell).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/27/05, 2/22/05 [DPS].

Floor Activity:

Passed House: 3/14/05, 97-0.

Floor Activity:

Passed House: 1/18/06, 96-0.

Senate Amended.

Passed Senate: 3/2/06, 42-0.

Brief Summary of Engrossed Substitute Bill

- Expands the circumstances under which a person can be found guilty of criminal mistreatment and abandonment of a dependent person.
- Increases the penalties for criminal mistreatment in the first and second degrees and abandonment of a dependent person in the first and second degrees.
- Protects Good Samaritans and government agencies that regularly provide care or assistance to dependant persons from liability for negligent acts that may rise to the level of criminal mistreatment in the third or fourth degree.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Kirby and Strow.

Staff: Jim Morishima (786-7191) and Kathryn Leathers (786-7114).

Background:

I. Criminal Mistreatment

In general, a person commits criminal mistreatment if he or she:

- is the parent of a child, is a person entrusted with the physical custody of a child or dependent person, or is employed to provide a child or dependent person with the basic necessities of life; and
- withholds the basic necessities of life from the child or dependent person.

The penalty for criminal mistreatment depends on the intent of the perpetrator and the harm caused to the victim. For example, it is criminal mistreatment in the first degree if the perpetrator recklessly causes great bodily harm to the child or dependent person. Criminal mistreatment in the first degree is a class B felony with a seriousness level of V.

Additionally, it is criminal mistreatment in the second degree if the person recklessly creates an imminent and substantial risk of death or great bodily harm or recklessly causes substantial bodily harm. Criminal mistreatment in the second degree is a class C felony with a seriousness level of III.

II. Abandonment

In general, a person commits abandonment of a dependent person if he or she:

- is the parent of a child, is a person entrusted with the physical custody of a child or dependent person, or is employed to provide a child or dependent person with the basic necessities of life; and
- abandons the dependent person.

As with criminal mistreatment, the penalty for abandonment of a dependent person depends on the intent of the perpetrator and the harm caused to the victim. For example, it is abandonment of a dependent person in the first degree if the perpetrator recklessly causes great bodily harm. Abandonment of a dependent person in the first degree is a class B felony with a seriousness level of V. Additionally, it is abandonment of a dependent person in the second degree if the perpetrator recklessly creates an imminent and substantial risk of death or great bodily harm or recklessly causes substantial bodily harm. Abandonment of a dependent person in the second degree is a class C felony with a seriousness level of III.

Summary of Engrossed Substitute Bill:

I. Criminal Mistreatment

The circumstances under which a person can be guilty of criminal mistreatment are expanded to include when a person who has assumed the responsibility to provide a dependent person the basic necessities of life withholds the basic necessities of life. However, Good Samaritans and government agencies that regularly provide care or assistance to dependant persons are

provided protection from liability for negligent acts that may rise to the level of criminal mistreatment in the third or fourth degree.

A "Good Samaritan" is defined as "any individual or group of individuals who are not related to the dependent person; who voluntarily provides assistance or services of any type to the dependent person; who is not paid, given gifts, or made a beneficiary of any assets valued at \$500 or more, for any reason, by the dependent person, the dependent person's family, or the dependent person's estate; and who does not commit or attempt to commit any other crime against the dependent person or the dependent person's estate."

The seriousness level for criminal mistreatment in the first degree is increased from V to IX. The seriousness level for criminal mistreatment in the second degree is increased from III to V.

II. Abandonment

The circumstances under which a person can be guilty of abandonment of a dependent person are expanded to include when a person who assumed the responsibility to provide a dependent person the basic necessities of life abandons the dependent person.

The seriousness level for abandonment of a dependent person in the first degree is increased from V to IX. The seriousness level for abandonment of a dependent person in the second degree is increased from III to V.

EFFECT OF SENATE AMENDMENT(S):

Makes technical changes to update sections that were amended during the 2005 legislative session.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2005.

Testimony For: (In support) The focus of this bill is to increase the penalties for criminal mistreatment in the first and second degrees. Until recently, judges had the ability to impose higher sentences so that punishment would fit the crime. However, due to the recent supreme court decision, judges no longer have that ability.

There was a young woman who was bed-bound and was being taken care of by two state paid care workers. When the woman was brought into a local hospital, the doctors found that she had been suffering from 11 pressure ulcers, dehydration, and malnutrition. The defendants in this case were charged with criminal mistreatment which is a six to 12 month sentence. An offender who would have been sentenced for assault, which involves the same degree of great bodily harm, would have received over a 90-month sentence.

Another case, involved an elderly man who was found barricaded in his bedroom with the windows closed; the temperature was over 90 degrees. He was found wearing a garbage bag for a diaper and he was also suffering from malnutrition and dehydration. The defendant in this case was charged with criminal mistreatment in the second degree, a one to three month sentence.

The bill does two things. First, it corrects the fact that criminal mistreatment and abandonment have been undervalued in the Washington Sentencing Guidelines. Second, it helps to make this crime applicable to adult victims. Criminal treatment in the past has mainly been used to victimize children.

There have only been 13 cases of criminal treatment that have been prosecuted in the last four years.

(Concerns) The definition of "person" needs to be amended in the bill. The language in the bill may also need to be reworked to ensure that the language is not too broad as there will not be any tort liability for anyone, including local agencies.

Testimony Against: None.

Persons Testifying: (In support) Representative McDonald, prime sponsor; and Page Ulrey, King County Prosecuting Office.

(Concerns) Laverne Lamoureux, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.