

2 **SHB 2382** - S COMM AMD
3 By Committee on Judiciary

4 ADOPTED 03/04/02

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature recognizes that responses
8 by the department of social and health services and public safety
9 agencies have varied between jurisdictions when allegations of
10 withholding of the basic necessities of life are made. The legislature
11 intends to improve the capacity of the department of social and health
12 services and public safety agencies to respond to situations where the
13 basic necessities of life are withheld by allowing an earlier
14 intervention in such cases. The legislature finds that improved
15 coordination between the department of social and health services and
16 public safety agencies at an earlier point will lead to better
17 treatment of children and families and will reduce the likelihood of
18 serious harm.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.42 RCW
20 to read as follows:

21 (1) A person is guilty of the crime of criminal mistreatment in the
22 fourth degree if the person is the parent of a child, is a person
23 entrusted with the physical custody of a child or other dependent
24 person, or is a person employed to provide to the child or dependent
25 person the basic necessities of life, and either:

26 (a) With criminal negligence, creates an imminent and substantial
27 risk of bodily injury to a child or dependent person by withholding any
28 of the basic necessities of life; or

29 (b) With criminal negligence, causes bodily injury or extreme
30 emotional distress manifested by more than transient physical symptoms
31 to a child or dependent person by withholding the basic necessities of
32 life.

33 (2) Criminal mistreatment in the fourth degree is a misdemeanor.

1 **Sec. 3.** RCW 9A.42.040 and 2000 c 76 s 2 are each amended to read
2 as follows:

3 RCW 9A.42.020, 9A.42.030, (~~and~~) 9A.42.035, and section 2 of this
4 act do not apply to decisions to withdraw life support systems made in
5 accordance with chapter 7.70 or 70.122 RCW by the dependent person, his
6 or her legal surrogate, or others with a legal duty to care for the
7 dependent person.

8 **Sec. 4.** RCW 9A.42.045 and 2000 c 76 s 3 are each amended to read
9 as follows:

10 RCW 9A.42.020, 9A.42.030, (~~and~~) 9A.42.035, and section 2 of this
11 act do not apply when a terminally ill or permanently unconscious
12 person or his or her legal surrogate, as set forth in chapter 7.70 RCW,
13 requests, and the person receives, palliative care from a licensed home
14 health agency, hospice agency, nursing home, or hospital providing care
15 under the medical direction of a physician. As used in this section,
16 the terms "terminally ill" and "permanently unconscious" have the same
17 meaning as "terminal condition" and "permanent unconscious condition"
18 in chapter 70.122 RCW.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 9A.42 RCW
20 to read as follows:

21 (1) When a law enforcement officer arrests a person for criminal
22 mistreatment of a child, the officer must notify child protective
23 services.

24 (2) When a law enforcement officer arrests a person for criminal
25 mistreatment of a dependent person other than a child, the officer must
26 notify adult protective services.

27 **Sec. 6.** RCW 10.05.010 and 1998 c 208 s 1 are each amended to read
28 as follows:

29 (1) In a court of limited jurisdiction a person charged with a
30 misdemeanor or gross misdemeanor may petition the court to be
31 considered for a deferred prosecution program. The petition shall be
32 filed with the court at least seven days before the date set for trial
33 but, upon a written motion and affidavit establishing good cause for
34 the delay and failure to comply with this section, the court may waive
35 this requirement subject to the defendant's reimbursement to the court

1 of the witness fees and expenses due for subpoenaed witnesses who have
2 appeared on the date set for trial.

3 (2) A person charged with a traffic infraction, misdemeanor, or
4 gross misdemeanor under Title 46 RCW shall not be eligible for a
5 deferred prosecution program unless the court makes specific findings
6 pursuant to RCW 10.05.020. Such person shall not be eligible for a
7 deferred prosecution program more than once. Separate offenses
8 committed more than seven days apart may not be consolidated in a
9 single program.

10 (3) A person charged with a misdemeanor or a gross misdemeanor
11 under chapter 9A.42 RCW shall not be eligible for a deferred
12 prosecution program unless the court makes specific findings pursuant
13 to RCW 10.05.020. Such person shall not be eligible for a deferred
14 prosecution program more than once.

15 **Sec. 7.** RCW 10.05.020 and 1996 c 24 s 1 are each amended to read
16 as follows:

17 (1) Except as provided in subsection (2) of this section, the
18 petitioner shall allege under oath in the petition that the wrongful
19 conduct charged is the result of or caused by alcoholism, drug
20 addiction, or mental problems for which the person is in need of
21 treatment and unless treated the probability of future reoccurrence is
22 great, along with a statement that the person agrees to pay the cost of
23 a diagnosis and treatment of the alleged problem or problems if
24 financially able to do so. The petition shall also contain a case
25 history and written assessment prepared by an approved alcoholism
26 treatment program as designated in chapter 70.96A RCW if the petition
27 alleges alcoholism, an approved drug program as designated in chapter
28 71.24 RCW if the petition alleges drug addiction, or by an approved
29 mental health center if the petition alleges a mental problem.

30 (2) In the case of a petitioner charged with a misdemeanor or gross
31 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
32 oath in the petition that the petitioner is the natural or adoptive
33 parent of the alleged victim; that the wrongful conduct charged is the
34 result of parenting problems for which the petitioner is in need of
35 services; that the petitioner is in need of child welfare services
36 under chapter 74.13 RCW to improve his or her parenting skills in order
37 to better provide his or her child or children with the basic
38 necessities of life; that the petitioner wants to correct his or her

1 conduct to reduce the likelihood of harm to his or her minor children;
2 that in the absence of child welfare services the petitioner may be
3 unable to reduce the likelihood of harm to his or her minor children;
4 and that the petitioner has cooperated with the department of social
5 and health services to develop a plan to receive appropriate child
6 welfare services; along with a statement that the person agrees to pay
7 the cost of the services if he or she is financially able to do so.
8 The petition shall also contain a case history and a written service
9 plan from the department of social and health services.

10 (3) Before entry of an order deferring prosecution, a petitioner
11 shall be advised of his or her rights as an accused and execute, as a
12 condition of receiving treatment, a statement that contains: (a) An
13 acknowledgement of his or her rights; (b) an acknowledgement and waiver
14 of the right to testify, the right to a speedy trial, the right to call
15 witnesses to testify, the right to present evidence in his or her
16 defense, and the right to a jury trial; (c) a stipulation to the
17 admissibility and sufficiency of the facts contained in the written
18 police report; and (d) an acknowledgement that the statement will be
19 entered and used to support a finding of guilty if the court finds
20 cause to revoke the order granting deferred prosecution. The
21 petitioner shall also be advised that he or she may, if he or she
22 proceeds to trial and is found guilty, be allowed to seek suspension of
23 some or all of the fines and incarceration that may be ordered upon the
24 condition that he or she seek treatment and, further, that he or she
25 may seek treatment from public and private agencies at any time without
26 regard to whether or not he or she is found guilty of the offense
27 charged. He or she shall also be advised that the court will not
28 accept a petition for deferred prosecution from a person who sincerely
29 believes that he or she is innocent of the charges or sincerely
30 believes that he or she does not, in fact, suffer from alcoholism, drug
31 addiction, or mental problems, or in the case of a petitioner charged
32 under chapter 9A.42 RCW, sincerely believes that he or she does not
33 need child welfare services.

34 ((+3)) (4) Before entering an order deferring prosecution, the
35 court shall make specific findings that: (a) The petitioner has
36 stipulated to the admissibility and sufficiency of the facts as
37 contained in the written police report; (b) the petitioner has
38 acknowledged the admissibility of the stipulated facts in any criminal
39 hearing on the underlying offense or offenses held subsequent to

1 revocation of the order granting deferred prosecution; (c) the
2 petitioner has acknowledged and waived the right to testify, the right
3 to a speedy trial, the right to call witnesses to testify, the right to
4 present evidence in his or her defense, and the right to a jury trial;
5 and (d) the petitioner's statements were made knowingly and
6 voluntarily. Such findings shall be included in the order granting
7 deferred prosecution.

8 **Sec. 8.** RCW 10.05.030 and 1999 c 143 s 42 are each amended to read
9 as follows:

10 The arraigining judge upon consideration of the petition and with
11 the concurrence of the prosecuting attorney may continue the
12 arraignment and refer such person for a diagnostic investigation and
13 evaluation to an approved alcoholism treatment program as designated in
14 chapter 70.96A RCW, if the petition alleges an alcohol problem, an
15 approved drug treatment center as designated in chapter 71.24 RCW, if
16 the petition alleges a drug problem, ~~((or))~~ to an approved mental
17 health center, if the petition alleges a mental problem, or the
18 department of social and health services if the petition is brought
19 under RCW 10.05.020(2).

20 **Sec. 9.** RCW 10.05.040 and 1985 c 352 s 7 are each amended to read
21 as follows:

22 The facility to which such person is referred, or the department of
23 social and health services if the petition is brought under RCW
24 10.05.020(2), shall conduct an investigation and examination to
25 determine:

- 26 (1) Whether the person suffers from the problem described;
27 (2) Whether the problem is such that if not treated, or if no child
28 welfare services are provided, there is a probability that similar
29 misconduct will occur in the future;
30 (3) Whether extensive and long term treatment is required;
31 (4) Whether effective treatment or child welfare services for the
32 person's problem ~~((is))~~ are available; and
33 (5) Whether the person is amenable to treatment or willing to
34 cooperate with child welfare services.

35 **Sec. 10.** RCW 10.05.050 and 1985 c 352 s 8 are each amended to read
36 as follows:

1 (1) The facility, or the department of social and health services
2 if the petition is brought under RCW 10.05.020(2), shall make a written
3 report to the court stating its findings and recommendations after the
4 examination required by RCW 10.05.040. If its findings and
5 recommendations support treatment or the implementation of a child
6 welfare service plan, it shall also recommend a treatment or service
7 plan setting out:

8 ~~((1))~~ (a) The type;

9 ~~((2))~~ (b) Nature;

10 ~~((3))~~ (c) Length;

11 ~~((4))~~ (d) A treatment or service time schedule; and

12 ~~((5))~~ (e) Approximate cost of the treatment or child welfare
13 services.

14 (2) In the case of a child welfare service plan, the plan shall be
15 designed in a manner so that a parent who successfully completes the
16 plan will not be likely to withhold the basic necessities of life from
17 his or her child.

18 (3) The report with the treatment or service plan shall be filed
19 with the court and a copy given to the petitioner and petitioner's
20 counsel. A copy of the treatment or service plan shall be given to the
21 prosecutor by petitioner's counsel at the request of the prosecutor.
22 The evaluation facility, or the department of social and health
23 services if the petition is brought under RCW 10.05.020(2), making the
24 written report shall append to the report a commitment by the treatment
25 facility or the department of social and health services that it will
26 provide the treatment or child welfare services in accordance with this
27 chapter. The facility or the service provider shall agree to provide
28 the court with a statement every three months for the first year and
29 every six months for the second year regarding (a) the petitioner's
30 cooperation with the treatment or child welfare service plan proposed
31 and (b) the petitioner's progress or failure in treatment or child
32 welfare services. These statements shall be made as a declaration by
33 the person who is personally responsible for providing the treatment or
34 services.

35 **Sec. 11.** RCW 26.44.130 and 1988 c 190 s 4 are each amended to read
36 as follows:

37 When a peace officer responds to a call alleging that a child has
38 been subjected to sexual or physical abuse or criminal mistreatment and

1 has probable cause to believe that a crime has been committed or
2 responds to a call alleging that a temporary restraining order or
3 preliminary injunction has been violated, the peace officer has the
4 authority to arrest the person without a warrant pursuant to RCW
5 10.31.100.

6 NEW SECTION. **Sec. 12.** A new section is added to chapter 10.05 RCW
7 to read as follows:

8 Child welfare services provided under chapter 74.13 RCW pursuant to
9 a deferred prosecution ordered under RCW 10.05.060 may not be construed
10 to prohibit the department from providing services or undertaking
11 proceedings pursuant to chapter 13.34 or 26.44 RCW.

12 NEW SECTION. **Sec. 13.** A new section is added to chapter 74.13 RCW
13 to read as follows:

14 The department or its contractors may provide child welfare
15 services pursuant to a deferred prosecution plan ordered under chapter
16 10.05 RCW. Child welfare services provided under this chapter pursuant
17 to a deferred prosecution order may not be construed to prohibit the
18 department from providing services or undertaking proceedings pursuant
19 to chapter 13.34 or 26.44 RCW.

20 **Sec. 14.** RCW 10.05.120 and 1998 c 208 s 3 are each amended to read
21 as follows:

22 (1) Three years after receiving proof of successful completion of
23 the two-year treatment program, but not before five years following
24 entry of the order of deferred prosecution pursuant to a petition
25 brought under RCW 10.05.020(1), the court shall dismiss the charges
26 pending against the petitioner.

27 (2) When a deferred prosecution is ordered pursuant to a petition
28 brought under RCW 10.05.020(2) and the court has received proof that
29 the petitioner has successfully completed the child welfare service
30 plan, or the plan has been terminated because the alleged victim has
31 reached his or her majority and there are no other minor children in
32 the home, the court shall dismiss the charges pending against the
33 petitioner: PROVIDED, That in any case where the petitioner's parental
34 rights have been terminated with regard to the alleged victim due to
35 abuse or neglect that occurred during the pendency of the deferred
36 prosecution, the termination shall be per se evidence that the

1 petitioner did not successfully complete the child welfare service
2 plan.

3 NEW SECTION. **Sec. 15.** (1) The department of social and health
4 services, in consultation with the attorney general and organizations
5 representing law enforcement agencies, shall prepare a plan for
6 improved coordination of services to families when a member of the
7 family is charged with criminal mistreatment under chapter 9A.42 RCW.
8 The plan shall include revisions in the department's identification of
9 the needs for services for the families following an arrest and filing
10 of criminal mistreatment charges, delivery of such services, ways of
11 enhancing cooperation with law enforcement agencies during and
12 following the investigation and trial on such charges, improved
13 identification of those incidents which may precede such charges and
14 are indicators of a need for offering of services and possible
15 improvements in the methods of response to such incidents, suggestions
16 for ongoing efforts in reducing the number of criminal mistreatment
17 charges through improved identification of incidents and trends that
18 are markers of potentially serious family stress, and a review of the
19 adequacy of current sentencing for violations of the criminal
20 mistreatment statutes.

21 (2) The department of social and health services shall regularly
22 consult with the legislature in the preparation of the plan. The plan
23 shall be submitted to the governor and the legislature not later than
24 December 1, 2002.

25 (3) This section expires December 31, 2002."

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27 By Committee on Judiciary

28 ADOPTED 03/04/02

29 On page 1, line 1 of the title, after "mistreatment;" strike the
30 remainder of the title and insert "amending RCW 9A.42.040, 9A.42.045,
31 10.05.010, 10.05.020, 10.05.030, 10.05.040, 10.05.050, 26.44.130, and
32 10.05.120; adding new sections to chapter 9A.42 RCW; adding a new
33 section to chapter 10.05 RCW; adding a new section to chapter 74.13

1 RCW; creating new sections; prescribing penalties; and providing an
2 expiration date."

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