

FINAL BILL REPORT

SHB 2382

C 219 L 02

Synopsis as Enacted

Brief Description: Revising provisions relating to criminal mistreatment.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Dickerson, O'Brien, Kagi, Darneille and Chase).

House Committee on Criminal Justice & Corrections
Senate Committee on Judiciary

Background:

I. Criminal Mistreatment

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 the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she recklessly causes great bodily harm to a child by withholding the basic necessities of life. Criminal mistreatment in the first degree is a class B felony with a seriousness level of V.

Such a person is guilty of criminal mistreatment in the second degree if he or she recklessly creates an imminent and substantial risk of death or great bodily harm or causes substantial bodily harm by withholding the basic necessities of life. Criminal mistreatment in the second degree is a class C felony with a seriousness level of III.

Such a person is guilty of criminal mistreatment in the third degree if he or she, with criminal negligence, creates an imminent and substantial risk of substantial bodily harm by withholding the basic necessities of life or causes substantial bodily harm to a child or dependent person by withholding the basic necessities of life. Criminal mistreatment in the third degree is a gross misdemeanor.

For purposes of the criminal mistreatment laws, "basic necessities of life" means food, water, shelter, clothing, and medically necessary health care. "Bodily injury" means physical pain or injury, illness, or an impairment of physical condition.

II. Deferred Prosecutions

Any person charged with a non-felony offense in district court may petition for a deferred prosecution. In order to be eligible for a deferred prosecution, the defendant must allege that the criminal conduct in question resulted from alcoholism or drug addiction, that the

conduct is likely to recur if the alcoholism or drug addiction is not treated, and that the alcoholism or drug addiction is amenable to treatment. The defendant must also waive the right to testify, call witnesses, have a speedy trial, and have a jury trial.

If a person is granted a deferred prosecution, he or she must successfully complete a court-ordered, two-year treatment program. Upon completion, the court will dismiss the charges. If a person is convicted of a similar offense that was committed while the defendant is on deferral status, the deferral is revoked and judgment is entered on the deferred charge.

Summary:

I. Criminal Mistreatment

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 the basic necessities of life is guilty of criminal mistreatment in the fourth degree (a misdemeanor) if he or she, with criminal negligence:

- creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding the basic necessities of life; or
- causes bodily injury or extreme mental distress to a child or dependent person by withholding any of the basic necessities of life.

A peace officer has the authority to make a warrantless arrest of a person the officer has probable cause to believe is guilty of criminal mistreatment. When an officer arrests a person for criminal mistreatment of a child, the office must notify the Child Protective Services division of the Department of Social and Health Services (DSHS). When an officer arrests a person for criminal mistreatment of an adult, the officer must notify Adult Protective Services.

The DSHS, in consultation with the Attorney General and representatives of law enforcement agencies, must prepare a plan for improved coordination of services to families when a family member is charged with criminal mistreatment. The DSHS must regularly consult with the Legislature in the preparation of the plan, which must be submitted to the Governor and the Legislature by December 1, 2002.

II. Deferred Prosecution

A person charged with criminal mistreatment in the third degree or criminal mistreatment in the fourth degree is eligible for deferred prosecution only if the person alleges all of the following under oath that:

- the person is the natural or adoptive parent of the alleged victim.
- the wrongful conduct is the result of parenting problems for which the person is in need of services.

- the person is in need of child welfare services to improve his or her parenting skills.
- the person wants to correct his or her conduct to reduce the likelihood of harm to his or her children.
- the person may not be able to reduce the likelihood of harm to his or her children without child welfare services.
- the person has cooperated with the DSHS to develop a plan to receive appropriate child welfare services.
- the person agrees to pay the cost of the services if he or she is financially able.

The petition for deferral must contain a case history and a written service plan from the DSHS. The arraignment judge may refer the person to the DSHS for a diagnostic investigation and evaluation. The DSHS must conduct an investigation and examination to determine:

- whether the person suffers from the problem described;
- whether there is a probability that future misconduct will occur if no child welfare services are provided;
- whether long-term treatment is required;
- whether effective child welfare services are available; and
- whether the person is amenable to cooperation with child welfare services.

If the DSHS recommends a child welfare services plan, the plan must include the type, nature, and length of services along with their approximate cost. The services must be designed in a manner so that a parent who successfully completes the services will not be likely to withhold the basic necessities of life from his or her children. Child welfare services provided under a deferred prosecution do not affect the DSHS's ability to undertake proceedings under the statutory provisions dealing with child abuse.

When the court has received proof that the person has successfully completed the child welfare service plan, or if the victim has reached the age of majority and there are no other children in the home, the court must dismiss the charges. If the person's parental rights were terminated due to abuse or neglect of the child in question during the deferral period, the termination is per se evidence that the person did not complete the child welfare service plan.

Votes on Final Passage:

House 97 0
 Senate 47 0 (Senate amended)
 House 94 0 (House concurred)

Effective: June 13, 2002