

CERTIFICATION OF ENROLLMENT  
**SUBSTITUTE HOUSE BILL 2382**

57th Legislature  
2002 Regular Session

Passed by the House March 9, 2002  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 4, 2002  
Yeas 47 Nays 0

\_\_\_\_\_  
**President of the Senate**

Approved

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2382** as passed by the House of Representatives and the Senate on the dates hereon set forth.

\_\_\_\_\_  
**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2382**

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AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

**State of Washington                      57th Legislature                      2002 Regular Session**

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

Read first time 02/06/2002. Referred to Committee on .

1            AN ACT Relating to criminal mistreatment; amending RCW 9A.42.040,  
2 9A.42.045, 10.05.010, 10.05.020, 10.05.030, 10.05.040, 10.05.050,  
3 26.44.130, and 10.05.120; adding new sections to chapter 9A.42 RCW;  
4 adding a new section to chapter 10.05 RCW; adding a new section to  
5 chapter 74.13 RCW; creating new sections; prescribing penalties; and  
6 providing an expiration date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

3        (1) A person is guilty of the crime of criminal mistreatment in the  
4 fourth degree if the person is the parent of a child, is a person  
5 entrusted with the physical custody of a child or other dependent  
6 person, or is a person employed to provide to the child or dependent  
7 person the basic necessities of life, and either:

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

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

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

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

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

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

25        RCW 9A.42.020, 9A.42.030, (~~and~~) 9A.42.035, and section 2 of this  
26 act do not apply when a terminally ill or permanently unconscious  
27 person or his or her legal surrogate, as set forth in chapter 7.70 RCW,  
28 requests, and the person receives, palliative care from a licensed home  
29 health agency, hospice agency, nursing home, or hospital providing care  
30 under the medical direction of a physician. As used in this section,  
31 the terms "terminally ill" and "permanently unconscious" have the same  
32 meaning as "terminal condition" and "permanent unconscious condition"  
33 in chapter 70.122 RCW.

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

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

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

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

9 (1) In a court of limited jurisdiction a person charged with a  
10 misdemeanor or gross misdemeanor may petition the court to be  
11 considered for a deferred prosecution program. The petition shall be  
12 filed with the court at least seven days before the date set for trial  
13 but, upon a written motion and affidavit establishing good cause for  
14 the delay and failure to comply with this section, the court may waive  
15 this requirement subject to the defendant's reimbursement to the court  
16 of the witness fees and expenses due for subpoenaed witnesses who have  
17 appeared on the date set for trial.

18 (2) A person charged with a traffic infraction, misdemeanor, or  
19 gross misdemeanor under Title 46 RCW shall not be eligible for a  
20 deferred prosecution program unless the court makes specific findings  
21 pursuant to RCW 10.05.020. Such person shall not be eligible for a  
22 deferred prosecution program more than once. Separate offenses  
23 committed more than seven days apart may not be consolidated in a  
24 single program.

25 (3) A person charged with a misdemeanor or a gross misdemeanor  
26 under chapter 9A.42 RCW shall not be eligible for a deferred  
27 prosecution program unless the court makes specific findings pursuant  
28 to RCW 10.05.020. Such person shall not be eligible for a deferred  
29 prosecution program more than once.

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

32 (1) Except as provided in subsection (2) of this section, the  
33 petitioner shall allege under oath in the petition that the wrongful  
34 conduct charged is the result of or caused by alcoholism, drug  
35 addiction, or mental problems for which the person is in need of  
36 treatment and unless treated the probability of future reoccurrence is  
37 great, along with a statement that the person agrees to pay the cost of

1 a diagnosis and treatment of the alleged problem or problems if  
2 financially able to do so. The petition shall also contain a case  
3 history and written assessment prepared by an approved alcoholism  
4 treatment program as designated in chapter 70.96A RCW if the petition  
5 alleges alcoholism, an approved drug program as designated in chapter  
6 71.24 RCW if the petition alleges drug addiction, or by an approved  
7 mental health center if the petition alleges a mental problem.

8 (2) In the case of a petitioner charged with a misdemeanor or gross  
9 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under  
10 oath in the petition that the petitioner is the natural or adoptive  
11 parent of the alleged victim; that the wrongful conduct charged is the  
12 result of parenting problems for which the petitioner is in need of  
13 services; that the petitioner is in need of child welfare services  
14 under chapter 74.13 RCW to improve his or her parenting skills in order  
15 to better provide his or her child or children with the basic  
16 necessities of life; that the petitioner wants to correct his or her  
17 conduct to reduce the likelihood of harm to his or her minor children;  
18 that in the absence of child welfare services the petitioner may be  
19 unable to reduce the likelihood of harm to his or her minor children;  
20 and that the petitioner has cooperated with the department of social  
21 and health services to develop a plan to receive appropriate child  
22 welfare services; along with a statement that the person agrees to pay  
23 the cost of the services if he or she is financially able to do so.  
24 The petition shall also contain a case history and a written service  
25 plan from the department of social and health services.

26 (3) Before entry of an order deferring prosecution, a petitioner  
27 shall be advised of his or her rights as an accused and execute, as a  
28 condition of receiving treatment, a statement that contains: (a) An  
29 acknowledgement of his or her rights; (b) an acknowledgement and waiver  
30 of the right to testify, the right to a speedy trial, the right to call  
31 witnesses to testify, the right to present evidence in his or her  
32 defense, and the right to a jury trial; (c) a stipulation to the  
33 admissibility and sufficiency of the facts contained in the written  
34 police report; and (d) an acknowledgement that the statement will be  
35 entered and used to support a finding of guilty if the court finds  
36 cause to revoke the order granting deferred prosecution. The  
37 petitioner shall also be advised that he or she may, if he or she  
38 proceeds to trial and is found guilty, be allowed to seek suspension of  
39 some or all of the fines and incarceration that may be ordered upon the

1 condition that he or she seek treatment and, further, that he or she  
2 may seek treatment from public and private agencies at any time without  
3 regard to whether or not he or she is found guilty of the offense  
4 charged. He or she shall also be advised that the court will not  
5 accept a petition for deferred prosecution from a person who sincerely  
6 believes that he or she is innocent of the charges or sincerely  
7 believes that he or she does not, in fact, suffer from alcoholism, drug  
8 addiction, or mental problems, or in the case of a petitioner charged  
9 under chapter 9A.42 RCW, sincerely believes that he or she does not  
10 need child welfare services.

11 ((+3+)) (4) Before entering an order deferring prosecution, the  
12 court shall make specific findings that: (a) The petitioner has  
13 stipulated to the admissibility and sufficiency of the facts as  
14 contained in the written police report; (b) the petitioner has  
15 acknowledged the admissibility of the stipulated facts in any criminal  
16 hearing on the underlying offense or offenses held subsequent to  
17 revocation of the order granting deferred prosecution; (c) the  
18 petitioner has acknowledged and waived the right to testify, the right  
19 to a speedy trial, the right to call witnesses to testify, the right to  
20 present evidence in his or her defense, and the right to a jury trial;  
21 and (d) the petitioner's statements were made knowingly and  
22 voluntarily. Such findings shall be included in the order granting  
23 deferred prosecution.

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

26 The arraignment judge upon consideration of the petition and with  
27 the concurrence of the prosecuting attorney may continue the  
28 arraignment and refer such person for a diagnostic investigation and  
29 evaluation to an approved alcoholism treatment program as designated in  
30 chapter 70.96A RCW, if the petition alleges an alcohol problem, an  
31 approved drug treatment center as designated in chapter 71.24 RCW, if  
32 the petition alleges a drug problem, ((or)) to an approved mental  
33 health center, if the petition alleges a mental problem, or the  
34 department of social and health services if the petition is brought  
35 under RCW 10.05.020(2).

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

1       The facility to which such person is referred, or the department of  
2 social and health services if the petition is brought under RCW  
3 10.05.020(2), shall conduct an investigation and examination to  
4 determine:

5       (1) Whether the person suffers from the problem described;

6       (2) Whether the problem is such that if not treated, or if no child  
7 welfare services are provided, there is a probability that similar  
8 misconduct will occur in the future;

9       (3) Whether extensive and long term treatment is required;

10       (4) Whether effective treatment or child welfare services for the  
11 person's problem (~~(is)~~) are available; and

12       (5) Whether the person is amenable to treatment or willing to  
13 cooperate with child welfare services.

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

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

23       (~~(1)~~) (a) The type;

24       (~~(2)~~) (b) Nature;

25       (~~(3)~~) (c) Length;

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

27       (~~(5)~~) (e) Approximate cost of the treatment or child welfare  
28 services.

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

33       (3) The report with the treatment or service plan shall be filed  
34 with the court and a copy given to the petitioner and petitioner's  
35 counsel. A copy of the treatment or service plan shall be given to the  
36 prosecutor by petitioner's counsel at the request of the prosecutor.  
37 The evaluation facility, or the department of social and health  
38 services if the petition is brought under RCW 10.05.020(2), making the

1 written report shall append to the report a commitment by the treatment  
2 facility or the department of social and health services that it will  
3 provide the treatment or child welfare services in accordance with this  
4 chapter. The facility or the service provider shall agree to provide  
5 the court with a statement every three months for the first year and  
6 every six months for the second year regarding (a) the petitioner's  
7 cooperation with the treatment or child welfare service plan proposed  
8 and (b) the petitioner's progress or failure in treatment or child  
9 welfare services. These statements shall be made as a declaration by  
10 the person who is personally responsible for providing the treatment or  
11 services.

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

14 When a peace officer responds to a call alleging that a child has  
15 been subjected to sexual or physical abuse or criminal mistreatment and  
16 has probable cause to believe that a crime has been committed or  
17 responds to a call alleging that a temporary restraining order or  
18 preliminary injunction has been violated, the peace officer has the  
19 authority to arrest the person without a warrant pursuant to RCW  
20 10.31.100.

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

23 Child welfare services provided under chapter 74.13 RCW pursuant to  
24 a deferred prosecution ordered under RCW 10.05.060 may not be construed  
25 to prohibit the department from providing services or undertaking  
26 proceedings pursuant to chapter 13.34 or 26.44 RCW.

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

29 The department or its contractors may provide child welfare  
30 services pursuant to a deferred prosecution plan ordered under chapter  
31 10.05 RCW. Child welfare services provided under this chapter pursuant  
32 to a deferred prosecution order may not be construed to prohibit the  
33 department from providing services or undertaking proceedings pursuant  
34 to chapter 13.34 or 26.44 RCW.



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

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

8       (2) When a deferred prosecution is ordered pursuant to a petition  
9 brought under RCW 10.05.020(2) and the court has received proof that  
10 the petitioner has successfully completed the child welfare service  
11 plan, or the plan has been terminated because the alleged victim has  
12 reached his or her majority and there are no other minor children in  
13 the home, the court shall dismiss the charges pending against the  
14 petitioner: PROVIDED, That in any case where the petitioner's parental  
15 rights have been terminated with regard to the alleged victim due to  
16 abuse or neglect that occurred during the pendency of the deferred  
17 prosecution, the termination shall be per se evidence that the  
18 petitioner did not successfully complete the child welfare service  
19 plan.

20       NEW SECTION.   **Sec. 15.** (1) The department of social and health  
21 services, in consultation with the attorney general and organizations  
22 representing law enforcement agencies, shall prepare a plan for  
23 improved coordination of services to families when a member of the  
24 family is charged with criminal mistreatment under chapter 9A.42 RCW.  
25 The plan shall include revisions in the department's identification of  
26 the needs for services for the families following an arrest and filing  
27 of criminal mistreatment charges, delivery of such services, ways of  
28 enhancing cooperation with law enforcement agencies during and  
29 following the investigation and trial on such charges, improved  
30 identification of those incidents which may precede such charges and  
31 are indicators of a need for offering of services and possible  
32 improvements in the methods of response to such incidents, suggestions  
33 for ongoing efforts in reducing the number of criminal mistreatment  
34 charges through improved identification of incidents and trends that  
35 are markers of potentially serious family stress, and a review of the  
36 adequacy of current sentencing for violations of the criminal  
37 mistreatment statutes.

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

5           (3) This section expires December 31, 2002.

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