

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2382

Chapter 219, Laws of 2002

57th Legislature
2002 Regular Session

CRIMINAL MISTREATMENT

EFFECTIVE DATE: 6/13/02

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

FRANK CHOPP
Speaker of the House of Representatives

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

BRAD OWEN
President of the Senate

Approved March 28, 2002

GARY LOCKE
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.

CYNTHIA ZEHNDER
Chief Clerk

FILED

March 28, 2002 - 8:52 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2382

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 arraigining 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.

Passed the House March 9, 2002.

Passed the Senate March 4, 2002.

Approved by the Governor March 28, 2002.

Filed in Office of Secretary of State March 28, 2002.