

HOUSE BILL REPORT

SHB 2382

As Amended by the Senate

Title: An act relating to criminal mistreatment.

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).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/30/02, 2/6/02 [DPS].

Floor Activity:

Passed House: 2/14/02, 97-0.

Senate Amended.

Passed Senate: 3/4/02, 47-0.

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">· Expands the criminal mistreatment in the third degree to include harm that results in a mental disorder.· Prohibits the infliction of bodily injury and extreme mental distress by withholding the basic necessities of life.

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; Lovick, Vice Chair; Ballasiotes, Ranking Minority Member; Ahern, Kagi, Kirby and Morell.

Staff: Jim Morishima (786-7191).

Background:

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. "Great bodily harm" means bodily injury that creates a high probability of death, or that causes serious permanent disfigurement, or a permanent or protracted loss or impairment of bodily function. "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, a temporary but substantial loss or impairment of bodily function, or a fracture of any bodily part. "Bodily injury" means physical pain or injury, illness, or an impairment of a physical condition.

Summary of Substitute Bill:

Criminal mistreatment in the third degree is expanded to include 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, who with criminal negligence, causes harm that results in a mental disorder to a child or dependent person by withholding the basic necessities of life. "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

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 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.

It is an affirmative defense to criminal mistreatment in the fourth degree that the basic necessities of life were withheld:

- as part of a religious observance when no permanent injury or illness resulted; or
- as a disciplinary measure for a reasonable period of time and no permanent injury or illness resulted.

Criminal mistreatment in the fourth degree is a misdemeanor.

EFFECT OF SENATE AMENDMENT(S):

Removes the changes to criminal mistreatment in the third degree. Removes affirmative defenses to criminal mistreatment in the fourth degree relating to religious observances and discipline. Allows persons to be arrested for criminal mistreatment without a warrant. Requires arresting officers to report criminal mistreatment to child or adult protective services. Imposes requirements for deferred prosecutions for criminal mistreatment in the third and fourth degrees. Requires the DSHS to prepare a plan for improved coordination of services to families when a family member is charged with criminal mistreatment.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Severe child neglect is the most dangerous type of child abuse in terms of child development. Law enforcement officials have their hands tied and do not have the requisite tools to deal with these types of cases. This bill is meant to be a motivator for parents to stop the horrible conditions that exist in the home. Chronic neglect is under-punished in Washington. The damage to the cognitive development of children who are victims of chronic neglect can be irreversible. This law will help law enforcement intervene early in these cases. Similar laws have been used successfully in other states and on the local level.

(Concerns) The bill is somewhat unclear with respect to the definitions of mental disorder and extreme mental distress. Imposing criminal sanctions without services for reunification could amount to criminalizing what has traditionally been covered by the civil law and imposing unrealistic conditions and sanctions on parents. The bill also presents a threat of culturally insensitive and biased enforcement.

Testimony Against: None.

Testified: (In support) Representative Dickerson, prime sponsor; Teresa Berg, Pierce County Sheriff; Mark Gustafson, Kent Police Department; Paul Barry, Children's Alliance; Carol Cummings, King County Sheriff; Neil Low, Seattle Police Department;

Susan Sill, King County Sheriff; and Laurie Lippold, Children's Home Society.

(Concerns) Laverne Lamoureux, Children's Administration, Department of Social and Health Services.