

# HOUSE BILL REPORT

## SHB 2382

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### As Passed Legislature

**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.

House Concurred.

Passed House: 3/9/02, 94-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Prohibits the infliction of bodily injury and extreme mental distress by withholding the basic necessities of life.
- Allows deferred prosecutions for persons charged with criminal mistreatment in the third or fourth degrees.
- Requires the Department of Social and Health Services (DSHS) to prepare a plan for improved coordination of services to families when a family member is charged with criminal mistreatment.

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### 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:**

### 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, to call witnesses, to have a speedy trial, or to have a jury.

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.

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## **Summary of Substitute Bill:**

### 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 Child Protective Services. When an officer arrests a person for criminal mistreatment of an adult, the officer must notify Adult Protective Services.

The DSHS must, in consultation with the Attorney General and representatives of law enforcement agencies, 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 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; and
- 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 arrainging 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 cooperate 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.

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**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.