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**SUBSTITUTE HOUSE BILL 2382**

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**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.42.010,  
2 9A.42.035, 9A.42.040, and 9A.42.045; adding a new section to chapter  
3 9A.42 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 9A.42.010 and 1997 c 392 s 508 are each amended to  
6 read as follows:

7 As used in this chapter:

8 (1) "Basic necessities of life" means food, water, shelter,  
9 clothing, and medically necessary health care, including but not  
10 limited to health-related treatment or activities, hygiene, oxygen, and  
11 medication.

12 (2)(a) "Bodily injury" means physical pain or injury, illness, or  
13 an impairment of physical condition;

14 (b) "Substantial bodily harm" means bodily injury which involves a  
15 temporary but substantial disfigurement, or which causes a temporary  
16 but substantial loss or impairment of the function of any bodily part  
17 or organ, or which causes a fracture of any bodily part;

18 (c) "Great bodily harm" means bodily injury which creates a high  
19 probability of death, or which causes serious permanent disfigurement,

1 or which causes a permanent or protracted loss or impairment of the  
2 function of any bodily part or organ.

3 (3) "Child" means a person under eighteen years of age.

4 (4) "Dependent person" means a person who, because of physical or  
5 mental disability, or because of extreme advanced age, is dependent  
6 upon another person to provide the basic necessities of life. A  
7 resident of a nursing home, as defined in RCW 18.51.010, a resident of  
8 an adult family home, as defined in RCW 70.128.010, and a frail elder  
9 or vulnerable adult, as defined in RCW 74.34.020(~~(+8)~~) (13), is  
10 presumed to be a dependent person for purposes of this chapter.

11 (5) "Employed" means hired by a dependent person, another person  
12 acting on behalf of a dependent person, or by an organization or  
13 governmental entity, to provide to a dependent person any of the basic  
14 necessities of life. A person may be "employed" regardless of whether  
15 the person is paid for the services or, if paid, regardless of who pays  
16 for the person's services.

17 (6) "Mental disorder" means any organic, mental, or emotional  
18 impairment which has substantial adverse effects on an individual's  
19 cognitive or volitional functions.

20 (7) "Parent" has its ordinary meaning and also includes a guardian  
21 and the authorized agent of a parent or guardian.

22 (~~(+7)~~) (8) "Abandons" means leaving a child or other dependent  
23 person without the means or ability to obtain one or more of the basic  
24 necessities of life.

25 **Sec. 2.** RCW 9A.42.035 and 2000 c 76 s 1 are each amended to read  
26 as follows:

27 (1) A person is guilty of the crime of criminal mistreatment in the  
28 third degree if the person is the parent of a child, is a person  
29 entrusted with the physical custody of a child or other dependent  
30 person, or is a person employed to provide to the child or dependent  
31 person the basic necessities of life, and either:

32 (a) With criminal negligence, creates an imminent and substantial  
33 risk of substantial bodily harm to a child or dependent person by  
34 withholding any of the basic necessities of life; or

35 (b) With criminal negligence, causes substantial bodily harm or  
36 harm that results in a mental disorder to a child or dependent person  
37 by withholding any of the basic necessities of life.

1 (2) Criminal mistreatment in the third degree is a gross  
2 misdemeanor.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.42 RCW  
4 to read as follows:

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

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

13 (b) With criminal negligence, causes bodily injury or extreme  
14 mental distress to a child or dependent person by withholding the basic  
15 necessities of life.

16 (2) It is an affirmative defense to the charge of criminal  
17 mistreatment in the fourth degree that the defendant must prove by a  
18 preponderance of the evidence that the basic necessities of life were  
19 withheld:

20 (a) As part of a religious observance and no permanent injury or  
21 illness resulted; or

22 (b) As a disciplinary measure for a reasonable period of time and  
23 no permanent injury or illness resulted.

24 (3) Criminal mistreatment in the fourth degree is a misdemeanor.

25 **Sec. 4.** RCW 9A.42.040 and 2000 c 76 s 2 are each amended to read  
26 as follows:

27 RCW 9A.42.020, 9A.42.030, ~~((and))~~ 9A.42.035, and section 3 of this  
28 act do not apply to decisions to withdraw life support systems made in  
29 accordance with chapter 7.70 or 70.122 RCW by the dependent person, his  
30 or her legal surrogate, or others with a legal duty to care for the  
31 dependent person.

32 **Sec. 5.** RCW 9A.42.045 and 2000 c 76 s 3 are each amended to read  
33 as follows:

34 RCW 9A.42.020, 9A.42.030, ~~((and))~~ 9A.42.035, and section 3 of this  
35 act do not apply when a terminally ill or permanently unconscious  
36 person or his or her legal surrogate, as set forth in chapter 7.70 RCW,

1 requests, and the person receives, palliative care from a licensed home  
2 health agency, hospice agency, nursing home, or hospital providing care  
3 under the medical direction of a physician. As used in this section,  
4 the terms "terminally ill" and "permanently unconscious" have the same  
5 meaning as "terminal condition" and "permanent unconscious condition"  
6 in chapter 70.122 RCW.

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