
SUBSTITUTE SENATE BILL 6648

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/08/2002.

1 AN ACT Relating to the improved early coordination of services
2 between the department of social and health services and public safety
3 agencies when allegations of criminal mistreatment are made; amending
4 RCW 9A.42.040, 9A.42.045, 10.05.010, 10.05.020, 10.05.030, 10.05.040,
5 10.05.050, 26.44.130, and 10.05.120; adding new sections to chapter
6 9A.42 RCW; adding a new section to chapter 10.05 RCW; adding a new
7 section to chapter 74.13 RCW; creating new sections; prescribing
8 penalties; and providing an expiration date.

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

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

1 at an earlier point will lead to better treatment of children and
2 families and will reduce the likelihood of serious harm.

3 NEW SECTION. **Sec. 2.** 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 emotional distress manifested by more than transient physical symptoms
15 to a child or dependent person by withholding the basic necessities of
16 life.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) Except as provided in subsection (2) of this section, the
35 petitioner shall allege under oath in the petition that the wrongful
36 conduct charged is the result of or caused by alcoholism, drug
37 addiction, or mental problems for which the person is in need of

1 treatment and unless treated the probability of future reoccurrence is
2 great, along with a statement that the person agrees to pay the cost of
3 a diagnosis and treatment of the alleged problem or problems if
4 financially able to do so. The petition shall also contain a case
5 history and written assessment prepared by an approved alcoholism
6 treatment program as designated in chapter 70.96A RCW if the petition
7 alleges alcoholism, an approved drug program as designated in chapter
8 71.24 RCW if the petition alleges drug addiction, or by an approved
9 mental health center if the petition alleges a mental problem.

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

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

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

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

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

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

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

3 The facility to which such person is referred, or the department of
4 social and health services if the petition is brought under RCW
5 10.05.020(2), shall conduct an investigation and examination to
6 determine:

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

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

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

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

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

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

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

25 (~~(1)~~) (a) The type;

26 (~~(2)~~) (b) Nature;

27 (~~(3)~~) (c) Length;

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

29 (~~(5)~~) (e) Approximate cost of the treatment or child welfare
30 services.

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

35 (3) The report with the treatment or service plan shall be filed
36 with the court and a copy given to the petitioner and petitioner's
37 counsel. A copy of the treatment or service plan shall be given to the
38 prosecutor by petitioner's counsel at the request of the prosecutor.

1 The evaluation facility, or the department of social and health
2 services if the petition is brought under RCW 10.05.020(2), making the
3 written report shall append to the report a commitment by the treatment
4 facility or the department of social and health services that it will
5 provide the treatment or child welfare services in accordance with this
6 chapter. The facility or the service provider shall agree to provide
7 the court with a statement every three months for the first year and
8 every six months for the second year regarding (a) the petitioner's
9 cooperation with the treatment or child welfare service plan proposed
10 and (b) the petitioner's progress or failure in treatment or child
11 welfare services. These statements shall be made as a declaration by
12 the person who is personally responsible for providing the treatment or
13 services.

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

16 When a peace officer responds to a call alleging that a child has
17 been subjected to sexual or physical abuse or criminal mistreatment and
18 has probable cause to believe that a crime has been committed or
19 responds to a call alleging that a temporary restraining order or
20 preliminary injunction has been violated, the peace officer has the
21 authority to arrest the person without a warrant pursuant to RCW
22 10.31.100.

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

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

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

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