
HOUSE BILL 2382

State of Washington

54th Legislature

1996 Regular Session

By Representatives McMahan, Cooke, Johnson, Boldt, Pelesky, Koster, Mulliken, Hymes, Hargrove, Goldsmith, Sterk, Stevens, McMorris, Thompson, Backlund, Mastin, Honeyford, Sheahan, D. Sommers, Fuhrman, Blanton, L. Thomas, Elliot, Cairnes, D. Schmidt and Campbell

Read first time 01/10/96. Referred to Committee on Children & Family Services.

1 AN ACT Relating to allegations of abuse or neglect; amending RCW
2 26.44.030, 26.44.035, 26.44.040, 26.44.060, and 10.97.060; reenacting
3 and amending RCW 26.44.050; adding a new section to chapter 26.44 RCW;
4 and creating a new section.

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

6 **Sec. 1.** RCW 26.44.030 and 1995 c 311 s 17 are each amended to read
7 as follows:

8 (1)(a) When any practitioner, county coroner or medical examiner,
9 law enforcement officer, professional school personnel, registered or
10 licensed nurse, social service counselor, psychologist, pharmacist,
11 licensed or certified child care providers or their employees, employee
12 of the department, or juvenile probation officer has reasonable cause
13 to believe that a child or adult dependent or developmentally disabled
14 person, has suffered abuse or neglect, he or she shall report such
15 incident, or cause a report to be made, to the proper law enforcement
16 agency (~~(or to the department)~~) as provided in RCW 26.44.040.

17 (b) The reporting requirement shall also apply to any adult who has
18 reasonable cause to believe that a child or adult dependent or
19 developmentally disabled person, who resides with them, has suffered

1 severe abuse, and is able or capable of making a report. For the
2 purposes of this subsection, "severe abuse" means any of the following:
3 Any single act of abuse that causes physical trauma of sufficient
4 severity that, if left untreated, could cause death; any single act of
5 sexual abuse that causes significant bleeding, deep bruising, or
6 significant external or internal swelling; or more than one act of
7 physical abuse, each of which causes bleeding, deep bruising,
8 significant external or internal swelling, bone fracture, or
9 unconsciousness.

10 (c) The report shall be made at the first opportunity, but in no
11 case longer than forty-eight hours after there is reasonable cause to
12 believe that the child or adult has suffered abuse or neglect. The
13 report shall include the identity of the accused if known.

14 (2) The reporting requirement of subsection (1) of this section
15 does not apply to the discovery of abuse or neglect that occurred
16 during childhood if it is discovered after the child has become an
17 adult. However, if there is reasonable cause to believe other
18 children, dependent adults, or developmentally disabled persons are or
19 may be at risk of abuse or neglect by the accused, the reporting
20 requirement of subsection (1) of this section shall apply.

21 (3) Any other person who has reasonable cause to believe that a
22 child or adult dependent or developmentally disabled person has
23 suffered abuse or neglect may report such incident to the proper law
24 enforcement agency (~~(or to the department of social and health~~
25 ~~services))~~) as provided in RCW 26.44.040.

26 (4) (~~The department, upon receiving a report of an incident of~~
27 ~~abuse or neglect pursuant to this chapter, involving a child or adult~~
28 ~~dependent or developmentally disabled person who has died or has had~~
29 ~~physical injury or injuries inflicted upon him or her other than by~~
30 ~~accidental means or who has been subjected to sexual abuse, shall~~
31 ~~report such incident to the proper law enforcement agency. In~~
32 ~~emergency cases, where the child, adult dependent, or developmentally~~
33 ~~disabled person's welfare is endangered, the department shall notify~~
34 ~~the proper law enforcement agency within twenty four hours after a~~
35 ~~report is received by the department. In all other cases, the~~
36 ~~department shall notify the law enforcement agency within seventy two~~
37 ~~hours after a report is received by the department. If the department~~
38 ~~makes an oral report, a written report shall also be made to the proper~~
39 ~~law enforcement agency within five days thereafter.~~

1 ~~(5)~~) Any law enforcement agency receiving a report of an incident
2 of abuse or neglect pursuant to this chapter, involving a child or
3 adult dependent or developmentally disabled person who has died or has
4 had physical injury or injuries inflicted upon him or her other than by
5 accidental means, or who has been subjected to sexual abuse, shall
6 report such incident in writing as provided in RCW 26.44.040 to the
7 proper county prosecutor or city attorney for appropriate action
8 whenever the law enforcement agency's investigation reveals that a
9 crime may have been committed. The law enforcement agency shall also
10 notify the department of all reports received and the law enforcement
11 agency's disposition of them. In emergency cases, where the child,
12 adult dependent, or developmentally disabled person's welfare is
13 endangered, the law enforcement agency shall notify the department
14 within twenty-four hours. In all other cases, the law enforcement
15 agency shall notify the department within seventy-two hours after a
16 report is received by the law enforcement agency.

17 ~~((6))~~ (5) Any county prosecutor or city attorney receiving a
18 report under subsection ~~((5))~~ (4) of this section shall notify the
19 victim, any persons the victim requests, and the local office of the
20 department, of the decision to charge or decline to charge a crime,
21 within five days of making the decision.

22 ~~((7))~~ (6) The department may conduct ongoing case planning and
23 consultation with those persons or agencies required to report under
24 this section, with consultants designated by the department, and with
25 designated representatives of Washington Indian tribes if the client
26 information exchanged is pertinent to cases currently receiving child
27 protective services or department case services for the developmentally
28 disabled. Upon request, the department shall conduct such planning and
29 consultation with those persons required to report under this section
30 if the department determines it is in the best interests of the child
31 or developmentally disabled person. Information considered privileged
32 by statute and not directly related to reports required by this section
33 shall not be divulged without a valid written waiver of the privilege.

34 ~~((8))~~ (7) Any case referred to the department by a physician
35 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
36 medical opinion that child abuse, neglect, or sexual assault has
37 occurred and that the child's safety will be seriously endangered if
38 returned home, the department shall file a dependency petition unless
39 a second licensed physician of the parents' choice believes that such

1 expert medical opinion is incorrect. If the parents fail to designate
2 a second physician, the department may make the selection. If a
3 physician finds that a child has suffered abuse or neglect but that
4 such abuse or neglect does not constitute imminent danger to the
5 child's health or safety, and the department agrees with the
6 physician's assessment, the child may be left in the parents' home
7 while the department proceeds with reasonable efforts to remedy
8 parenting deficiencies.

9 ~~((+9))~~ (8) Persons or agencies exchanging information under
10 subsection ~~((+7))~~ (6) of this section shall not further disseminate or
11 release the information except as authorized by state or federal
12 statute. Violation of this subsection is a misdemeanor.

13 ~~((+10))~~ (9) Upon receiving reports of abuse or neglect, the
14 ~~((department-or))~~ law enforcement agency may interview children. The
15 interviews may be conducted on school premises, at day-care facilities,
16 at the child's home, or at other suitable locations outside of the
17 presence of parents. Parental notification of the interview shall
18 occur at the earliest possible point in the investigation that will not
19 jeopardize the safety or protection of the child or the course of the
20 investigation. Prior to commencing the interview the ~~((department-or))~~
21 law enforcement agency shall determine whether the child wishes a third
22 party to be present for the interview and, if so, shall make reasonable
23 efforts to accommodate the child's wishes. Unless the child objects,
24 the ~~((department-or))~~ law enforcement agency shall make reasonable
25 efforts to include a third party in any interview so long as the
26 presence of the third party will not jeopardize the course of the
27 investigation.

28 ~~((+11))~~ (10) Upon receiving a report of child abuse and neglect,
29 the ~~((department-or))~~ investigating law enforcement agency shall have
30 access to all relevant records of the child in the possession of
31 mandated reporters and their employees.

32 ~~((+12))~~ (11) The ~~((department))~~ law enforcement agency shall
33 maintain investigation records and conduct timely and periodic reviews
34 of all cases constituting abuse and neglect. The ~~((department))~~ law
35 enforcement agency shall maintain a log of screened-out nonabusive
36 cases.

37 ~~((+13))~~ (12) The department shall use a risk assessment process
38 when investigating child abuse and neglect referrals. The department
39 shall present the risk factors at all hearings in which the placement

1 of a dependent child is an issue. The department shall, within funds
2 appropriated for this purpose, offer enhanced community-based services
3 to persons who are determined not to require further state
4 intervention.

5 The department shall provide annual reports to the legislature on
6 the effectiveness of the risk assessment process.

7 ~~((14))~~ (13) A law enforcement agency that receives a report of
8 suspected abuse or neglect must require the person reporting the
9 incident to provide the person's name, address, and telephone number.
10 Upon receipt of a report of abuse or neglect the law enforcement agency
11 ~~((may))~~ shall arrange to interview the person making the report and any
12 collateral sources to determine if any malice is involved in the
13 reporting.

14 NEW SECTION. Sec. 2. A new section is added to chapter 26.44 RCW
15 to read as follows:

16 A law enforcement agency that receives a report of suspected abuse
17 or neglect shall notify the suspect that a report has been made about
18 the person. The disclosure to the suspect may be made at a time when
19 notice of the report will not jeopardize the course of the
20 investigation. The law enforcement agency investigating the incident
21 shall disclose to the suspect the identity of the person making the
22 report, unless the law enforcement agency determines that disclosure of
23 the information would be likely to endanger the life or safety of the
24 person who reported the incident or another person.

25 **Sec. 3.** RCW 26.44.035 and 1985 c 259 s 3 are each amended to read
26 as follows:

27 (1) If ~~((the department or))~~ a law enforcement agency responds to
28 a complaint of child abuse or neglect and discovers that another agency
29 has also responded to the complaint, the agency shall notify the other
30 agency of their presence, and the agencies shall coordinate the
31 investigation and keep each other apprised of progress.

32 ~~((The department))~~ (2) Except as provided in subsection (3) of this
33 section, each law enforcement agency, each county prosecuting attorney,
34 each city attorney, and each court shall make as soon as practicable a
35 written record and shall maintain records of all incidents of suspected
36 child abuse reported to that person or agency. Records kept under this

1 section shall be identifiable by means of an agency code for child
2 abuse.

3 (3) If the law enforcement agency or prosecutor determines that the
4 allegations of abuse and neglect were the result of a false report, all
5 records of the allegation shall be destroyed. The agency investigating
6 the case must also direct any criminal justice agency in possession of
7 nonconviction data concerning the false allegation to destroy the
8 nonconviction data pursuant to RCW 10.97.060.

9 **Sec. 4.** RCW 26.44.040 and 1993 c 412 s 14 are each amended to read
10 as follows:

11 An immediate oral report shall be made by telephone or otherwise to
12 the proper law enforcement agency (~~or the department of social and~~
13 ~~health services~~) and, upon request, shall be followed by a report in
14 writing. Such reports shall contain the following information, if
15 known:

16 (1) The name, address, and age of the child or adult dependent or
17 developmentally disabled person;

18 (2) The name and address of the child's parents, stepparents,
19 guardians, or other persons having custody of the child or the
20 residence of the adult dependent or developmentally disabled person;

21 (3) The nature and extent of the injury or injuries;

22 (4) The nature and extent of the neglect;

23 (5) The nature and extent of the sexual abuse;

24 (6) Any evidence of previous injuries, including their nature and
25 extent; and

26 (7) Any other information which may be helpful in establishing the
27 cause of the child's or adult dependent or developmentally disabled
28 person's death, injury, or injuries and the identity of the alleged
29 perpetrator or perpetrators.

30 **Sec. 5.** RCW 26.44.050 and 1987 c 450 s 7 and 1987 c 206 ú 5 are
31 each reenacted and amended to read as follows:

32 Upon the receipt of a report concerning the possible occurrence of
33 abuse or neglect, it shall be the duty of the law enforcement agency
34 (~~or the department of social and health services~~) to investigate and
35 provide the protective services section with a report in accordance
36 with the provision of chapter 74.13 RCW, and where necessary to refer
37 such report to the court.

1 A law enforcement officer may take, or cause to be taken, a child
2 into custody without a court order if there is probable cause to
3 believe that the child is abused or neglected and that the child would
4 be injured or could not be taken into custody if it were necessary to
5 first obtain a court order pursuant to RCW 13.34.050. The law
6 enforcement agency (~~or the department of social and health services~~)
7 investigating such a report is hereby authorized to photograph such a
8 child or adult dependent or developmentally disabled person for the
9 purpose of providing documentary evidence of the physical condition of
10 the child, adult dependent, or developmentally disabled person.

11 **Sec. 6.** RCW 26.44.060 and 1988 c 142 s 3 are each amended to read
12 as follows:

13 (1)(a) Except as provided in (b) of this subsection, any person
14 participating in good faith in the making of a report pursuant to this
15 chapter or testifying as to alleged child abuse or neglect in a
16 judicial proceeding shall in so doing be immune from any liability
17 arising out of such reporting or testifying under any law of this state
18 or its political subdivisions.

19 (b) A person convicted of a violation of subsection (4) of this
20 section shall not be immune from liability under (a) of this
21 subsection.

22 (2) An administrator of a hospital or similar institution or any
23 physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a
24 child into custody pursuant to RCW 26.44.056 shall not be subject to
25 criminal or civil liability for such taking into custody.

26 (3) Conduct conforming with the reporting requirements of this
27 chapter shall not be deemed a violation of the confidential
28 communication privilege of RCW 5.60.060 (3) and (4), 18.53.200, and
29 18.83.110. Nothing in this chapter shall be construed as to supersede
30 or abridge remedies provided in chapter 4.92 RCW.

31 (4) A person who, intentionally and in bad faith or maliciously,
32 knowingly makes a false report of abuse or neglect shall be guilty of
33 a misdemeanor punishable in accordance with RCW 9A.20.021. A person
34 who is convicted of making a false report of abuse or neglect is liable
35 to the state for the costs of investigating and prosecuting the case.
36 The person is also liable to the falsely accused person for costs
37 incurred due to the investigation or prosecution. This subsection does

1 not limit civil remedies available to a person who is falsely accused
2 of abuse or neglect.

3 **Sec. 7.** RCW 10.97.060 and 1977 ex.s. c 314 s 6 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, criminal
6 history record information which consists of nonconviction data only
7 shall be subject to deletion from criminal justice agency files which
8 are available and generally searched for the purpose of responding to
9 inquiries concerning the criminal history of a named or otherwise
10 identified individual when two years or longer have elapsed since the
11 record became nonconviction data as a result of the entry of a
12 disposition favorable to the defendant, or upon the passage of three
13 years from the date of arrest or issuance of a citation or warrant for
14 an offense for which a conviction was not obtained unless the defendant
15 is a fugitive, or the case is under active prosecution according to a
16 current certification made by the prosecuting attorney.

17 Such criminal history record information consisting of
18 nonconviction data shall be deleted upon the request of the person who
19 is the subject of the record(~~(:—PROVIDED, HOWEVER, That)~~). The
20 criminal justice agency maintaining the data may, at its option, refuse
21 to make the deletion if:

22 ~~((+1))~~ (a) The disposition was a deferred prosecution or similar
23 diversion of the alleged offender;

24 ~~((+2))~~ (b) The person who is the subject of the record has had a
25 prior conviction for a felony or gross misdemeanor;

26 ~~((+3))~~ (c) The individual who is the subject of the record has
27 been arrested for or charged with another crime during the intervening
28 period.

29 (2) Criminal justice agencies must delete nonconviction data
30 concerning allegations of abuse or neglect made under chapter 26.44 RCW
31 when notified, pursuant to RCW 26.44.035, that the data must be deleted
32 from the files. The person who is the subject of the record is not
33 required to request deletion of the nonconviction data under this
34 subsection.

35 (3) Nothing in this chapter is intended to restrict the authority
36 of any court, through appropriate judicial proceedings, to order the
37 modification or deletion of a record in a particular cause or
38 concerning a particular individual or event.

1 NEW SECTION. **Sec. 8.** If any part of this act is found to be in
2 conflict with federal requirements that are a prescribed condition to
3 the allocation of federal funds to the state, the conflicting part of
4 this act is inoperative solely to the extent of the conflict and with
5 respect to the agencies directly affected, and this finding does not
6 affect the operation of the remainder of this act in its application to
7 the agencies concerned.

--- END ---