
HOUSE BILL 2399

State of Washington

54th Legislature

1996 Regular Session

By Representatives Backlund, Cooke, Stevens, McMahan, Sterk, L. Thomas and Thompson

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1 AN ACT Relating to abuse of children and adult dependent and
2 developmentally disabled persons; amending RCW 26.44.010, 26.44.015,
3 26.44.030, 26.44.035, 26.44.040, 26.44.056, and 26.44.060; and
4 reenacting and amending RCW 26.44.020 and 26.44.050.

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

6 **Sec. 1.** RCW 26.44.010 and 1987 c 206 s 1 are each amended to read
7 as follows:

8 The Washington state legislature finds and declares: The bond
9 between a child and his or her parent, custodian, or guardian is of
10 paramount importance, and any intervention into the life of a child is
11 also an intervention into the life of the parent, custodian, or
12 guardian; however, instances of nonaccidental injury, neglect, death,
13 sexual abuse and cruelty to children by their parents, custodians or
14 guardians have occurred, and in the instance where a child is deprived
15 of his or her right to conditions of minimal nurture, health, and
16 safety, the state is justified in emergency intervention based upon
17 verified information; and therefore the Washington state legislature
18 hereby provides for the reporting of such alleged cases to the
19 appropriate public authorities. It is the intent of the legislature

1 that, as a result of such reports, protective services shall be made
2 available in an effort to prevent further abuses, and to safeguard the
3 general welfare of such children: PROVIDED, That such reports shall be
4 maintained and disseminated with strictest regard for the privacy of
5 the subjects of such reports and so as to safeguard against arbitrary,
6 malicious or erroneous information or actions: PROVIDED FURTHER, That
7 this chapter shall not be construed to authorize interference with
8 child-raising practices, including reasonable parental discipline,
9 which are not proved to be injurious to the child's health, welfare and
10 safety.

11 Adult dependent or developmentally disabled persons not able to
12 provide for their own protection through the criminal justice system
13 shall also be afforded the protection offered children through the
14 reporting and investigation requirements mandated in this chapter.

15 **Sec. 2.** RCW 26.44.015 and 1993 c 412 s 11 are each amended to read
16 as follows:

17 (1) This chapter shall not be construed to authorize interference
18 with child-raising practices, including reasonable parental discipline,
19 which are not injurious to the child's health, welfare, and safety.

20 (2) Nothing in this chapter may be used to prohibit the reasonable
21 use of corporal punishment as a means of discipline.

22 (3) No parent or guardian may be deemed abusive or neglectful
23 solely by reason of the parent's or child's blindness, deafness,
24 developmental disability, or other handicap.

25 (4) A person reporting alleged injury, abuse, or neglect to an
26 adult dependent person shall not suffer negative consequences if the
27 person reporting believes in good faith that the adult dependent person
28 has been found legally incompetent or disabled.

29 **Sec. 3.** RCW 26.44.020 and 1993 c 412 s 12 and 1993 c 402 s 1 are
30 each reenacted and amended to read as follows:

31 For the purpose of and as used in this chapter:

32 (1) "Court" means the superior court of the state of Washington,
33 juvenile department.

34 (2) "Law enforcement agency" means the police department, the
35 prosecuting attorney, the state patrol, the director of public safety,
36 or the office of the sheriff.

1 (3) "Practitioner of the healing arts" or "practitioner" means a
2 person licensed by this state to practice podiatric medicine and
3 surgery, optometry, chiropractic, nursing, dentistry, osteopathy and
4 surgery, or medicine and surgery or to provide other health services.
5 The term "practitioner" shall include a duly accredited Christian
6 Science practitioner: PROVIDED, HOWEVER, That a person who is being
7 furnished Christian Science treatment by a duly accredited Christian
8 Science practitioner shall not be considered, for that reason alone, a
9 neglected person for the purposes of this chapter.

10 (4) "Institution" means a private or public hospital or any other
11 facility providing medical diagnosis, treatment or care.

12 (5) "Department" means the state department of social and health
13 services.

14 (6) "Child" or "children" means any person under the age of
15 eighteen years of age.

16 (7) "Professional school personnel" shall include, but not be
17 limited to, teachers, counselors, administrators, child care facility
18 personnel, and school nurses.

19 (8) "Social service counselor" shall mean anyone engaged in a
20 professional capacity during the regular course of employment in
21 encouraging or promoting the health, welfare, support or education of
22 children, or providing social services to adults or families, including
23 mental health, drug and alcohol treatment, and domestic violence
24 programs, whether in an individual capacity, or as an employee or agent
25 of any public or private organization or institution.

26 (9) "Psychologist" shall mean any person licensed to practice
27 psychology under chapter 18.83 RCW, whether acting in an individual
28 capacity or as an employee or agent of any public or private
29 organization or institution.

30 (10) "Pharmacist" shall mean any registered pharmacist under the
31 provisions of chapter 18.64 RCW, whether acting in an individual
32 capacity or as an employee or agent of any public or private
33 organization or institution.

34 (11) "Clergy" shall mean any regularly licensed or ordained
35 minister, priest or rabbi of any church or religious denomination,
36 whether acting in an individual capacity or as an employee or agent of
37 any public or private organization or institution.

38 (12) (~~"Abuse or neglect" shall mean the injury, sexual abuse,~~
39 ~~sexual exploitation, negligent treatment, or maltreatment of a child,~~

1 ~~adult dependent, or developmentally disabled person by any person under~~
2 ~~circumstances which indicate that the child's or adult's health,~~
3 ~~welfare, and safety is harmed. An abused child is a child who has been~~
4 ~~subjected to child abuse or neglect as defined herein.)) "Abuse" means:~~
5 (a) By other than accidental means, inflicting or allowing the
6 infliction of physical injury that causes or creates a substantial risk
7 of death, serious or protracted disfigurement, protracted impairment of
8 physical health, or protracted loss or impairment of the function of
9 any bodily organ to a child or adult dependent or developmentally
10 disabled person; or (b) committing or allowing to be committed against
11 a child or adult dependent or developmentally disabled person: (i) A
12 sex offense, as defined in chapter 9A.44 RCW; or (b) sexual
13 exploitation, as defined in this chapter. The amount of time a
14 disfigurement must last to be deemed "protracted" depends on the nature
15 of the injury, its location, its severity, and the age of the child.

16 (13) "Child protective services section" shall mean the child
17 protective services section of the department.

18 (14) "Adult dependent persons" shall be defined as those persons
19 over the age of eighteen years who have been found to be legally
20 incompetent or disabled pursuant to chapter 11.88 RCW.

21 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
22 encouraging a child to engage in prostitution by any person; or (b)
23 allowing, permitting, encouraging, or engaging in the obscene or
24 pornographic photographing, filming, or depicting of a child by any
25 person.

26 (16) (~~"Negligent treatment or maltreatment" means an act or~~
27 ~~omission which evidences a serious disregard of consequences of such~~
28 ~~magnitude as to constitute a clear and present danger to the child's~~
29 ~~health, welfare, and safety.)) "Neglect" means the failure of a parent,
30 guardian, or custodian of a child or adult dependent or developmentally
31 disabled person to exercise a minimum degree of care in supplying
32 adequate supervision, food, clothing, shelter, or medical care that
33 causes impairment or a substantial risk of impairment to the child or
34 adult dependent or developmentally disabled person's health and
35 welfare, if the parent, guardian, or custodian is financially able or
36 offered financial or other reasonable means to do so. A parent
37 legitimately practicing religious beliefs who does not provide
38 specified medical treatment for a child because of religious beliefs
39 may not be considered a negligent parent for that reason.~~

1 (17) "Developmentally disabled person" means a person who has a
2 disability defined in RCW 71A.10.020.

3 (18) "Child protective services" means those services provided by
4 the department designed to protect children from child abuse and
5 neglect and safeguard the general welfare of such children and shall
6 include investigations of child abuse and neglect reports, including
7 reports regarding child care centers and family child care homes, and
8 the development, management, and provision of or referral to services
9 to ameliorate conditions which endanger the welfare of children, the
10 coordination of necessary programs and services relevant to the
11 prevention, intervention, and treatment of child abuse and neglect, and
12 services to children to ensure that each child has a permanent home.
13 In determining whether protective services should be provided, the
14 department shall not decline to provide such services solely because of
15 the child's unwillingness or developmental inability to describe the
16 nature and severity of the abuse or neglect.

17 (19) "Malice" or "maliciously" means an evil intent, wish, or
18 design to vex, annoy, or injure another person. Such malice may be
19 inferred from an act done in wilful disregard of the rights of another,
20 or an act wrongfully done without just cause or excuse, or an act or
21 omission of duty betraying a wilful disregard of social duty.

22 (20) "Sexually aggressive youth" means a child who is defined in
23 RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

24 (21) "Reasonable parental discipline" means discipline that is not
25 unlawful under RCW 9A.16.100.

26 (22) "Probable cause" means facts and circumstances, based upon as
27 accurate and reliable information as possible, that would justify a
28 reasonable person to suspect that a child is abused or neglected.

29 **Sec. 4.** RCW 26.44.030 and 1995 c 311 s 17 are each amended to read
30 as follows:

31 (1)(a) When any practitioner, county coroner or medical examiner,
32 law enforcement officer, professional school personnel, registered or
33 licensed nurse, social service counselor, psychologist, pharmacist,
34 licensed or certified child care providers or their employees, employee
35 of the department, or juvenile probation officer has (~~reasonable~~)
36 probable cause to believe that a child or adult dependent or
37 developmentally disabled person, has suffered abuse or neglect, he or
38 she shall report such incident, or cause a report to be made, to the

1 proper law enforcement agency or to the department as provided in RCW
2 26.44.040.

3 (b) The reporting requirement shall also apply to any adult who has
4 (~~reasonable~~) probable cause to believe that a child or adult
5 dependent or developmentally disabled person, who resides with them,
6 has suffered severe abuse, and is able or capable of making a report.
7 For the purposes of this subsection, "severe abuse" means any of the
8 following: Any single act of abuse that causes physical trauma of
9 sufficient severity that, if left untreated, could cause death; any
10 single act of sexual abuse that causes significant bleeding, deep
11 bruising, or significant external or internal swelling; or more than
12 one act of physical abuse, each of which causes bleeding, deep
13 bruising, significant external or internal swelling, bone fracture, or
14 unconsciousness.

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

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

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

32 (4) The department, upon receiving a report of an incident of
33 alleged abuse or neglect pursuant to this chapter, involving a child or
34 adult dependent or developmentally disabled person who has died or has
35 had physical injury or injuries inflicted upon him or her other than by
36 accidental means or who has been subjected to alleged sexual abuse,
37 shall report such incident to the proper law enforcement agency. In
38 emergency cases, where the child, adult dependent, or developmentally
39 disabled person's welfare is endangered, the department shall notify

1 the proper law enforcement agency within twenty-four hours after a
2 report is received by the department. In all other cases, the
3 department shall notify the law enforcement agency within seventy-two
4 hours after a report is received by the department. If the department
5 makes an oral report, a written report shall also be made to the proper
6 law enforcement agency within five days thereafter.

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

24 (6) Any county prosecutor or city attorney receiving a report under
25 subsection (5) of this section shall notify the victim, any persons the
26 victim requests, and the local office of the department, of the
27 decision to charge or decline to charge a crime, within five days of
28 making the decision.

29 (7) The department may conduct ongoing case planning and
30 consultation with those persons or agencies required to report under
31 this section, with consultants designated by the department, and with
32 designated representatives of Washington Indian tribes if the client
33 information exchanged is pertinent to cases currently receiving child
34 protective services or department case services for the developmentally
35 disabled. Upon request, the department shall conduct such planning and
36 consultation with those persons required to report under this section
37 if the department determines it is in the best interests of the child
38 or developmentally disabled person. Information considered privileged

1 by statute and not directly related to reports required by this section
2 shall not be divulged without a valid written waiver of the privilege.

3 (8) Any case referred to the department by a physician licensed
4 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
5 opinion that child abuse, neglect, or sexual assault has occurred and
6 that the child's safety will be seriously endangered if returned home,
7 the department shall file a dependency petition unless a second
8 licensed physician of the parents' choice believes that such expert
9 medical opinion is incorrect. If the parents fail to designate a
10 second physician, the department may make the selection. If a
11 physician finds that a child has suffered abuse or neglect but that
12 such abuse or neglect does not constitute imminent danger to the
13 child's health or safety, and the department agrees with the
14 physician's assessment, the child may be left in the parents' home
15 while the department proceeds with reasonable efforts to remedy
16 parenting deficiencies.

17 (9) Persons or agencies exchanging information under subsection (7)
18 of this section shall not further disseminate or release the
19 information except as authorized by state or federal statute.
20 Violation of this subsection is a misdemeanor.

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

35 (11) Upon receiving a report of alleged child abuse and neglect,
36 the department or investigating law enforcement agency shall have
37 access to all relevant records of the child in the possession of
38 mandated reporters and their employees.

1 (12) The department shall maintain investigation records and
2 conduct timely and periodic reviews of all cases constituting abuse and
3 neglect. The department shall maintain a log of screened-out
4 nonabusive cases.

5 (13) The department shall use a risk assessment process when
6 investigating alleged child abuse and neglect referrals. The
7 department shall present the risk factors at all hearings in which the
8 placement of a dependent child is an issue. The department shall,
9 within funds appropriated for this purpose, offer enhanced community-
10 based services to persons who are determined not to require further
11 state intervention.

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

14 (14) Upon receipt of a report of alleged abuse or neglect the law
15 enforcement agency may arrange to interview the person making the
16 report and any collateral sources to determine if any malice is
17 involved in the reporting.

18 **Sec. 5.** RCW 26.44.035 and 1985 c 259 s 3 are each amended to read
19 as follows:

20 If the department or a law enforcement agency responds to a
21 complaint of alleged child abuse or neglect and discovers that another
22 agency has also responded to the complaint, the agency shall notify the
23 other agency of their presence, and the agencies shall coordinate the
24 investigation and keep each other apprised of progress.

25 The department, each law enforcement agency, each county
26 prosecuting attorney, each city attorney, and each court shall make as
27 soon as practicable a written record and shall maintain records of all
28 incidents of suspected child abuse reported to that person or agency.
29 Records kept under this section shall be identifiable by means of an
30 agency code for child abuse.

31 **Sec. 6.** RCW 26.44.040 and 1993 c 412 s 14 are each amended to read
32 as follows:

33 An immediate oral report shall be made by telephone or otherwise to
34 the proper law enforcement agency or the department of social and
35 health services and, upon request, shall be followed by a report in
36 writing. Such reports shall contain the following information, if
37 known:

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

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

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

7 (4) The nature and extent of the alleged neglect;

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

9 (6) Any evidence of previous injuries, including their nature and
10 extent; and

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

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

17 Upon the receipt of a report concerning the possible occurrence of
18 abuse or neglect, it shall be the duty of the law enforcement agency or
19 the department of social and health services to investigate and provide
20 the protective services section with a report in accordance with the
21 provision of chapter 74.13 RCW, and where necessary to refer such
22 report to the court.

23 A law enforcement officer may take, or cause to be taken, a child
24 into custody without a court order if there is probable cause to
25 believe that the child (~~((is abused or neglected))~~) has suffered abuse or
26 neglect and that the (~~((child would be injured or could not be taken~~
27 ~~into custody))~~) child's life or health would be in imminent danger if it
28 were necessary to first obtain a court order pursuant to RCW 13.34.050.
29 The law enforcement agency or the department of social and health
30 services investigating such a report is hereby authorized to photograph
31 such a child or adult dependent or developmentally disabled person for
32 the purpose of providing documentary evidence of the physical condition
33 of the child, adult dependent or developmentally disabled person.

34 **Sec. 8.** RCW 26.44.056 and 1983 c 246 s 3 are each amended to read
35 as follows:

36 (1) An administrator of a hospital or similar institution or any
37 physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain

1 a child without consent of a person legally responsible for the child
2 whether or not medical treatment is required, if the circumstances or
3 conditions of the child are such that the detaining individual has
4 ((reasonable)) probable cause to believe that permitting the child to
5 continue in his or her place of residence or in the care and custody of
6 the parent, guardian, custodian or other person legally responsible for
7 the child's care would present an imminent danger to that child's
8 ((safety)) life or health: PROVIDED, That such administrator or
9 physician shall notify or cause to be notified the appropriate law
10 enforcement agency or child protective services pursuant to RCW
11 26.44.040. Such notification shall be made as soon as possible and in
12 no case longer than seventy-two hours. Such temporary protective
13 custody by an administrator or doctor shall not be deemed an arrest.
14 Child protective services may detain the child until the court assumes
15 custody, but in no case longer than seventy-two hours, excluding
16 Saturdays, Sundays, and holidays.

17 (2) Whenever an administrator or physician has ((reasonable))
18 probable cause to believe that a child would be in imminent danger if
19 released to a parent, guardian, custodian, or other person or is in
20 imminent danger if left in the custody of a parent, guardian,
21 custodian, or other person, the administrator or physician may notify
22 a law enforcement agency and the law enforcement agency shall take the
23 child into custody or cause the child to be taken into custody. The
24 law enforcement agency shall release the child to the custody of child
25 protective services. Child protective services shall detain the child
26 until the court assumes custody or upon a documented and substantiated
27 record that in the professional judgment of the child protective
28 services the child's safety will not be endangered if the child is
29 returned. If the child is returned, the department shall establish a
30 six-month plan to monitor and assure the continued safety of the
31 child's life or health. The monitoring period may be extended for good
32 cause.

33 (3) A child protective services employee, an administrator, doctor,
34 or law enforcement officer shall not be held liable in any civil action
35 for the decision for taking the child into custody, if done in good
36 faith under this section.

37 **Sec. 9.** RCW 26.44.060 and 1988 c 142 s 3 are each amended to read
38 as follows:

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

7 (b) A person convicted of a violation of subsection (4) of this
8 section shall not be immune from liability under (a) of this
9 subsection.

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

14 (3) Conduct conforming with the reporting requirements of this
15 chapter shall not be deemed a violation of the confidential
16 communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and
17 18.83.110. Nothing in this chapter shall be construed as to supersede
18 or abridge remedies provided in chapter 4.92 RCW.

19 (4) A person who, intentionally and in bad faith or maliciously,
20 knowingly makes a false report of alleged abuse or neglect shall be
21 guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

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