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HOUSE BILL 1859

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Cooke, Dickerson, Boldt and McDonald

Read first time 02/11/97. Referred to Committee on Children & Family Services.

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 26.44.020, 26.44.030, 26.44.035, 26.44.040, 26.44.056, and 26.44.060;  
4 and reenacting and amending RCW 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 1996 c 178 s 10 are each amended to read  
30 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, osteopathic  
4 medicine and surgery, or medicine and surgery or to provide other  
5 health services. The term "practitioner" shall include a duly  
6 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a  
7 person who is being furnished Christian Science treatment by a duly  
8 accredited Christian Science practitioner shall not be considered, for  
9 that reason alone, a 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, sexual  
39 exploitation, negligent treatment, or maltreatment of a child, adult

1 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.

5 (13) "Child protective services section" shall mean the child  
6 protective services section of the department.

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

10 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or  
11 encouraging a child to engage in prostitution by any person; or (b)  
12 allowing, permitting, encouraging, or engaging in the obscene or  
13 pornographic photographing, filming, or depicting of a child by any  
14 person.

15 (16) "Negligent treatment or maltreatment" means an act or omission  
16 which evidences a serious disregard of consequences of such magnitude  
17 as to constitute a clear and present danger to the child's health,  
18 welfare, and safety.

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

21 (18) "Child protective services" means those services provided by  
22 the department designed to protect children from child abuse and  
23 neglect and safeguard the general welfare of such children and shall  
24 include investigations of child abuse and neglect reports, including  
25 reports regarding child care centers and family child care homes, and  
26 the development, management, and provision of or referral to services  
27 to ameliorate conditions which endanger the welfare of children, the  
28 coordination of necessary programs and services relevant to the  
29 prevention, intervention, and treatment of child abuse and neglect, and  
30 services to children to ensure that each child has a permanent home.  
31 In determining whether protective services should be provided, the  
32 department shall not decline to provide such services solely because of  
33 the child's unwillingness or developmental inability to describe the  
34 nature and severity of the abuse or neglect.

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

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

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

5 **Sec. 4.** RCW 26.44.030 and 1996 c 278 s 2 are each amended to read  
6 as follows:

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

16 (b) The reporting requirement shall also apply to department of  
17 corrections personnel who, in the course of their employment, observe  
18 offenders or the children with whom the offenders are in contact. If,  
19 as a result of observations or information received in the course of  
20 his or her employment, any department of corrections personnel has  
21 reasonable cause to believe that a child or adult dependent or  
22 developmentally disabled person has suffered abuse or neglect, he or  
23 she shall report the incident, or cause a report to be made, to the  
24 proper law enforcement agency or to the department as provided in RCW  
25 26.44.040.

26 (c) The reporting requirement shall also apply to any adult who has  
27 reasonable cause to believe that a child or adult dependent or  
28 developmentally disabled person, who resides with them, has suffered  
29 severe abuse, and is able or capable of making a report. For the  
30 purposes of this subsection, "severe abuse" means any of the following:  
31 Any single act of abuse that causes physical trauma of sufficient  
32 severity that, if left untreated, could cause death; any single act of  
33 sexual abuse that causes significant bleeding, deep bruising, or  
34 significant external or internal swelling; or more than one act of  
35 physical abuse, each of which causes bleeding, deep bruising,  
36 significant external or internal swelling, bone fracture, or  
37 unconsciousness.

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

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

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

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

32 (5) Any law enforcement agency 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 jointly investigate the alleged incident with child protective  
38 services and shall report such incident in writing as provided in RCW  
39 26.44.040 to the proper county prosecutor or city attorney for

1 appropriate action whenever the law enforcement agency's investigation  
2 reveals that a crime may have been committed. The law enforcement  
3 agency shall also notify the department of all reports received and the  
4 law enforcement agency's disposition of them. In emergency cases,  
5 where the child, adult dependent, or developmentally disabled  
6 (~~person's welfare is endangered~~) person is in imminent danger, the  
7 law enforcement agency shall notify the department within twenty-four  
8 hours. In all other cases, the law enforcement agency shall notify the  
9 department within seventy-two hours after a report is received by the  
10 law enforcement agency.

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

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

28 (8) Any case referred to the department by a physician licensed  
29 under chapter 18.57 or 18.71 RCW on the basis of an expert medical  
30 opinion that child abuse, neglect, or sexual assault has occurred and  
31 that the child's safety will be seriously endangered if returned home,  
32 the department shall file a dependency petition unless a second  
33 licensed physician of the parents' choice believes that such expert  
34 medical opinion is incorrect. If the parents fail to designate a  
35 second physician, the department may make the selection. If a  
36 physician finds that a child has suffered abuse or neglect but that  
37 such abuse or neglect does not constitute imminent danger to the  
38 child's health or safety, and the department agrees with the  
39 physician's assessment, the child may be left in the parents' home

1 while the department proceeds with reasonable efforts to remedy  
2 parenting deficiencies.

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

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

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

25 (12) The department shall maintain investigation records and  
26 conduct timely and periodic reviews of all cases constituting abuse and  
27 neglect. The department shall maintain a log of screened-out  
28 nonabusive cases.

29 (13) The department shall use a risk assessment process when  
30 investigating alleged child abuse and neglect referrals. The  
31 department shall clearly separate assessment and investigation  
32 functions. The department shall present the risk factors at all  
33 hearings in which the placement of a dependent child is an issue. The  
34 department shall, within funds appropriated for this purpose, offer  
35 enhanced community-based services to persons who are determined not to  
36 require further state intervention.

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



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

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

7 If the department or a law enforcement agency responds to a  
8 complaint of alleged child abuse or neglect and discovers that another  
9 agency has also responded to the complaint, the agency shall notify the  
10 other agency of their presence, and the agencies shall coordinate the  
11 investigation and keep each other apprised of progress.

12 The department, each law enforcement agency, each county  
13 prosecuting attorney, each city attorney, and each court shall make as  
14 soon as practicable a written record and shall maintain records of all  
15 incidents of suspected child abuse reported to that person or agency.  
16 Records kept under this section shall be identifiable by means of an  
17 agency code for child abuse.

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

20 An immediate oral report shall be made by telephone or otherwise to  
21 the proper law enforcement agency or the department of social and  
22 health services and, upon request, shall be followed by a report in  
23 writing. Such reports shall contain the following information, if  
24 known:

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

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

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

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

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

33 (6) Any evidence of previous injuries, including their nature and  
34 extent; and

35 (7) Any other information which may be helpful in establishing the  
36 cause of the child's or adult dependent or developmentally disabled

1 person's death, injury, or injuries and the identity of the alleged  
2 perpetrator or perpetrators.

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

5 Upon the receipt of a report concerning the possible occurrence of  
6 abuse or neglect, it shall be the duty of the law enforcement agency or  
7 the department of social and health services to investigate and provide  
8 the protective services section with a report in accordance with the  
9 provision of chapter 74.13 RCW, and where necessary to refer such  
10 report to the court.

11 A law enforcement officer may take, or cause to be taken, a child  
12 into custody without a court order if there is probable cause to  
13 believe that the child is abused or neglected and that the ~~((child~~  
14 ~~would be injured or could not be taken into custody))~~ child's life or  
15 health would be in imminent danger if it were necessary to first obtain  
16 a court order pursuant to RCW 13.34.050. The law enforcement agency or  
17 the department of social and health services investigating such a  
18 report is hereby authorized to photograph such a child or adult  
19 dependent or developmentally disabled person for the purpose of  
20 providing documentary evidence of the physical condition of the child,  
21 adult dependent or developmentally disabled person.

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

24 (1) An administrator of a hospital or similar institution or any  
25 physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain  
26 a child without consent of a person legally responsible for the child  
27 whether or not medical treatment is required, if the circumstances or  
28 conditions of the child are such that the detaining individual has  
29 reasonable cause to believe that permitting the child to continue in  
30 his or her place of residence or in the care and custody of the parent,  
31 guardian, custodian or other person legally responsible for the child's  
32 care would present an imminent danger to that child's ~~((safety))~~ life  
33 or health: PROVIDED, That such administrator or physician shall notify  
34 or cause to be notified the appropriate law enforcement agency or child  
35 protective services pursuant to RCW 26.44.040. Such notification shall  
36 be made as soon as possible and in no case longer than seventy-two  
37 hours. Such temporary protective custody by an administrator or doctor

1 shall not be deemed an arrest. Child protective services may detain  
2 the child until the court assumes custody, but in no case longer than  
3 seventy-two hours, excluding Saturdays, Sundays, and holidays.

4 (2) Whenever an administrator or physician has reasonable cause to  
5 believe that a child would be in imminent danger if released to a  
6 parent, guardian, custodian, or other person or is in imminent danger  
7 if left in the custody of a parent, guardian, custodian, or other  
8 person, the administrator or physician may notify a law enforcement  
9 agency and the law enforcement agency shall take the child into custody  
10 or cause the child to be taken into custody. The law enforcement  
11 agency shall release the child to the custody of child protective  
12 services. Child protective services shall detain the child until the  
13 court assumes custody or upon a documented and substantiated record  
14 that in the professional judgment of the child protective services the  
15 child's ((~~safety~~)) life or health will not be endangered if the child  
16 is returned. If the child is returned, the department shall establish  
17 a six-month plan to monitor and assure the continued safety of the  
18 child's life or health. The monitoring period may be extended for good  
19 cause.

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

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

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

32 (b) A person convicted of a violation of subsection (4) of this  
33 section shall not be immune from liability under (a) of this  
34 subsection.

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

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

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

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