
SENATE BILL 5087

State of Washington

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By Senators Roach, Swecker, Schow and Oke

Read first time 01/14/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to interviews of children conducted by the
2 department of social and health services; amending RCW 26.44.030;
3 adding a new section to chapter 26.44 RCW; and adding a new section to
4 chapter 9A.44 RCW.

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

6 **Sec. 1.** RCW 26.44.030 and 1996 c 278 s 2 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 department of
18 corrections personnel who, in the course of their employment, observe
19 offenders or the children with whom the offenders are in contact. If,

1 as a result of observations or information received in the course of
2 his or her employment, any department of corrections personnel has
3 reasonable cause to believe that a child or adult dependent or
4 developmentally disabled person has suffered abuse or neglect, he or
5 she shall report the incident, or cause a report to be made, to the
6 proper law enforcement agency or to the department as provided in RCW
7 26.44.040.

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

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

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

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

36 (4) The department, upon receiving a report of an incident of abuse
37 or neglect pursuant to this chapter, involving a child or adult
38 dependent or developmentally disabled person who has died or has had
39 physical injury or injuries inflicted upon him or her other than by

1 accidental means or who has been subjected to sexual abuse, shall
2 report such incident to the proper law enforcement agency. In
3 emergency cases, where the child, adult dependent, or developmentally
4 disabled person's welfare is endangered, the department shall notify
5 the proper law enforcement agency within twenty-four hours after a
6 report is received by the department. In all other cases, the
7 department shall notify the law enforcement agency within seventy-two
8 hours after a report is received by the department. If the department
9 makes an oral report, a written report shall also be made to the proper
10 law enforcement agency within five days thereafter.

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

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

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

1 if the department determines it is in the best interests of the child
2 or developmentally disabled person. Information considered privileged
3 by statute and not directly related to reports required by this section
4 shall not be divulged without a valid written waiver of the privilege.

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

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

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

38 (11) Upon receiving a report of child abuse and neglect, the
39 department or investigating law enforcement agency shall have access to

1 all relevant records of the child in the possession of mandated
2 reporters and their employees.

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

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

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

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

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW
21 to read as follows:

22 (1) When an interview of a child regarding allegations of sexual
23 abuse is conducted by the department under RCW 26.44.030 without a law
24 enforcement officer present, that interview shall be recorded by
25 audiotape or videotape. Failure to record the interview shall not
26 affect the admissibility of statements pursuant to RCW 9A.44.120 unless
27 the failure was willful. The willful failure of the department to
28 record, by audiotape or videotape, an interview of a child regarding
29 allegations of sexual abuse creates a presumption that such statements
30 are inadmissible for the purpose of RCW 9A.44.120.

31 (2) The department shall not make any copies of an audiotape or
32 videotape recorded under this section. The original tape shall be
33 immediately transmitted to the prosecuting attorney's office or the
34 local law enforcement agency to be preserved as evidence.

35 (3) Only persons accused of alleged sexual abuse or the person's
36 attorney may view or listen to the tape as necessary to prepare an
37 adequate defense, but the tape shall remain in the custody of the
38 prosecuting attorney's office or the local law enforcement agency. If

1 the tape has been introduced as evidence it shall remain in the custody
2 of the court. If the charges against the accused are dismissed or if
3 the accused is found not guilty, all tapes shall be destroyed.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.44 RCW
5 to read as follows:

6 If an audiotape or videotape is made in compliance with section 2
7 of this act, the recorded statements by the child may be admitted into
8 evidence through the audiotape or videotape, subject to the
9 requirements of RCW 9A.44.120. A videotaped interview with the child
10 may be admitted into evidence in lieu of the child's live testimony at
11 trial, by stipulation of the accused person and the state, or as
12 otherwise admissible by law.

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