

1 **SHB 1054 - H AMD 0071 FAILED 3-7-03**

2 By Representative Carrell

3 Strike everything after the enacting clause and insert the
4 following:

5 On page

6 "Sec. 1. RCW 26.44.020 and 2000 c 162 s 19 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

15 (3) "Practitioner of the healing arts" or "practitioner" means
16 a person licensed by this state to practice podiatric medicine and
17 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
18 medicine and surgery, or medicine and surgery or to provide other
19 health services. The term "practitioner" includes a duly
20 accredited Christian Science practitioner: PROVIDED, HOWEVER, That
21 a person who is being furnished Christian Science treatment by a
22 duly accredited Christian Science practitioner will not be
23 considered, for that reason alone, a neglected person for the
24 purposes of this chapter.

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

27 (5) "Department" means the state department of social and
28 health services.

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

31 (7) "Professional school personnel" include, but are not
32 limited to, teachers, counselors, administrators, child care
33 facility personnel, and school nurses.

1 (8) "Social service counselor" means anyone engaged in a
2 professional capacity during the regular course of employment in
3 encouraging or promoting the health, welfare, support or education
4 of children, or providing social services to adults or families,
5 including mental health, drug and alcohol treatment, and domestic
6 violence programs, whether in an individual capacity, or as an
7 employee or agent of any public or private organization or
8 institution.

9 (9) "Psychologist" means any person licensed to practice
10 psychology under chapter 18.83 RCW, whether acting in an individual
11 capacity or as an employee or agent of any public or private
12 organization or institution.

13 (10) "Pharmacist" means any registered pharmacist under chapter
14 18.64 RCW, whether acting in an individual capacity or as an
15 employee or agent of any public or private organization or
16 institution.

17 (11) "Member of the clergy" means any regularly licensed,
18 accredited, or ordained minister, priest, ((~~or~~)) rabbi, imam, or
19 similarly situated religious or spiritual leader of any church
20 ((~~or~~)), religious denomination, religious body, spiritual
21 community, or sect, whether acting in an individual capacity or as
22 an employee ((~~or~~)), agent, or official of any public or private
23 organization or institution.

24 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
25 exploitation, negligent treatment, or maltreatment of a child by
26 any person under circumstances which indicate that the child's
27 health, welfare, and safety is harmed, excluding conduct permitted
28 under RCW 9A.16.100. An abused child is a child who has been
29 subjected to child abuse or neglect as defined in this section.

30 (13) "Child protective services section" means the child
31 protective services section of the department.

32 (14) "Sexual exploitation" includes: (a) Allowing, permitting,
33 or encouraging a child to engage in prostitution by any person; or
34 (b) allowing, permitting, encouraging, or engaging in the obscene
35 or pornographic photographing, filming, or depicting of a child by
36 any person.

37 (15) "Negligent treatment or maltreatment" means an act or
38 omission that evidences a serious disregard of consequences of such
39 magnitude as to constitute a clear and present danger to the

1 child's health, welfare, and safety. The fact that siblings share
2 a bedroom is not, in and of itself, negligent treatment or
3 maltreatment.

4 (16) "Child protective services" means those services provided
5 by the department designed to protect children from child abuse and
6 neglect and safeguard such children from future abuse and neglect,
7 and conduct investigations of child abuse and neglect reports.
8 Investigations may be conducted regardless of the location of the
9 alleged abuse or neglect. Child protective services includes
10 referral to services to ameliorate conditions that endanger the
11 welfare of children, the coordination of necessary programs and
12 services relevant to the prevention, intervention, and treatment of
13 child abuse and neglect, and services to children to ensure that
14 each child has a permanent home. In determining whether protective
15 services should be provided, the department shall not decline to
16 provide such services solely because of the child's unwillingness
17 or developmental inability to describe the nature and severity of
18 the abuse or neglect.

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

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

27 (19) "Unfounded" means available information indicates that,
28 more likely than not, child abuse or neglect did not occur. No
29 unfounded allegation of child abuse or neglect may be disclosed to
30 a child-placing agency, private adoption agency, or any other
31 provider licensed under chapter 74.15 RCW.

32 **Sec. 2.** RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30
33 are each reenacted and amended to read as follows:

34 (1)(a) When any practitioner, county coroner or medical
35 examiner, law enforcement officer, professional school personnel,
36 registered or licensed nurse, social service counselor,
37 psychologist, pharmacist, licensed or certified child care
38 providers or their employees, employee of the department, juvenile

1 probation officer, placement and liaison specialist, responsible
2 living skills program staff, HOPE center staff, or state family and
3 children's ombudsman or any volunteer in the ombudsman's office has
4 reasonable cause to believe that a child has suffered abuse or
5 neglect, he or she shall report such incident, or cause a report to
6 be made, to the proper law enforcement agency or to the department
7 as provided in RCW 26.44.040.

8 When any member of the clergy has reasonable cause to believe
9 that a child has suffered abuse or neglect from another member of
10 the clergy within the same church, religious denomination,
11 religious body, spiritual community, or sect, he or she shall
12 report such incident, or cause a report to be made, to the proper
13 law enforcement agency or to the department as provided in RCW
14 26.44.040.

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

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

35 (d) The report must be made at the first opportunity, but in no
36 case longer than forty-eight hours after there is reasonable cause
37 to believe that the child has suffered abuse or neglect. The
38 report must include the identity of the accused if known.

1 (2)(a) The reporting requirement of subsection (1) of this
2 section does not apply to a member of the clergy with regard to
3 information obtained solely as a result of a confession made
4 pursuant to the clergy-penitent privilege as provided in RCW
5 5.60.060(3).

6 (b) Nothing in this subsection shall exempt a member of the
7 clergy from making a report of child abuse or neglect as required
8 in subsection (1) of this section when the member of the clergy is
9 acting in some other capacity that would otherwise require him or
10 her to make a report.

11 (3) The reporting requirement of subsection (1) of this section
12 does not apply to the discovery of abuse or neglect that occurred
13 during childhood if it is discovered after the child has become an
14 adult. However, if there is reasonable cause to believe other
15 children are or may be at risk of abuse or neglect by the accused,
16 the reporting requirement of subsection (1) of this section does
17 apply.

18 ~~((+3))~~ (4) Any other person who has reasonable cause to
19 believe that a child has suffered abuse or neglect may report such
20 incident to the proper law enforcement agency or to the department
21 of social and health services as provided in RCW 26.44.040.

22 ~~((+4))~~ (5) The department, upon receiving a report of an
23 incident of alleged abuse or neglect pursuant to this chapter,
24 involving a child who has died or has had physical injury or
25 injuries inflicted upon him or her other than by accidental means
26 or who has been subjected to alleged sexual abuse, shall report
27 such incident to the proper law enforcement agency. In emergency
28 cases, where the child's welfare is endangered, the department
29 shall notify the proper law enforcement agency within twenty-four
30 hours after a report is received by the department. In all other
31 cases, the department shall notify the law enforcement agency
32 within seventy-two hours after a report is received by the
33 department. If the department makes an oral report, a written
34 report must also be made to the proper law enforcement agency
35 within five days thereafter.

36 ~~((+5))~~ (6) Any law enforcement agency receiving a report of an
37 incident of alleged abuse or neglect pursuant to this chapter,
38 involving a child who has died or has had physical injury or
39 injuries inflicted upon him or her other than by accidental means,

1 or who has been subjected to alleged sexual abuse, shall report
2 such incident in writing as provided in RCW 26.44.040 to the proper
3 county prosecutor or city attorney for appropriate action whenever
4 the law enforcement agency's investigation reveals that a crime may
5 have been committed. The law enforcement agency shall also notify
6 the department of all reports received and the law enforcement
7 agency's disposition of them. In emergency cases, where the
8 child's welfare is endangered, the law enforcement agency shall
9 notify the department within twenty-four hours. In all other
10 cases, the law enforcement agency shall notify the department
11 within seventy-two hours after a report is received by the law
12 enforcement agency.

13 ~~((+6+))~~ (7) Any county prosecutor or city attorney receiving a
14 report under subsection ~~((+5+))~~ (6) of this section shall notify
15 the victim, any persons the victim requests, and the local office
16 of the department, of the decision to charge or decline to charge
17 a crime, within five days of making the decision.

18 ~~((+7+))~~ (8) The department may conduct ongoing case planning
19 and consultation with those persons or agencies required to report
20 under this section, with consultants designated by the department,
21 and with designated representatives of Washington Indian tribes if
22 the client information exchanged is pertinent to cases currently
23 receiving child protective services. Upon request, the department
24 shall conduct such planning and consultation with those persons
25 required to report under this section if the department determines
26 it is in the best interests of the child. Information considered
27 privileged by statute and not directly related to reports required
28 by this section must not be divulged without a valid written waiver
29 of the privilege.

30 ~~((+8+))~~ (9) Any case referred to the department by a physician
31 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
32 medical opinion that child abuse, neglect, or sexual assault has
33 occurred and that the child's safety will be seriously endangered
34 if returned home, the department shall file a dependency petition
35 unless a second licensed physician of the parents' choice believes
36 that such expert medical opinion is incorrect. If the parents fail
37 to designate a second physician, the department may make the
38 selection. If a physician finds that a child has suffered abuse or
39 neglect but that such abuse or neglect does not constitute imminent

1 danger to the child's health or safety, and the department agrees
2 with the physician's assessment, the child may be left in the
3 parents' home while the department proceeds with reasonable efforts
4 to remedy parenting deficiencies.

5 ~~((+9))~~ (10) Persons or agencies exchanging information under
6 subsection ~~((+7))~~ (8) of this section shall not further
7 disseminate or release the information except as authorized by
8 state or federal statute. Violation of this subsection is a
9 misdemeanor.

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

26 ~~((+11))~~ (12) Upon receiving a report of alleged child abuse
27 and neglect, the department or investigating law enforcement agency
28 shall have access to all relevant records of the child in the
29 possession of mandated reporters and their employees.

30 ~~((+12))~~ (13) The department shall maintain investigation
31 records and conduct timely and periodic reviews of all cases
32 constituting abuse and neglect. The department shall maintain a
33 log of screened-out nonabusive cases.

34 ~~((+13))~~ (14) The department shall use a risk assessment
35 process when investigating alleged child abuse and neglect
36 referrals. The department shall present the risk factors at all
37 hearings in which the placement of a dependent child is an issue.
38 Substance abuse must be a risk factor. The department shall,
39 within funds appropriated for this purpose, offer enhanced

1 community-based services to persons who are determined not to
2 require further state intervention.

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

5 ~~((+14))~~ (15) Upon receipt of a report of alleged abuse or
6 neglect the law enforcement agency may arrange to interview the
7 person making the report and any collateral sources to determine if
8 any malice is involved in the reporting.

9 ~~((+15))~~ (16) The department shall make reasonable efforts to
10 learn the name, address, and telephone number of each person making
11 a report of abuse or neglect under this section. The department
12 shall provide assurances of appropriate confidentiality of the
13 identification of persons reporting under this section. If the
14 department is unable to learn the information required under this
15 subsection, the department shall only investigate cases in which:
16 (a) The department believes there is a serious threat of
17 substantial harm to the child; (b) the report indicates conduct
18 involving a criminal offense that has, or is about to occur, in
19 which the child is the victim; or (c) the department has, after
20 investigation, a report of abuse or neglect that has been founded
21 with regard to a member of the household within three years of
22 receipt of the referral.

23 **Sec. 3.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to
24 read as follows:

25 (1) Prosecutions for criminal offenses shall not be commenced
26 after the periods prescribed in this section.

27 (a) The following offenses may be prosecuted at any time after
28 their commission:

29 (i) Murder;

30 (ii) Homicide by abuse;

31 (iii) Arson if a death results;

32 (iv) Vehicular homicide;

33 (v) Vehicular assault if a death results;

34 (vi) Hit-and-run injury-accident if a death results (RCW
35 46.52.020(4)).

36 (b) The following offenses shall not be prosecuted more than
37 ten years after their commission:

1 (i) Any felony committed by a public officer if the commission
2 is in connection with the duties of his or her office or
3 constitutes a breach of his or her public duty or a violation of
4 the oath of office;

5 (ii) Arson if no death results; or

6 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
7 reported to a law enforcement agency within one year of its
8 commission; except that if the victim is under fourteen years of
9 age when the rape is committed and the rape is reported to a law
10 enforcement agency within one year of its commission, the violation
11 may be prosecuted up to three years after the victim's eighteenth
12 birthday or up to ten years after the rape's commission, whichever
13 is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not
14 reported within one year, the rape may not be prosecuted: (A) More
15 than three years after its commission if the violation was
16 committed against a victim fourteen years of age or older; or (B)
17 more than three years after the victim's eighteenth birthday or
18 more than seven years after the rape's commission, whichever is
19 later, if the violation was committed against a victim under
20 fourteen years of age.

21 (c) Violations of the following statutes shall not be
22 prosecuted more than three years after the victim's eighteenth
23 birthday or more than seven years after their commission, whichever
24 is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086,
25 9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

26 (d) The following offenses shall not be prosecuted more than
27 six years after their commission: Violations of RCW 9A.82.060 or
28 9A.82.080.

29 (e) The following offenses shall not be prosecuted more than
30 five years after their commission: Any class C felony under
31 chapter 74.09, 82.36, or 82.38 RCW.

32 (f) Bigamy shall not be prosecuted more than three years after
33 the time specified in RCW 9A.64.010.

34 (g) A violation of RCW 9A.56.030 must not be prosecuted more
35 than three years after the discovery of the offense when the victim
36 is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

37 (h) No other felony may be prosecuted more than three years
38 after its commission; except that in a prosecution under RCW
39 9A.44.115, if the person who was viewed, photographed, or filmed

1 did not realize at the time that he or she was being viewed,
2 photographed, or filmed, the prosecution must be commenced within
3 two years of the time the person who was viewed or in the
4 photograph or film first learns that he or she was viewed,
5 photographed, or filmed.

6 (i) A violation of RCW 26.44.080 must not be prosecuted more
7 than ten years after the disclosure of the information that was the
8 subject of the reporting requirement under RCW 26.44.030 should
9 have occurred.

10 (j) No other gross misdemeanor may be prosecuted more than two
11 years after its commission.

12 (~~(j)~~) (k) No misdemeanor may be prosecuted more than one year
13 after its commission.

14 (2) The periods of limitation prescribed in subsection (1) of
15 this section do not run during any time when the person charged is
16 not usually and publicly resident within this state.

17 (3) If, before the end of a period of limitation prescribed in
18 subsection (1) of this section, an indictment has been found or a
19 complaint or an information has been filed, and the indictment,
20 complaint, or information is set aside, then the period of
21 limitation is extended by a period equal to the length of time from
22 the finding or filing to the setting aside."

23 Correct the title.

24 EFFECT: Changes the definition of "member of the clergy" to
25 a narrower definition.

26 Changes the circumstances under which the member of the clergy
27 is required to report information regarding the abuse or neglect of
28 a child. The member of the clergy is required to report if he or
29 she has reasonable cause to believe that a child has suffered
30 abuse or neglect from another member of the clergy within the same
31 church, religious denomination, religious body, spiritual
32 community, or sect.

33 Narrows the exception to the reporting requirement to state
34 that the reporting requirement does not apply to information
35 obtained by a member of the clergy as a result of a confession
36 which is privileged.

EFFECT: