
SENATE BILL 5639

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By Senators Kohl-Welles, McCaslin, Heavey, Franklin, Gardner, Goings, Roach, Rasmussen and McAuliffe

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1 AN ACT Relating to investigations or interviews involving children;
2 amending RCW 26.44.030, 26.44.035, and 26.44.080; reenacting and
3 amending RCW 26.44.050; adding a new section to chapter 26.44 RCW;
4 adding new sections to chapter 43.101 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 26.44.030 and 1998 c 328 s 5 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, juvenile probation officer, or state family and
13 children's ombudsman or any volunteer in the ombudsman's office has
14 reasonable cause to believe that a child or adult dependent or
15 developmentally disabled person, has suffered abuse or neglect, he or
16 she shall report such incident, or cause a report to be made, to the
17 proper law enforcement agency or to the department as provided in RCW
18 26.44.040.

1 (b) The reporting requirement shall also apply to department of
2 corrections personnel who, in the course of their employment, observe
3 offenders or the children with whom the offenders are in contact. If,
4 as a result of observations or information received in the course of
5 his or her employment, any department of corrections personnel has
6 reasonable cause to believe that a child or adult dependent or
7 developmentally disabled person has suffered abuse or neglect, he or
8 she shall report the incident, or cause a report to be made, to the
9 proper law enforcement agency or to the department as provided in RCW
10 26.44.040.

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

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

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

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

1 (4) The department, upon receiving a report of an incident of
2 alleged 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 alleged sexual abuse,
6 shall report such incident to the proper law enforcement agency. In
7 emergency cases, where the child, adult dependent, or developmentally
8 disabled person's welfare is endangered, the department shall notify
9 the proper law enforcement agency within twenty-four hours after a
10 report is received by the department. In all other cases, the
11 department shall notify the law enforcement agency within seventy-two
12 hours after a report is received by the department. If the department
13 makes an oral report, a written report shall also be made to the proper
14 law enforcement agency within five days thereafter.

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

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

36 (7) The department may conduct ongoing case planning and
37 consultation with those persons or agencies required to report under
38 this section, with consultants designated by the department, and with
39 designated representatives of Washington Indian tribes if the client

1 information exchanged is pertinent to cases currently receiving child
2 protective services or department case services for the developmentally
3 disabled. Upon request, the department shall conduct such planning and
4 consultation with those persons required to report under this section
5 if the department determines it is in the best interests of the child
6 or developmentally disabled person. Information considered privileged
7 by statute and not directly related to reports required by this section
8 shall not be divulged without a valid written waiver of the privilege.

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

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

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

1 to include a third party in any interview so long as the presence of
2 the third party will not jeopardize the course of the investigation.

3 (b) The interviewer shall use a question and answer interviewing
4 format, with questioning as nondirective as possible, to elicit
5 spontaneous responses. When interviewing the alleged child victim and
6 child witnesses, the interviewer must, whenever possible, record the
7 interview by either the use of videotape or audiotape or certified
8 court stenographer.

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

13 (12) The department or law enforcement agency shall maintain
14 investigation records ((and)), including verbatim or near verbatim
15 records of child interviews. The department shall conduct timely and
16 periodic reviews of all cases constituting abuse and neglect. The
17 department shall maintain a log of screened-out nonabusive cases.

18 (13) The department shall use a risk assessment process when
19 investigating alleged child abuse and neglect referrals. The
20 department shall present the risk factors at all hearings in which the
21 placement of a dependent child is an issue. Substance abuse must be a
22 risk factor. The department shall, within funds appropriated for this
23 purpose, offer enhanced community-based services to persons who are
24 determined not to require further state intervention.

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

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

31 (15) The department shall make reasonable efforts to learn the
32 name, address, and telephone number of each person making a report of
33 abuse or neglect under this section. The department shall provide
34 assurances of appropriate confidentiality of the identification of
35 persons reporting under this section. If the department is unable to
36 learn the information required under this subsection, the department
37 shall only investigate cases in which: (a) The department believes
38 there is a serious threat of substantial harm to the child; (b) the
39 report indicates conduct involving a criminal offense that has, or is

1 about to occur, in which the child is the victim; or (c) the department
2 has, after investigation, a report of abuse or neglect that has been
3 founded with regard to a member of the household within three years of
4 receipt of the referral.

5 **Sec. 2.** RCW 26.44.035 and 1997 c 386 s 26 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. Any agency which conducts a child witness
18 interview, including the department, a law enforcement agency, the
19 county prosecutor's office, or the city attorney's office, shall make
20 and maintain a verbatim record or near verbatim record of the interview
21 as required by RCW 26.44.030(10).

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

24 Upon the receipt of a report concerning the possible occurrence of
25 abuse or neglect, it shall be the duty of the law enforcement agency or
26 the department of social and health services to investigate and provide
27 the protective services section with a report in accordance with the
28 provision of chapter 74.13 RCW, and where necessary to refer such
29 report to the court.

30 A law enforcement officer may take, or cause to be taken, a child
31 into custody without a court order if there is probable cause to
32 believe that the child is abused or neglected and that the child would
33 be injured or could not be taken into custody if it were necessary to
34 first obtain a court order pursuant to RCW 13.34.050. The law
35 enforcement agency or the department of social and health services
36 investigating such a report is hereby authorized to photograph,
37 audiotape, or videotape such a child or adult dependent or

1 developmentally disabled person for the purpose of providing
2 documentary evidence of the physical condition of the child, adult
3 dependent or developmentally disabled person.

4 **Sec. 4.** RCW 26.44.080 and 1982 c 129 s 10 are each amended to read
5 as follows:

6 (1) Every person who is required to make, or to cause to be made,
7 a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly
8 fails to make, or fails to cause to be made, such report, shall be
9 guilty of a gross misdemeanor.

10 (2) Every person who is required to maintain investigation records
11 including verbatim or near verbatim records of child interviews under
12 RCW 26.44.030 and 26.44.035, and who knowingly fails to maintain or
13 destroys those records, shall be guilty of a gross misdemeanor.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.44 RCW
15 to read as follows:

16 (1) A custodian of a videotape of a child victim or alleged victim
17 alleging, explaining, denying, or describing an act of physical or
18 sexual abuse as part of an investigation or evaluation of the abuse may
19 not release a copy of the videotape without a court order,
20 notwithstanding that the subject has consented to the release of the
21 videotape or that the release is authorized under law.

22 (2) The court order may govern the purposes for which the videotape
23 may be used, including reproduction, release to other persons,
24 retention and return of copies, and other requirements reasonably
25 necessary for the protection of the privacy and best interests of the
26 child.

27 (3) An individual being investigated or charged with the allegation
28 of child abuse or child sexual abuse or the child victim or alleged
29 child victim who is seeking a copy of the videotape under this section
30 may petition the superior court in the county where the alleged abuse
31 took place or where the custodian of the videotape resides for an order
32 releasing a copy of the videotape under subsection (2) of this section.
33 Nothing in this section establishes a right to obtain access to a
34 videotape by any other person or limits the right of a person to obtain
35 access if access is otherwise authorized by law or pursuant to
36 discovery in a court proceeding.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.101 RCW
2 to read as follows:

3 The commission shall provide training for law enforcement officers,
4 prosecutors, and employees of child protective services concerning
5 investigations of child sexual abuse allegations. The course of study
6 shall include, but is not limited to, research about children's memory
7 and suggestibility, patterns of disclosure and reporting, recommended
8 interview techniques with a specified minimum number of clinical
9 training hours, interviews with suspects, interviews with collateral
10 witnesses, and reviews of forensic medical evidence.

11 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.101 RCW
12 to read as follows:

13 Any public employee or volunteer of any city, county, state, or
14 combination thereof, who conducts any investigation and/or interview
15 for the purpose of investigating allegations of child sexual abuse
16 shall be certified, prior to conducting that investigation or
17 interview, by the commission as having completed a course of study
18 concerning investigation of child sexual abuse allegations.

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