

SHB 1054 - H AMD 67

By Representative Carrell

WITHDRAWN 03/07/2003

1 Strike everything after the enacting clause and insert the
2 following:

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

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

23 (5) "Department" means the state department of social and health
24 services.

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

27 (7) "Professional school personnel" include, but are not limited
28 to, teachers, counselors, administrators, child care facility
29 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 of
4 children, or providing social services to adults or families, including
5 mental health, drug and alcohol treatment, and domestic violence
6 programs, whether in an individual capacity, or as an employee or agent
7 of any public or private organization or institution.

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

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

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

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

28 (13) "Child protective services section" means the child protective
29 services section of the department.

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

35 (15) "Negligent treatment or maltreatment" means an act or omission
36 that evidences a serious disregard of consequences of such magnitude as
37 to constitute a clear and present danger to the child's health,

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

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

17 (17) "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 willful disregard of the rights of
20 another, or an act wrongfully done without just cause or excuse, or an
21 act or omission of duty betraying a willful disregard of social duty.

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

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

29 **Sec. 2.** RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30 are
30 each reenacted and amended to read 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, juvenile probation officer, placement and liaison
36 specialist, responsible living skills program staff, HOPE center staff,
37 or state family and children's ombudsman or any volunteer in the

1 ombudsman's office has reasonable cause to believe that a child has
2 suffered abuse or neglect, he or she shall report such incident, or
3 cause a report to be made, to the proper law enforcement agency or to
4 the department as provided in RCW 26.44.040.

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

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

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

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

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

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

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

12 ~~((+3))~~ (4) Any other person who has reasonable cause to believe
13 that a child has suffered abuse or neglect may report such incident to
14 the proper law enforcement agency or to the department of social and
15 health services as provided in RCW 26.44.040.

16 ~~((+4))~~ (5) The department, upon receiving a report of an incident
17 of alleged abuse or neglect pursuant to this chapter, involving a child
18 who has died or has had physical injury or injuries inflicted upon him
19 or her other than by accidental means or who has been subjected to
20 alleged sexual abuse, shall report such incident to the proper law
21 enforcement agency. In emergency cases, where the child's welfare is
22 endangered, the department shall notify the proper law enforcement
23 agency within twenty-four hours after a report is received by the
24 department. In all other cases, the department shall notify the law
25 enforcement agency within seventy-two hours after a report is received
26 by the department. If the department makes an oral report, a written
27 report must also be made to the proper law enforcement agency within
28 five days thereafter.

29 ~~((+5))~~ (6) Any law enforcement agency receiving a report of an
30 incident of alleged abuse or neglect pursuant to this chapter,
31 involving a child who has died or has had physical injury or injuries
32 inflicted upon him or her other than by accidental means, or who has
33 been subjected to alleged sexual abuse, shall report such incident in
34 writing as provided in RCW 26.44.040 to the proper county prosecutor or
35 city attorney for appropriate action whenever the law enforcement
36 agency's investigation reveals that a crime may have been committed.
37 The law enforcement agency shall also notify the department of all
38 reports received and the law enforcement agency's disposition of them.

1 In emergency cases, where the child's welfare is endangered, the law
2 enforcement agency shall notify the department within twenty-four
3 hours. In all other cases, the law enforcement agency shall notify the
4 department within seventy-two hours after a report is received by the
5 law enforcement agency.

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

11 ~~((+7+))~~ (8) The department may conduct ongoing case planning and
12 consultation with those persons or agencies required to report under
13 this section, with consultants designated by the department, and with
14 designated representatives of Washington Indian tribes if the client
15 information exchanged is pertinent to cases currently receiving child
16 protective services. Upon request, the department shall conduct such
17 planning and consultation with those persons required to report under
18 this section if the department determines it is in the best interests
19 of the child. Information considered privileged by statute and not
20 directly related to reports required by this section must not be
21 divulged without a valid written waiver of the privilege.

22 ~~((+8+))~~ (9) Any case referred to the department by a physician
23 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
24 medical opinion that child abuse, neglect, or sexual assault has
25 occurred and that the child's safety will be seriously endangered if
26 returned home, the department shall file a dependency petition unless
27 a second licensed physician of the parents' choice believes that such
28 expert medical opinion is incorrect. If the parents fail to designate
29 a second physician, the department may make the selection. If a
30 physician finds that a child has suffered abuse or neglect but that
31 such abuse or neglect does not constitute imminent danger to the
32 child's health or safety, and the department agrees with the
33 physician's assessment, the child may be left in the parents' home
34 while the department proceeds with reasonable efforts to remedy
35 parenting deficiencies.

36 ~~((+9+))~~ (10) Persons or agencies exchanging information under
37 subsection ~~((+7+))~~ (8) of this section shall not further disseminate or

1 release the information except as authorized by state or federal
2 statute. Violation of this subsection is a misdemeanor.

3 ~~((+10+))~~ (11) Upon receiving reports of alleged abuse or neglect,
4 the department or law enforcement agency may interview children. The
5 interviews may be conducted on school premises, at day-care facilities,
6 at the child's home, or at other suitable locations outside of the
7 presence of parents. Parental notification of the interview must occur
8 at the earliest possible point in the investigation that will not
9 jeopardize the safety or protection of the child or the course of the
10 investigation. Prior to commencing the interview the department or law
11 enforcement agency shall determine whether the child wishes a third
12 party to be present for the interview and, if so, shall make reasonable
13 efforts to accommodate the child's wishes. Unless the child objects,
14 the department or law enforcement agency shall make reasonable efforts
15 to include a third party in any interview so long as the presence of
16 the third party will not jeopardize the course of the investigation.

17 ~~((+11+))~~ (12) Upon receiving a report of alleged child abuse and
18 neglect, the department or investigating law enforcement agency shall
19 have access to all relevant records of the child in the possession of
20 mandated reporters and their employees.

21 ~~((+12+))~~ (13) The department shall maintain investigation records
22 and conduct timely and periodic reviews of all cases constituting abuse
23 and neglect. The department shall maintain a log of screened-out
24 nonabusive cases.

25 ~~((+13+))~~ (14) The department shall use a risk assessment process
26 when investigating alleged child abuse and neglect referrals. The
27 department shall present the risk factors at all hearings in which the
28 placement of a dependent child is an issue. Substance abuse must be a
29 risk factor. The department shall, within funds appropriated for this
30 purpose, offer enhanced community-based services to persons who are
31 determined not to require further state intervention.

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

34 ~~((+14+))~~ (15) Upon receipt of a report of alleged abuse or neglect
35 the law enforcement agency may arrange to interview the person making
36 the report and any collateral sources to determine if any malice is
37 involved in the reporting.

1 (~~(15)~~) (16) The department shall make reasonable efforts to learn
2 the name, address, and telephone number of each person making a report
3 of abuse or neglect under this section. The department shall provide
4 assurances of appropriate confidentiality of the identification of
5 persons reporting under this section. If the department is unable to
6 learn the information required under this subsection, the department
7 shall only investigate cases in which: (a) The department believes
8 there is a serious threat of substantial harm to the child; (b) the
9 report indicates conduct involving a criminal offense that has, or is
10 about to occur, in which the child is the victim; or (c) the department
11 has, after investigation, a report of abuse or neglect that has been
12 founded with regard to a member of the household within three years of
13 receipt of the referral.

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

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

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

20 (i) Murder;

21 (ii) Homicide by abuse;

22 (iii) Arson if a death results;

23 (iv) Vehicular homicide;

24 (v) Vehicular assault if a death results;

25 (vi) Hit-and-run injury-accident if a death results (RCW
26 46.52.020(4)).

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

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

32 (ii) Arson if no death results; or

33 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
34 reported to a law enforcement agency within one year of its commission;
35 except that if the victim is under fourteen years of age when the rape
36 is committed and the rape is reported to a law enforcement agency
37 within one year of its commission, the violation may be prosecuted up

1 to three years after the victim's eighteenth birthday or up to ten
2 years after the rape's commission, whichever is later. If a violation
3 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
4 may not be prosecuted: (A) More than three years after its commission
5 if the violation was committed against a victim fourteen years of age
6 or older; or (B) more than three years after the victim's eighteenth
7 birthday or more than seven years after the rape's commission,
8 whichever is later, if the violation was committed against a victim
9 under fourteen years of age.

10 (c) Violations of the following statutes shall not be prosecuted
11 more than three years after the victim's eighteenth birthday or more
12 than seven years after their commission, whichever is later: RCW
13 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
14 9A.44.100(1)(b), or 9A.64.020.

15 (d) The following offenses shall not be prosecuted more than six
16 years after their commission: Violations of RCW 9A.82.060 or
17 9A.82.080.

18 (e) The following offenses shall not be prosecuted more than five
19 years after their commission: Any class C felony under chapter 74.09,
20 82.36, or 82.38 RCW.

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

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

26 (h) No other felony may be prosecuted more than three years after
27 its commission; except that in a prosecution under RCW 9A.44.115, if
28 the person who was viewed, photographed, or filmed did not realize at
29 the time that he or she was being viewed, photographed, or filmed, the
30 prosecution must be commenced within two years of the time the person
31 who was viewed or in the photograph or film first learns that he or she
32 was viewed, photographed, or filmed.

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

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

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

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

6 (3) If, before the end of a period of limitation prescribed in
7 subsection (1) of this section, an indictment has been found or a
8 complaint or an information has been filed, and the indictment,
9 complaint, or information is set aside, then the period of limitation
10 is extended by a period equal to the length of time from the finding or
11 filing to the setting aside."

12 Correct the title.

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

Removes a "member of the clergy" from the list of persons who are required to report information regarding the abuse or neglect of a child unless the member of the clergy has reasonable cause to believe that a child has suffered abuse or neglect from another member of the clergy within the same church, religious denomination, religious body, spiritual community, or sect.

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

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