
ENGROSSED SUBSTITUTE HOUSE BILL 1054

State of Washington

58th Legislature

2003 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Dickerson, Skinner, Romero, Haigh, O'Brien, Kenney, Darneille, Kagi, Clements, Sommers, Chase, Miloscia, McDermott, Kirby, Schual-Berke, Lovick and Kessler)

READ FIRST TIME 02/13/03.

1 AN ACT Relating to duty of clergy to report child abuse or neglect;
2 amending RCW 26.44.020 and 9A.04.080; and reenacting and amending RCW
3 26.44.030.

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

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

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

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

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

14 (3) "Practitioner of the healing arts" or "practitioner" means a
15 person licensed by this state to practice podiatric medicine and
16 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
17 medicine and surgery, or medicine and surgery or to provide other

1 health services. The term "practitioner" includes a duly accredited
2 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
3 is being furnished Christian Science treatment by a duly accredited
4 Christian Science practitioner will not be considered, for that reason
5 alone, a neglected person for the purposes of this chapter.

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

8 (5) "Department" means the state department of social and health
9 services.

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

12 (7) "Professional school personnel" include, but are not limited
13 to, teachers, counselors, administrators, child care facility
14 personnel, and school nurses.

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

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

26 (10) "Pharmacist" means any registered pharmacist under chapter
27 18.64 RCW, whether acting in an individual capacity or as an employee
28 or agent of any public or private organization or institution.

29 (11) "Member of the clergy" means any regularly licensed,
30 accredited, or ordained minister, priest, ((~~or~~)) rabbi, imam, similarly
31 situated religious or spiritual leader of any church ((~~or~~)),
32 religious denomination, religious body, spiritual community, or sect, or person
33 performing official duties that are recognized as the duties of a
34 member of the clergy under the discipline, tenets, doctrine, or custom
35 of the person's church, religious denomination, religious body,
36 spiritual community, or sect, whether acting in an individual capacity
37 or as an employee ((~~or~~)), agent, or official of any public or private
38 organization or institution.

1 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
2 exploitation, negligent treatment, or maltreatment of a child by any
3 person under circumstances which indicate that the child's health,
4 welfare, and safety is harmed, excluding conduct permitted under RCW
5 9A.16.100. An abused child is a child who has been subjected to child
6 abuse or neglect as defined in this section.

7 (13) "Child protective services section" means the child protective
8 services section of the department.

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

14 (15) "Negligent treatment or maltreatment" means an act or omission
15 that evidences a serious disregard of consequences of such magnitude as
16 to constitute a clear and present danger to the child's health,
17 welfare, and safety. The fact that siblings share a bedroom is not, in
18 and of itself, negligent treatment or maltreatment.

19 (16) "Child protective services" means those services provided by
20 the department designed to protect children from child abuse and
21 neglect and safeguard such children from future abuse and neglect, and
22 conduct investigations of child abuse and neglect reports.
23 Investigations may be conducted regardless of the location of the
24 alleged abuse or neglect. Child protective services includes referral
25 to services to ameliorate conditions that endanger the welfare of
26 children, the coordination of necessary programs and services relevant
27 to the prevention, intervention, and treatment of child abuse and
28 neglect, and services to children to ensure that each child has a
29 permanent home. In determining whether protective services should be
30 provided, the department shall not decline to provide such services
31 solely because of the child's unwillingness or developmental inability
32 to describe the nature and severity of the abuse or neglect.

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

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

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

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

10 (1)(a) When any practitioner, county coroner or medical examiner,
11 law enforcement officer, professional school personnel, registered or
12 licensed nurse, social service counselor, psychologist, pharmacist,
13 member of the clergy, licensed or certified child care providers or
14 their employees, employee of the department, juvenile probation
15 officer, placement and liaison specialist, responsible living skills
16 program staff, HOPE center staff, or state family and children's
17 ombudsman or any volunteer in the ombudsman's office has reasonable
18 cause to believe that a child has suffered abuse or neglect, he or she
19 shall report such incident, or cause a report to be made, to the proper
20 law enforcement agency or to the department as provided in RCW
21 26.44.040.

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

31 (c) The reporting requirement shall also apply to any adult who has
32 reasonable cause to believe that a child who resides with them, has
33 suffered severe abuse, and is able or capable of making a report. For
34 the purposes of this subsection, "severe abuse" means any of the
35 following: Any single act of abuse that causes physical trauma of
36 sufficient severity that, if left untreated, could cause death; any
37 single act of sexual abuse that causes significant bleeding, deep

1 bruising, or significant external or internal swelling; or more than
2 one act of physical abuse, each of which causes bleeding, deep
3 bruising, significant external or internal swelling, bone fracture, or
4 unconsciousness.

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

9 (2)(a) The reporting requirement of subsection (1) of this section
10 does not apply to a member of the clergy with regard to information
11 obtained by the member of the clergy in his or her professional
12 character as a religious or spiritual advisor when the information is
13 obtained solely as a result of a confession made pursuant to the
14 clergy-penitent privilege as provided in RCW 5.60.060(3), and the
15 member of the clergy is authorized to hear such confession, and has a
16 duty under the discipline, tenets, doctrine, or custom of his or her
17 church, religious denomination, religious body, spiritual community, or
18 sect to keep the confession secret. The privilege shall not apply and
19 the member of the clergy shall report child abuse or neglect pursuant
20 to this section if: The member of the clergy has received the
21 information from any source other than from a confession.

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

27 (3) 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 children
31 are or may be at risk of abuse or neglect by the accused, the reporting
32 requirement of subsection (1) of this section does apply.

33 ~~((+3+))~~ (4) Any other person who has reasonable cause to believe
34 that a child has suffered abuse or neglect may report such incident to
35 the proper law enforcement agency or to the department of social and
36 health services as provided in RCW 26.44.040.

37 ~~((+4+))~~ (5) The department, upon receiving a report of an incident
38 of alleged abuse or neglect pursuant to this chapter, involving a child

1 who has died or has had physical injury or injuries inflicted upon him
2 or her other than by accidental means or who has been subjected to
3 alleged sexual abuse, shall report such incident to the proper law
4 enforcement agency. In emergency cases, where the child's welfare is
5 endangered, the department shall notify the proper law enforcement
6 agency within twenty-four hours after a report is received by the
7 department. In all other cases, the department shall notify the law
8 enforcement agency within seventy-two hours after a report is received
9 by the department. If the department makes an oral report, a written
10 report must also be made to the proper law enforcement agency within
11 five days thereafter.

12 ~~((+5+))~~ (6) Any law enforcement agency receiving a report of an
13 incident of alleged abuse or neglect pursuant to this chapter,
14 involving a child who has died or has had physical injury or injuries
15 inflicted upon him or her other than by accidental means, or who has
16 been subjected to alleged sexual abuse, shall report such incident in
17 writing as provided in RCW 26.44.040 to the proper county prosecutor or
18 city attorney for appropriate action whenever the law enforcement
19 agency's investigation reveals that a crime may have been committed.
20 The law enforcement agency shall also notify the department of all
21 reports received and the law enforcement agency's disposition of them.
22 In emergency cases, where the child's welfare is endangered, the law
23 enforcement agency shall notify the department within twenty-four
24 hours. In all other cases, the law enforcement agency shall notify the
25 department within seventy-two hours after a report is received by the
26 law enforcement agency.

27 ~~((+6+))~~ (7) Any county prosecutor or city attorney receiving a
28 report under subsection ~~((+5+))~~ (6) of this section shall notify the
29 victim, any persons the victim requests, and the local office of the
30 department, of the decision to charge or decline to charge a crime,
31 within five days of making the decision.

32 ~~((+7+))~~ (8) 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. Upon request, the department shall conduct such
38 planning and consultation with those persons required to report under

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

5 ~~((+8))~~ (9) Any case referred to the department by a physician
6 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
7 medical opinion that child abuse, neglect, or sexual assault has
8 occurred and that the child's safety will be seriously endangered if
9 returned home, the department shall file a dependency petition unless
10 a second licensed physician of the parents' choice believes that such
11 expert medical opinion is incorrect. If the parents fail to designate
12 a 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))~~ (10) Persons or agencies exchanging information under
20 subsection ~~((+7))~~ (8) of this section shall not further disseminate or
21 release the information except as authorized by state or federal
22 statute. Violation of this subsection is a misdemeanor.

23 ~~((+10))~~ (11) Upon receiving reports of alleged abuse or neglect,
24 the department or law enforcement agency may interview children. The
25 interviews may be conducted on school premises, at day-care facilities,
26 at the child's home, or at other suitable locations outside of the
27 presence of parents. Parental notification of the interview must occur
28 at the earliest possible point in the investigation that will not
29 jeopardize 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 reasonable
33 efforts to accommodate the child's wishes. Unless the child objects,
34 the department or law enforcement agency shall make reasonable efforts
35 to include a third party in any interview so long as the presence of
36 the third party will not jeopardize the course of the investigation.

37 ~~((+11))~~ (12) Upon receiving a report of alleged child abuse and

1 neglect, the department or investigating law enforcement agency shall
2 have access to all relevant records of the child in the possession of
3 mandated reporters and their employees.

4 ~~((+12+))~~ (13) The department shall maintain investigation records
5 and conduct timely and periodic reviews of all cases constituting abuse
6 and neglect. The department shall maintain a log of screened-out
7 nonabusive cases.

8 ~~((+13+))~~ (14) The department shall use a risk assessment process
9 when investigating alleged child abuse and neglect referrals. The
10 department shall present the risk factors at all hearings in which the
11 placement of a dependent child is an issue. Substance abuse must be a
12 risk factor. The department shall, within funds appropriated for this
13 purpose, offer enhanced community-based services to persons who are
14 determined not to require further state intervention.

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

17 ~~((+14+))~~ (15) Upon receipt of a report of alleged abuse or neglect
18 the law enforcement agency may arrange to interview the person making
19 the report and any collateral sources to determine if any malice is
20 involved in the reporting.

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

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

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

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

3 (i) Murder;

4 (ii) Homicide by abuse;

5 (iii) Arson if a death results;

6 (iv) Vehicular homicide;

7 (v) Vehicular assault if a death results;

8 (vi) Hit-and-run injury-accident if a death results (RCW
9 46.52.020(4)).

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

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

15 (ii) Arson if no death results; or

16 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
17 reported to a law enforcement agency within one year of its commission;
18 except that if the victim is under fourteen years of age when the rape
19 is committed and the rape is reported to a law enforcement agency
20 within one year of its commission, the violation may be prosecuted up
21 to three years after the victim's eighteenth birthday or up to ten
22 years after the rape's commission, whichever is later. If a violation
23 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
24 may not be prosecuted: (A) More than three years after its commission
25 if the violation was committed against a victim fourteen years of age
26 or older; or (B) more than three years after the victim's eighteenth
27 birthday or more than seven years after the rape's commission,
28 whichever is later, if the violation was committed against a victim
29 under fourteen years of age.

30 (c) Violations of the following statutes shall not be prosecuted
31 more than three years after the victim's eighteenth birthday or more
32 than seven years after their commission, whichever is later: RCW
33 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
34 9A.44.100(1)(b), or 9A.64.020.

35 (d) The following offenses shall not be prosecuted more than six
36 years after their commission: Violations of RCW 9A.82.060 or
37 9A.82.080.

1 (e) The following offenses shall not be prosecuted more than five
2 years after their commission: Any class C felony under chapter 74.09,
3 82.36, or 82.38 RCW.

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

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

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

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

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

21 ((+j)) (k) No misdemeanor may be prosecuted more than one year
22 after its commission.

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

26 (3) If, before the end of a period of limitation prescribed in
27 subsection (1) of this section, an indictment has been found or a
28 complaint or an information has been filed, and the indictment,
29 complaint, or information is set aside, then the period of limitation
30 is extended by a period equal to the length of time from the finding or
31 filing to the setting aside.

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