
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
18 health services. The term "practitioner" includes a duly accredited
19 Christian Science practitioner: PROVIDED, HOWEVER, That a person who

1 is being furnished Christian Science treatment by a duly accredited
2 Christian Science practitioner will not be considered, for that reason
3 alone, a neglected person for the purposes of this chapter.

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

6 (5) "Department" means the state department of social and health
7 services.

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

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

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

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

24 (10) "Pharmacist" means any registered pharmacist under chapter
25 18.64 RCW, whether acting in an individual capacity or as an employee
26 or agent of any public or private organization or institution.

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

37 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
38 exploitation, negligent treatment, or maltreatment of a child by any

1 person under circumstances which indicate that the child's health,
2 welfare, and safety is harmed, excluding conduct permitted under RCW
3 9A.16.100. An abused child is a child who has been subjected to child
4 abuse or neglect as defined in this section.

5 (13) "Child protective services section" means the child protective
6 services section of the department.

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

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

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

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

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

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

6 **Sec. 2.** RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30 are
7 each reenacted and amended to read 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 member of the clergy, licensed or certified child care providers or
12 their employees, employee of the department, juvenile probation
13 officer, placement and liaison specialist, responsible living skills
14 program staff, HOPE center staff, or state family and children's
15 ombudsman or any volunteer in the ombudsman's office has reasonable
16 cause to believe that a child has suffered abuse or neglect, he or she
17 shall report such incident, or cause a report to be made, to the proper
18 law enforcement agency or to the department as provided in RCW
19 26.44.040.

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

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

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

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

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

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

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

32 ~~((+3))~~ (4) Any other person who has reasonable cause to believe
33 that a child has suffered abuse or neglect may report such incident to
34 the proper law enforcement agency or to the department of social and
35 health services as provided in RCW 26.44.040.

36 ~~((+4))~~ (5) The department, upon receiving a report of an incident
37 of alleged abuse or neglect pursuant to this chapter, involving a child
38 who has died or has had physical injury or injuries inflicted upon him

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

11 ~~((+5))~~ (6) Any law enforcement agency receiving a report of an
12 incident of alleged abuse or neglect pursuant to this chapter,
13 involving a child who has died or has had physical injury or injuries
14 inflicted upon him or her other than by accidental means, or who has
15 been subjected to alleged sexual abuse, shall report such incident in
16 writing as provided in RCW 26.44.040 to the proper county prosecutor or
17 city attorney for appropriate action whenever the law enforcement
18 agency's investigation reveals that a crime may have been committed.
19 The law enforcement agency shall also notify the department of all
20 reports received and the law enforcement agency's disposition of them.
21 In emergency cases, where the child's welfare is endangered, the law
22 enforcement agency shall notify the department within twenty-four
23 hours. In all other cases, the law enforcement agency shall notify the
24 department within seventy-two hours after a report is received by the
25 law enforcement agency.

26 ~~((+6))~~ (7) Any county prosecutor or city attorney receiving a
27 report under subsection ~~((+5))~~ (6) of this section shall notify the
28 victim, any persons the victim requests, and the local office of the
29 department, of the decision to charge or decline to charge a crime,
30 within five days of making the decision.

31 ~~((+7))~~ (8) The department may conduct ongoing case planning and
32 consultation with those persons or agencies required to report under
33 this section, with consultants designated by the department, and with
34 designated representatives of Washington Indian tribes if the client
35 information exchanged is pertinent to cases currently receiving child
36 protective services. Upon request, the department shall conduct such
37 planning and consultation with those persons required to report under
38 this section if the department determines it is in the best interests

1 of the child. Information considered privileged by statute and not
2 directly related to reports required by this section must not be
3 divulged without a valid written waiver of the privilege.

4 ~~((+8+))~~ (9) Any case referred to the department by a physician
5 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
6 medical opinion that child abuse, neglect, or sexual assault has
7 occurred and that the child's safety will be seriously endangered if
8 returned home, the department shall file a dependency petition unless
9 a second licensed physician of the parents' choice believes that such
10 expert medical opinion is incorrect. If the parents fail to designate
11 a second physician, the department may make the selection. If a
12 physician finds that a child has suffered abuse or neglect but that
13 such abuse or neglect does not constitute imminent danger to the
14 child's health or safety, and the department agrees with the
15 physician's assessment, the child may be left in the parents' home
16 while the department proceeds with reasonable efforts to remedy
17 parenting deficiencies.

18 ~~((+9+))~~ (10) Persons or agencies exchanging information under
19 subsection ~~((+7+))~~ (8) of this section shall not further disseminate or
20 release the information except as authorized by state or federal
21 statute. Violation of this subsection is a misdemeanor.

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

36 ~~((+11+))~~ (12) Upon receiving a report of alleged child abuse and
37 neglect, the department or investigating law enforcement agency shall

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

3 ~~((12))~~ (13) The department shall maintain investigation records
4 and conduct timely and periodic reviews of all cases constituting abuse
5 and neglect. The department shall maintain a log of screened-out
6 nonabusive cases.

7 ~~((13))~~ (14) The department shall use a risk assessment process
8 when investigating alleged child abuse and neglect referrals. The
9 department shall present the risk factors at all hearings in which the
10 placement of a dependent child is an issue. Substance abuse must be a
11 risk factor. The department shall, within funds appropriated for this
12 purpose, offer enhanced community-based services to persons who are
13 determined not to require further state intervention.

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

16 ~~((14))~~ (15) Upon receipt of a report of alleged abuse or neglect
17 the law enforcement agency may arrange to interview the person making
18 the report and any collateral sources to determine if any malice is
19 involved in the reporting.

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

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

35 (1) Prosecutions for criminal offenses shall not be commenced after
36 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 by a member of the clergy must not
17 be prosecuted more than ten years after the disclosure of the
18 information that was the subject of the reporting requirement under RCW
19 26.44.030 should have occurred.

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

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

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

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

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