
HOUSE BILL 2812

State of Washington

58th Legislature

2004 Regular Session

By Representative Boldt

Read first time 01/21/2004. Referred to Committee on Children & Family Services.

1 AN ACT Relating to ensuring reporting by clergy of sex offenses
2 committed against children by other clergy; amending RCW 26.44.020,
3 26.44.030, 26.44.160, and 9A.04.080; and prescribing penalties.

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, or
29 similarly situated religious or spiritual leader of any church ((~~or~~)),
30 religious denomination, religious body, spiritual community, or sect,
31 whether acting in an individual capacity or as an employee ((~~or~~)),
32 agent, or official of any public or private organization or
33 institution.

34 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
35 exploitation, negligent treatment, or maltreatment of a child by any
36 person under circumstances which indicate that the child's health,
37 welfare, and safety is harmed, excluding conduct permitted under RCW

1 9A.16.100. "Sexual abuse" includes any offense defined as a sex
2 offense in RCW 9A.44.130. An abused child is a child who has been
3 subjected to child abuse or neglect as defined in this section.

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

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

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

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

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

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

37 (19) "Unfounded" means available information indicates that, more
38 likely than not, child abuse or neglect did not occur. No unfounded

1 allegation of child abuse or neglect may be disclosed to a child-
2 placing agency, private adoption agency, or any other provider licensed
3 under chapter 74.15 RCW.

4 **Sec. 2.** RCW 26.44.030 and 2003 c 207 s 4 are each amended to read
5 as follows:

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

17 (b) When a member of the clergy has reasonable cause to believe
18 that a child has suffered abuse or neglect from another member of the
19 clergy within the same church, religious denomination, religious body,
20 spiritual community, or sect, he or she shall report the incident, or
21 cause a report to be made, to the proper law enforcement agency or to
22 the department as provided in RCW 26.44.040.

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

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

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

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

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

14 (b) Nothing in this subsection (2) exempts a member of the clergy
15 from making a report of child abuse or neglect as required in
16 subsection (1)(b) of this section when the member of the clergy is
17 acting in some other capacity that would otherwise require him or her
18 to make a report.

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

25 ~~((3))~~ (4) Any other person who has reasonable cause to believe
26 that a child has suffered abuse or neglect may report such incident to
27 the proper law enforcement agency or to the department of social and
28 health services as provided in RCW 26.44.040.

29 ~~((4))~~ (5) The department, upon receiving a report of an incident
30 of alleged abuse or neglect pursuant to this chapter, involving a child
31 who has died or has had physical injury or injuries inflicted upon him
32 or her other than by accidental means or who has been subjected to
33 alleged sexual abuse, shall report such incident to the proper law
34 enforcement agency. In emergency cases, where the child's welfare is
35 endangered, the department shall notify the proper law enforcement
36 agency within twenty-four hours after a report is received by the
37 department. In all other cases, the department shall notify the law
38 enforcement agency within seventy-two hours after a report is received

1 by the department. If the department makes an oral report, a written
2 report must also be made to the proper law enforcement agency within
3 five days thereafter.

4 ~~((+5+))~~ (6) Any law enforcement agency receiving a report of an
5 incident of alleged abuse or neglect pursuant to this chapter,
6 involving a child who has died or has had physical injury or injuries
7 inflicted upon him or her other than by accidental means, or who has
8 been subjected to alleged sexual abuse, shall report such incident in
9 writing as provided in RCW 26.44.040 to the proper county prosecutor or
10 city attorney for appropriate action whenever the law enforcement
11 agency's investigation reveals that a crime may have been committed.
12 The law enforcement agency shall also notify the department of all
13 reports received and the law enforcement agency's disposition of them.
14 In emergency cases, where the child's welfare is endangered, the law
15 enforcement agency shall notify the department within twenty-four
16 hours. In all other cases, the law enforcement agency shall notify the
17 department within seventy-two hours after a report is received by the
18 law enforcement agency.

19 ~~((+6+))~~ (7) Any county prosecutor or city attorney receiving a
20 report under subsection ~~((+5+))~~ (6) of this section shall notify the
21 victim, any persons the victim requests, and the local office of the
22 department, of the decision to charge or decline to charge a crime,
23 within five days of making the decision.

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

35 ~~((+8+))~~ (9) Any case referred to the department by a physician
36 licensed under chapter 18.57 or 18.71 RCW on the basis of an expert
37 medical opinion that child abuse, neglect, or sexual assault has
38 occurred and that the child's safety will be seriously endangered if

1 returned home, the department shall file a dependency petition unless
2 a second licensed physician of the parents' choice believes that such
3 expert medical opinion is incorrect. If the parents fail to designate
4 a second physician, the department may make the selection. If a
5 physician finds that a child has suffered abuse or neglect but that
6 such abuse or neglect does not constitute imminent danger to the
7 child's health or safety, and the department agrees with the
8 physician's assessment, the child may be left in the parents' home
9 while the department proceeds with reasonable efforts to remedy
10 parenting deficiencies.

11 ~~((+9))~~ (10) Persons or agencies exchanging information under
12 subsection ~~((+7))~~ (8) of this section shall not further disseminate or
13 release the information except as authorized by state or federal
14 statute. Violation of this subsection is a misdemeanor.

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

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

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

37 ~~((+13))~~ (14) The department shall use a risk assessment process
38 when investigating alleged child abuse and neglect referrals. The

1 department shall present the risk factors at all hearings in which the
2 placement of a dependent child is an issue. Substance abuse must be a
3 risk factor. The department shall, within funds appropriated for this
4 purpose, offer enhanced community-based services to persons who are
5 determined not to require further state intervention.

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

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

23 **Sec. 3.** RCW 26.44.160 and 1993 c 402 s 2 are each amended to read
24 as follows:

25 (1) If a law enforcement agency receives a complaint that alleges
26 that a child under age twelve has committed a sex offense as defined in
27 RCW 9.94A.030, the agency shall investigate the complaint. If the
28 investigation reveals that probable cause exists to believe that the
29 youth may have committed a sex offense and the child is at least eight
30 years of age, the agency shall refer the case to the proper county
31 prosecuting attorney for appropriate action to determine whether the
32 child may be prosecuted or is a sexually aggressive youth. If the
33 child is less than eight years old, the law enforcement agency shall
34 refer the case to the department.

35 (2) If the prosecutor or a judge determines the child cannot be
36 prosecuted for the alleged sex offense because the child is incapable
37 of committing a crime as provided in RCW 9A.04.050 and the prosecutor

1 believes that probable cause exists to believe that the child engaged
2 in acts that would constitute a sex offense, the prosecutor shall refer
3 the child as a sexually aggressive youth to the department. The
4 prosecutor shall provide the department with an affidavit stating that
5 the prosecutor has determined that probable cause exists to believe
6 that the juvenile has committed acts that could be prosecuted as a sex
7 offense but the case is not being prosecuted because the juvenile is
8 incapable of committing a crime as provided in RCW 9A.04.050.

9 (3) The department shall investigate any referrals that allege that
10 a child is a sexually aggressive youth. The purpose of the
11 investigation shall be to determine whether the child is abused or
12 neglected, as defined in this chapter, and whether the child or the
13 child's parents are in need of services or treatment. The department
14 may offer appropriate available services and treatment to a sexually
15 aggressive youth and his or her parents or legal guardians as provided
16 in RCW 74.13.075 and may refer the child and his or her parents to
17 appropriate treatment and services available within the community. If
18 the parents refuse to accept or fail to obtain appropriate treatment or
19 services under circumstances that indicate that the refusal or failure
20 is child abuse or neglect, as defined in this chapter, the department
21 may pursue a dependency action as provided in chapter 13.34 RCW.

22 (4) Nothing in this section shall affect the responsibility of a
23 law enforcement agency to report incidents of abuse or neglect as
24 required in RCW 26.44.030(~~(+5)~~) (6).

25 **Sec. 4.** RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read
26 as follows:

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

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

31 (i) Murder;

32 (ii) Homicide by abuse;

33 (iii) Arson if a death results;

34 (iv) Vehicular homicide;

35 (v) Vehicular assault if a death results;

36 (vi) Hit-and-run injury-accident if a death results (RCW
37 46.52.020(4)).

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

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

6 (ii) Arson if no death results; or

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

21 (c) Violations of the following statutes shall not be prosecuted
22 more than three years after the victim's eighteenth birthday or more
23 than seven years after their commission, whichever is later: RCW
24 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
25 9A.44.100(1)(b), (~~(e)~~) 9A.64.020, or 26.44.080.

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

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

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

37 (h) No other felony may be prosecuted more than three years after
38 its commission; except that in a prosecution under RCW 9A.44.115, if

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

6 (i) No gross misdemeanor may be prosecuted more than two years
7 after its commission.

8 (j) No misdemeanor may be prosecuted more than one year after its
9 commission.

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

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

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