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SENATE BILL 5881

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State of Washington                      58th Legislature                      2003 Regular Session

By Senators Kohl-Welles, Shin and Kline

Read first time 02/18/2003. Referred to Committee on Judiciary.

1            AN ACT Relating to the duty of members of the clergy to report  
2 child abuse or neglect; amending RCW 26.44.020; reenacting and amending  
3 RCW 26.44.030; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** The legislature recognizes the inherent  
6 value clergy bring to the relationship they have with the members of  
7 their religious institutions and recognizes the importance of the  
8 clergy in providing comfort, support, and advice in the daily lives of  
9 all persons. Nothing in this act is to be construed by any agency of  
10 government to derogate that value and importance. The legislature also  
11 recognizes the need to enhance the reporting of potential abuse or  
12 neglect of children. The legislature, through passage of this measure,  
13 is creating a requirement that allegations of abuse or neglect be  
14 reported by members of the clergy only when the information is  
15 presented to a member of the clergy in his or her capacity as a  
16 supervisor of other clergy and only when the information is presented  
17 in some way other than in the delivery of spiritual comfort and  
18 counseling.

1       **Sec. 2.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to read  
2 as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

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

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

21       (5) "Department" means the state department of social and health  
22 services.

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

25       (7) "Professional school personnel" include, but are not limited  
26 to, teachers, counselors, administrators, child care facility  
27 personnel, and school nurses.

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

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

1 (10) "Pharmacist" means any registered pharmacist under chapter  
2 18.64 RCW, whether acting in an individual capacity or as an employee  
3 or agent of any public or private organization or institution.

4 (11) "Member of the clergy" means any regularly licensed,  
5 accredited, or ordained minister, priest, ((~~or~~)) rabbi, imam, similarly  
6 situated religious or spiritual leader of any church ((~~or~~)), religious  
7 denomination, religious body, spiritual community, or sect, or person  
8 performing official duties that are recognized as the duties of a  
9 member of the clergy under the discipline, tenets, doctrine, or custom  
10 of the person's church, religious denomination, religious body,  
11 spiritual community, or sect, whether acting in an individual capacity  
12 or as an employee ((~~or~~)), agent, or official of any public or private  
13 organization or institution.

14 (12) "Abuse or neglect" means the injury, sexual abuse, sexual  
15 exploitation, negligent treatment, or maltreatment of a child by any  
16 person under circumstances which indicate that the child's health,  
17 welfare, and safety is harmed, excluding conduct permitted under RCW  
18 9A.16.100. An abused child is a child who has been subjected to child  
19 abuse or neglect as defined in this section.

20 (13) "Child protective services section" means the child protective  
21 services section of the department.

22 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or  
23 encouraging a child to engage in prostitution by any person; or (b)  
24 allowing, permitting, encouraging, or engaging in the obscene or  
25 pornographic photographing, filming, or depicting of a child by any  
26 person.

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

32 (16) "Child protective services" means those services provided by  
33 the department designed to protect children from child abuse and  
34 neglect and safeguard such children from future abuse and neglect, and  
35 conduct investigations of child abuse and neglect reports.  
36 Investigations may be conducted regardless of the location of the  
37 alleged abuse or neglect. Child protective services includes referral  
38 to services to ameliorate conditions that endanger the welfare of

1 children, the coordination of necessary programs and services relevant  
2 to the prevention, intervention, and treatment of child abuse and  
3 neglect, and services to children to ensure that each child has a  
4 permanent home. In determining whether protective services should be  
5 provided, the department shall not decline to provide such services  
6 solely because of the child's unwillingness or developmental inability  
7 to describe the nature and severity of the abuse or neglect.

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

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

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

20 **Sec. 3.** RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30 are  
21 each reenacted and amended to read as follows:

22 (1)(a) When any practitioner, county coroner or medical examiner,  
23 law enforcement officer, professional school personnel, registered or  
24 licensed nurse, social service counselor, psychologist, pharmacist,  
25 member of the clergy, licensed or certified child care providers or  
26 their employees, employee of the department, juvenile probation  
27 officer, placement and liaison specialist, responsible living skills  
28 program staff, HOPE center staff, or state family and children's  
29 ombudsman or any volunteer in the ombudsman's office has reasonable  
30 cause to believe that a child has suffered abuse or neglect, he or she  
31 shall report such incident, or cause a report to be made, to the proper  
32 law enforcement agency or to the department as provided in RCW  
33 26.44.040.

34 (b) The reporting requirement also applies to department of  
35 corrections personnel who, in the course of their employment, observe  
36 offenders or the children with whom the offenders are in contact. If,  
37 as a result of observations or information received in the course of

1 his or her employment, any department of corrections personnel has  
2 reasonable cause to believe that a child has suffered abuse or neglect,  
3 he or she shall report the incident, or cause a report to be made, to  
4 the proper law enforcement agency or to the department as provided in  
5 RCW 26.44.040.

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

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

21 (2)(a) The reporting requirement of subsection (1) of this section  
22 shall apply to a member of the clergy only when he or she becomes aware  
23 of an allegation of abuse or neglect that is made regarding another  
24 member of the clergy over whom the member of the clergy regularly  
25 exercises supervisory authority in his or her capacity as a member of  
26 the administrative or managerial structure of the religious  
27 institution. No member of the clergy shall be required to report  
28 allegations of abuse or neglect when he or she obtains the information  
29 solely as a result of a confession made pursuant to the clergy-penitent  
30 privilege as provided in RCW 5.60.060, so long as the member of the  
31 clergy has the authority to hear such confession under the regular  
32 tenets of his or her religious institution.

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

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

7        ~~((+3))~~ (4) Any other person who has reasonable cause to believe  
8 that a child has suffered abuse or neglect may report such incident to  
9 the proper law enforcement agency or to the department of social and  
10 health services as provided in RCW 26.44.040.

11        ~~((+4))~~ (5) The department, upon receiving a report of an incident  
12 of alleged abuse or neglect pursuant to this chapter, involving a child  
13 who has died or has had physical injury or injuries inflicted upon him  
14 or her other than by accidental means or who has been subjected to  
15 alleged sexual abuse, shall report such incident to the proper law  
16 enforcement agency. In emergency cases, where the child's welfare is  
17 endangered, the department shall notify the proper law enforcement  
18 agency within twenty-four hours after a report is received by the  
19 department. In all other cases, the department shall notify the law  
20 enforcement agency within seventy-two hours after a report is received  
21 by the department. If the department makes an oral report, a written  
22 report must also be made to the proper law enforcement agency within  
23 five days thereafter.

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

1        ~~((+6+))~~ (7) Any county prosecutor or city attorney receiving a  
2 report under subsection ~~((+5+))~~ (6) of this section shall notify the  
3 victim, any persons the victim requests, and the local office of the  
4 department, of the decision to charge or decline to charge a crime,  
5 within five days of making the decision.

6        ~~((+7+))~~ (8) The department may conduct ongoing case planning and  
7 consultation with those persons or agencies required to report under  
8 this section, with consultants designated by the department, and with  
9 designated representatives of Washington Indian tribes if the client  
10 information exchanged is pertinent to cases currently receiving child  
11 protective services. Upon request, the department shall conduct such  
12 planning and consultation with those persons required to report under  
13 this section if the department determines it is in the best interests  
14 of the child. Information considered privileged by statute and not  
15 directly related to reports required by this section must not be  
16 divulged without a valid written waiver of the privilege.

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

31        ~~((+9+))~~ (10) Persons or agencies exchanging information under  
32 subsection ~~((+7+))~~ (8) of this section shall not further disseminate or  
33 release the information except as authorized by state or federal  
34 statute. Violation of this subsection is a misdemeanor.

35        ~~((+10+))~~ (11) Upon receiving reports of alleged abuse or neglect,  
36 the department or law enforcement agency may interview children. The  
37 interviews may be conducted on school premises, at day-care facilities,  
38 at the child's home, or at other suitable locations outside of the

1 presence of parents. Parental notification of the interview must occur  
2 at the earliest possible point in the investigation that will not  
3 jeopardize the safety or protection of the child or the course of the  
4 investigation. Prior to commencing the interview the department or law  
5 enforcement agency shall determine whether the child wishes a third  
6 party to be present for the interview and, if so, shall make reasonable  
7 efforts to accommodate the child's wishes. Unless the child objects,  
8 the department or law enforcement agency shall make reasonable efforts  
9 to include a third party in any interview so long as the presence of  
10 the third party will not jeopardize the course of the investigation.

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

15 ~~((+12+))~~ (13) The department shall maintain investigation records  
16 and conduct timely and periodic reviews of all cases constituting abuse  
17 and neglect. The department shall maintain a log of screened-out  
18 nonabusive cases.

19 ~~((+13+))~~ (14) The department shall use a risk assessment process  
20 when investigating alleged child abuse and neglect referrals. The  
21 department shall present the risk factors at all hearings in which the  
22 placement of a dependent child is an issue. Substance abuse must be a  
23 risk factor. The department shall, within funds appropriated for this  
24 purpose, offer enhanced community-based services to persons who are  
25 determined not to require further state intervention.

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

28 ~~((+14+))~~ (15) Upon receipt of a report of alleged abuse or neglect  
29 the law enforcement agency may arrange to interview the person making  
30 the report and any collateral sources to determine if any malice is  
31 involved in the reporting.

32 ~~((+15+))~~ (16) The department shall make reasonable efforts to learn  
33 the name, address, and telephone number of each person making a report  
34 of abuse or neglect under this section. The department shall provide  
35 assurances of appropriate confidentiality of the identification of  
36 persons reporting under this section. If the department is unable to  
37 learn the information required under this subsection, the department  
38 shall only investigate cases in which: (a) The department believes



1 there is a serious threat of substantial harm to the child; (b) the  
2 report indicates conduct involving a criminal offense that has, or is  
3 about to occur, in which the child is the victim; or (c) the department  
4 has, after investigation, a report of abuse or neglect that has been  
5 founded with regard to a member of the household within three years of  
6 receipt of the referral.

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