

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5321

60th Legislature
2007 Regular Session

Passed by the Senate April 16, 2007
YEAS 46 NAYS 0

President of the Senate

Passed by the House April 5, 2007
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5321** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5321

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Carrell, Regala, Stevens, Schoesler, Clements and Rasmussen)

READ FIRST TIME 02/23/07.

1 AN ACT Relating to the sharing of child welfare information;
2 amending RCW 26.44.020, 26.44.030, 26.44.031, 74.13.280, 74.15.130,
3 74.13.650, 74.13.660, and 13.34.110; adding a new section to chapter
4 74.13 RCW; creating a new section; and providing an effective date.

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

6 **Sec. 1.** RCW 26.44.020 and 2006 c 339 s 108 are each amended to
7 read as follows:

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

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

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

15 ~~(3) "Practitioner of the healing arts" or "practitioner" means a~~
16 ~~person licensed by this state to practice podiatric medicine and~~
17 ~~surgery, optometry, chiropractic, nursing, dentistry, osteopathic~~
18 ~~medicine and surgery, or medicine and surgery or to provide other~~
19 ~~health services. The term "practitioner" includes a duly accredited~~

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

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

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

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

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

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

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

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

28 ~~(11) "Clergy" means any regularly licensed or ordained minister,~~
29 ~~priest, or rabbi of any church or religious denomination, whether~~
30 ~~acting in an individual capacity or as an employee or agent of any~~
31 ~~public or private organization or institution.~~

32 ~~(12) "Abuse or neglect" means sexual abuse, sexual exploitation, or~~
33 ~~injury of a child by any person under circumstances which cause harm to~~
34 ~~the child's health, welfare, or safety, excluding conduct permitted~~
35 ~~under RCW 9A.16.100; or the negligent treatment or maltreatment of a~~
36 ~~child by a person responsible for or providing care to the child. An~~
37 ~~abused child is a child who has been subjected to child abuse or~~
38 ~~neglect as defined in this section.~~

1 ~~(13) "Child protective services section" means the child protective~~
2 ~~services section of the department.~~

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

8 ~~(15) "Negligent treatment or maltreatment" means an act or a~~
9 ~~failure to act, or the cumulative effects of a pattern of conduct,~~
10 ~~behavior, or inaction, that evidences a serious disregard of~~
11 ~~consequences of such magnitude as to constitute a clear and present~~
12 ~~danger to a child's health, welfare, or safety, including but not~~
13 ~~limited to conduct prohibited under RCW 9A.42.100. When considering~~
14 ~~whether a clear and present danger exists, evidence of a parent's~~
15 ~~substance abuse as a contributing factor to negligent treatment or~~
16 ~~maltreatment shall be given great weight. The fact that siblings share~~
17 ~~a bedroom is not, in and of itself, negligent treatment or~~
18 ~~maltreatment. Poverty, homelessness, or exposure to domestic violence~~
19 ~~as defined in RCW 26.50.010 that is perpetrated against someone other~~
20 ~~than the child does not constitute negligent treatment or maltreatment~~
21 ~~in and of itself.~~

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

36 ~~(17) "Malice" or "maliciously" means an evil intent, wish, or~~
37 ~~design to vex, annoy, or injure another person. Such malice may be~~

1 ~~inferred from an act done in willful disregard of the rights of~~
2 ~~another, or an act wrongfully done without just cause or excuse, or an~~
3 ~~act or omission of duty betraying a willful disregard of social duty.~~

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

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

11 (1) "Abuse or neglect" means sexual abuse, sexual exploitation, or
12 injury of a child by any person under circumstances which cause harm to
13 the child's health, welfare, or safety, excluding conduct permitted
14 under RCW 9A.16.100; or the negligent treatment or maltreatment of a
15 child by a person responsible for or providing care to the child. An
16 abused child is a child who has been subjected to child abuse or
17 neglect as defined in this section.

18 (2) "Child" or "children" means any person under the age of
19 eighteen years of age.

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

34 (4) "Child protective services section" means the child protective
35 services section of the department.

36 (5) "Clergy" means any regularly licensed or ordained minister,
37 priest, or rabbi of any church or religious denomination, whether

1 acting in an individual capacity or as an employee or agent of any
2 public or private organization or institution.

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

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

7 (8) "Founded" means the determination following an investigation by
8 the department that, based on available information, it is more likely
9 than not that child abuse or neglect did occur.

10 (9) "Inconclusive" means the determination following an
11 investigation by the department, prior to the effective date of this
12 section, that based on available information a decision cannot be made
13 that more likely than not, child abuse or neglect did or did not occur.

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

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

19 (12) "Malice" or "maliciously" means an intent, wish, or design to
20 intimidate, annoy, or injure another person. Such malice may be
21 inferred from an act done in willful disregard of the rights of
22 another, or an act wrongfully done without just cause or excuse, or an
23 act or omission of duty betraying a willful disregard of social duty.

24 (13) "Negligent treatment or maltreatment" means an act or a
25 failure to act, or the cumulative effects of a pattern of conduct,
26 behavior, or inaction, that evidences a serious disregard of
27 consequences of such magnitude as to constitute a clear and present
28 danger to a child's health, welfare, or safety, including but not
29 limited to conduct prohibited under RCW 9A.42.100. When considering
30 whether a clear and present danger exists, evidence of a parent's
31 substance abuse as a contributing factor to negligent treatment or
32 maltreatment shall be given great weight. The fact that siblings share
33 a bedroom is not, in and of itself, negligent treatment or
34 maltreatment. Poverty, homelessness, or exposure to domestic violence
35 as defined in RCW 26.50.010 that is perpetrated against someone other
36 than the child does not constitute negligent treatment or maltreatment
37 in and of itself.

1 (14) "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 (15) "Practitioner of the healing arts" or "practitioner" means a
5 person licensed by this state to practice podiatric medicine and
6 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
7 medicine and surgery, or medicine and surgery or to provide other
8 health services. The term "practitioner" includes a duly accredited
9 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
10 is being furnished Christian Science treatment by a duly accredited
11 Christian Science practitioner will not be considered, for that reason
12 alone, a neglected person for the purposes of this chapter.

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

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

20 (18) "Screened-out report" means a report of alleged child abuse or
21 neglect that the department has determined does not rise to the level
22 of a credible report of abuse or neglect and is not referred for
23 investigation.

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

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

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

1 (22) "Unfounded" means the determination following an investigation
2 by the department that available information indicates that, more
3 likely than not, child abuse or neglect did not occur, or that there is
4 insufficient evidence for the department to determine whether the
5 alleged child abuse did or did not occur.

6 **Sec. 2.** RCW 26.44.030 and 2005 c 417 s 1 are each amended to read
7 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 licensed or certified child care providers or their employees, employee
12 of the department, juvenile probation officer, placement and liaison
13 specialist, responsible living skills program staff, HOPE center staff,
14 or state family and children's ombudsman or any volunteer in the
15 ombudsman's office has reasonable cause to believe that a child has
16 suffered abuse or neglect, he or she shall report such incident, or
17 cause a report to be made, to the proper law enforcement agency or to
18 the department as provided in RCW 26.44.040.

19 (b) When any person, in his or her official supervisory capacity
20 with a nonprofit or for-profit organization, has reasonable cause to
21 believe that a child has suffered abuse or neglect caused by a person
22 over whom he or she regularly exercises supervisory authority, he or
23 she shall report such incident, or cause a report to be made, to the
24 proper law enforcement agency, provided that the person alleged to have
25 caused the abuse or neglect is employed by, contracted by, or
26 volunteers with the organization and coaches, trains, educates, or
27 counsels a child or children or regularly has unsupervised access to a
28 child or children as part of the employment, contract, or voluntary
29 service. No one shall be required to report under this section when he
30 or she obtains the information solely as a result of a privileged
31 communication as provided in RCW 5.60.060.

32 Nothing in this subsection (1)(b) shall limit a person's duty to
33 report under (a) of this subsection.

34 For the purposes of this subsection, the following definitions
35 apply:

36 (i) "Official supervisory capacity" means a position, status, or
37 role created, recognized, or designated by any nonprofit or for-profit

1 organization, either for financial gain or without financial gain,
2 whose scope includes, but is not limited to, overseeing, directing, or
3 managing another person who is employed by, contracted by, or
4 volunteers with the nonprofit or for-profit organization.

5 (ii) "Regularly exercises supervisory authority" means to act in
6 his or her official supervisory capacity on an ongoing or continuing
7 basis with regards to a particular person.

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

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

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

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

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

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

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

33 (6) Any county prosecutor or city attorney receiving a report under
34 subsection (5) of this section shall notify the victim, any persons the
35 victim requests, and the local office of the department, of the
36 decision to charge or decline to charge a crime, within five days of
37 making the decision.

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

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

26 (9) Persons or agencies exchanging information under subsection (7)
27 of this section shall not further disseminate or release the
28 information except as authorized by state or federal statute.
29 Violation of this subsection is a misdemeanor.

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

1 (a) The department believes there is a serious threat of
2 substantial harm to the child;

3 (b) The report indicates conduct involving a criminal offense that
4 has, or is about to occur, in which the child is the victim; or

5 (c) The department has a prior founded report of abuse or neglect
6 with regard to a member of the household that is within three years of
7 receipt of the referral.

8 (11)(a) For reports of alleged abuse or neglect that are accepted
9 for investigation by the department, the investigation shall be
10 conducted within time frames established by the department in rule. In
11 no case shall the investigation extend longer than ninety days from the
12 date the report is received, unless the investigation is being
13 conducted under a written protocol pursuant to RCW 26.44.180 and a law
14 enforcement agency or prosecuting attorney has determined that a longer
15 investigation period is necessary. At the completion of the
16 investigation, the department shall make a finding that the report of
17 child abuse or neglect is founded or unfounded.

18 (b) If a court in a civil or criminal proceeding, considering the
19 same facts or circumstances as are contained in the report being
20 investigated by the department, makes a judicial finding by a
21 preponderance of the evidence or higher that the subject of the pending
22 investigation has abused or neglected the child, the department shall
23 adopt the finding in its investigation.

24 (12) In conducting an investigation of alleged abuse or neglect,
25 the department or law enforcement agency:

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

1 ~~((11) Upon receiving a report of alleged child abuse and neglect,~~
2 ~~the department or investigating law enforcement agency)); and~~

3 **(b)** Shall have access to all relevant records of the child in the
4 possession of mandated reporters and their employees.

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

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

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) The department shall make reasonable efforts to learn the
21 name, address, and telephone number of each person making a report of
22 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 26.44.031 and 1997 c 282 s 1 are each amended to read
34 as follows:

35 (1) To protect the privacy in reporting and the maintenance of
36 reports of nonaccidental injury, neglect, death, sexual abuse, and
37 cruelty to children by their parents, and to safeguard against

1 arbitrary, malicious, or erroneous information or actions, the
2 department shall not disclose or maintain information related to
3 ~~((unfounded referrals in files or))~~ reports of child abuse or neglect
4 ~~((for longer than six years))~~ except as provided in this section or as
5 otherwise required by state and federal law.

6 ~~((At the end of six years from receipt of the unfounded report, the~~
7 ~~information shall be purged unless an additional report has been~~
8 ~~received in the intervening period.))~~

9 (2) The department shall destroy all of its records concerning:

10 (a) A screened-out report, within three years from the receipt of
11 the report; and

12 (b) An unfounded or inconclusive report, within six years of
13 completion of the investigation, unless a prior or subsequent founded
14 report has been received regarding the child who is the subject of the
15 report, a sibling or half-sibling of the child, or a parent, guardian,
16 or legal custodian of the child, before the records are destroyed.

17 (3) The department may keep records concerning founded reports of
18 child abuse or neglect as the department determines by rule.

19 (4) An unfounded, screened-out, or inconclusive report may not be
20 disclosed to a child-placing agency, private adoption agency, or any
21 other provider licensed under chapter 74.15 RCW.

22 (5)(a) If the department fails to comply with this section, an
23 individual who is the subject of a report may institute proceedings for
24 injunctive or other appropriate relief for enforcement of the
25 requirement to purge information. These proceedings may be instituted
26 in the superior court for the county in which the person resides or, if
27 the person is not then a resident of this state, in the superior court
28 for Thurston county.

29 (b) If the department fails to comply with subsection (4) of this
30 section and an individual who is the subject of the report is harmed by
31 the disclosure of information, in addition to the relief provided in
32 (a) of this subsection, the court may award a penalty of up to one
33 thousand dollars and reasonable attorneys' fees and court costs to the
34 petitioner.

35 (c) A proceeding under this subsection does not preclude other
36 methods of enforcement provided for by law.

37 (6) Nothing in this section shall prevent the department from

1 retaining general, nonidentifying information which is required for
2 state and federal reporting and management purposes.

3 **Sec. 4.** RCW 74.13.280 and 2001 c 318 s 3 are each amended to read
4 as follows:

5 (1) Except as provided in RCW 70.24.105, whenever a child is placed
6 in out-of-home care by the department or a child-placing agency, the
7 department or agency shall share information known to the department or
8 agency about the child and the child's family with the care provider
9 and shall consult with the care provider regarding the child's case
10 plan. If the child is dependent pursuant to a proceeding under chapter
11 13.34 RCW, the department or agency shall keep the care provider
12 informed regarding the dates and location of dependency review and
13 permanency planning hearings pertaining to the child.

14 (2) Information about the child and the child's family shall
15 include information known to the department or agency as to whether the
16 child is a sexually reactive child, has exhibited high-risk behaviors,
17 or is physically assaultive or physically aggressive, as defined in
18 this section.

19 (3) Information about the child shall also include information
20 known to the department or agency that the child:

21 (a) Has received a medical diagnosis of fetal alcohol syndrome or
22 fetal alcohol effect;

23 (b) Has been diagnosed by a qualified mental health professional as
24 having a mental health disorder;

25 (c) Has witnessed a death or substantial physical violence in the
26 past or recent past; or

27 (d) Was a victim of sexual or severe physical abuse in the recent
28 past.

29 (4) Any person who receives information about a child or a child's
30 family pursuant to this section shall keep the information confidential
31 and shall not further disclose or disseminate the information except as
32 authorized by law.

33 ~~((3))~~ (5) Nothing in this section shall be construed to limit the
34 authority of the department or child-placing agencies to disclose
35 client information or to maintain client confidentiality as provided by
36 law.

37 (6) As used in this section:

1 (a) "Sexually reactive child" means a child who exhibits sexual
2 behavior problems including, but not limited to, sexual behaviors that
3 are developmentally inappropriate for their age or are harmful to the
4 child or others.

5 (b) "High-risk behavior" means an observed or reported and
6 documented history of one or more of the following:

7 (i) Suicide attempts or suicidal behavior or ideation;
8 (ii) Self-mutilation or similar self-destructive behavior;
9 (iii) Fire-setting or a developmentally inappropriate fascination
10 with fire;

11 (iv) Animal torture;
12 (v) Property destruction; or
13 (vi) Substance or alcohol abuse.

14 (c) "Physically assaultive or physically aggressive" means a child
15 who exhibits one or more of the following behaviors that are
16 developmentally inappropriate and harmful to the child or to others:

17 (i) Observed assaultive behavior;
18 (ii) Reported and documented history of the child willfully
19 assaulting or inflicting bodily harm; or
20 (iii) Attempting to assault or inflict bodily harm on other
21 children or adults under circumstances where the child has the apparent
22 ability or capability to carry out the attempted assaults including
23 threats to use a weapon.

24 NEW SECTION. Sec. 5. A new section is added to chapter 74.13 RCW
25 to read as follows:

26 (1) A care provider may not be found to have abused or neglected a
27 child under chapter 26.44 RCW or be denied a license pursuant to
28 chapter 74.15 RCW and RCW 74.13.031 for any allegations of failure to
29 supervise wherein:

30 (a) The allegations arise from the child's conduct that is
31 substantially similar to prior behavior of the child, and:

32 (i) The child is a sexually reactive youth, exhibits high-risk
33 behaviors, or is physically assaultive or physically aggressive as
34 defined in RCW 74.13.280, and this information and the child's prior
35 behavior was not disclosed to the care provider as required by RCW
36 74.13.280; and

1 (ii) The care provider did not know or have reason to know that the
2 child needed supervision as a sexually reactive or physically
3 assaultive or physically aggressive youth, or because of a documented
4 history of high-risk behaviors, as a result of the care provider's
5 involvement with or independent knowledge of the child or training and
6 experience; or

7 (b) The child was not within the reasonable control of the care
8 provider at the time of the incident that is the subject of the
9 allegation, and the care provider was acting in good faith and did not
10 know or have reason to know that reasonable control or supervision of
11 the child was necessary to prevent harm or risk of harm to the child or
12 other persons.

13 (2) Allegations of child abuse or neglect that meet the provisions
14 of this section shall be designated as "unfounded" as defined in RCW
15 26.44.020.

16 **Sec. 6.** RCW 74.15.130 and 2006 c 265 s 404 are each amended to
17 read as follows:

18 (1) An agency may be denied a license, or any license issued
19 pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended,
20 revoked, modified, or not renewed by the secretary upon proof (a) that
21 the agency has failed or refused to comply with the provisions of
22 chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated
23 pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or
24 (b) that the conditions required for the issuance of a license under
25 chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect
26 to such licenses. RCW 43.20A.205 governs notice of a license denial,
27 revocation, suspension, or modification and provides the right to an
28 adjudicative proceeding.

29 (2) In any adjudicative proceeding regarding the denial,
30 modification, suspension, or revocation of a foster family home
31 license, the department's decision shall be upheld if there is
32 reasonable cause to believe that:

33 (a) The applicant or licensee lacks the character, suitability, or
34 competence to care for children placed in out-of-home care, however, no
35 unfounded, inconclusive, or screened-out report of child abuse or
36 neglect may be used to deny employment or a license;

1 (b) The applicant or licensee has failed or refused to comply with
2 any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements
3 adopted pursuant to such provisions; or

4 (c) The conditions required for issuance of a license under chapter
5 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such
6 licenses.

7 (3) In any adjudicative proceeding regarding the denial,
8 modification, suspension, or revocation of any license under this
9 chapter, other than a foster family home license, the department's
10 decision shall be upheld if it is supported by a preponderance of the
11 evidence.

12 (4) The department may assess civil monetary penalties upon proof
13 that an agency has failed or refused to comply with the rules adopted
14 under the provisions of this chapter and RCW 74.13.031 or that an
15 agency subject to licensing under this chapter and RCW 74.13.031 is
16 operating without a license except that civil monetary penalties shall
17 not be levied against a licensed foster home. Monetary penalties
18 levied against unlicensed agencies that submit an application for
19 licensure within thirty days of notification and subsequently become
20 licensed will be forgiven. These penalties may be assessed in addition
21 to or in lieu of other disciplinary actions. Civil monetary penalties,
22 if imposed, may be assessed and collected, with interest, for each day
23 an agency is or was out of compliance. Civil monetary penalties shall
24 not exceed two hundred fifty dollars per violation for group homes and
25 child-placing agencies. Each day upon which the same or substantially
26 similar action occurs is a separate violation subject to the assessment
27 of a separate penalty. The department shall provide a notification
28 period before a monetary penalty is effective and may forgive the
29 penalty levied if the agency comes into compliance during this period.
30 The department may suspend, revoke, or not renew a license for failure
31 to pay a civil monetary penalty it has assessed pursuant to this
32 chapter within ten days after such assessment becomes final. Chapter
33 43.20A RCW governs notice of a civil monetary penalty and provides the
34 right of an adjudicative proceeding. The preponderance of evidence
35 standard shall apply in adjudicative proceedings related to assessment
36 of civil monetary penalties.

1 **Sec. 7.** RCW 74.13.650 and 2006 c 353 s 2 are each amended to read
2 as follows:

3 A foster parent critical support and retention program is
4 established to retain foster parents who care for sexually reactive
5 children, physically assaultive children, or children with other high-
6 risk behaviors, as defined in RCW 74.13.280. Services shall consist of
7 short-term therapeutic and educational interventions to support the
8 stability of the placement. The foster parent critical support and
9 retention program is to be implemented under the division of children
10 and family services' contract and supervision. A contractor must
11 demonstrate experience providing in-home case management, as well as
12 experience working with caregivers of children with significant
13 behavioral issues that pose a threat to others or themselves or the
14 stability of the placement.

15 **Sec. 8.** RCW 74.13.660 and 2006 c 353 s 3 are each amended to read
16 as follows:

17 Under the foster parent critical support and retention program,
18 foster parents who care for sexually reactive children, physically
19 assaultive children, or children with other high-risk behaviors, as
20 defined in RCW 74.13.280, shall receive:

- 21 (1) Availability at any time of the day or night to address
22 specific concerns related to the identified child;
- 23 (2) Assessment of risk and development of a safety and supervision
24 plan;
- 25 (3) Home-based foster parent training utilizing evidence-based
26 models; and
- 27 (4) Referral to relevant community services and training provided
28 by the local children's administration office or community agencies.

29 **Sec. 9.** RCW 13.34.110 and 2001 c 332 s 7 are each amended to read
30 as follows:

31 (1) The court shall hold a fact-finding hearing on the petition
32 and, unless the court dismisses the petition, shall make written
33 findings of fact, stating the reasons therefor. The rules of evidence
34 shall apply at the fact-finding hearing and the parent, guardian, or
35 legal custodian of the child shall have all of the rights provided in

1 RCW 13.34.090(1). The petitioner shall have the burden of establishing
2 by a preponderance of the evidence that the child is dependent within
3 the meaning of RCW 13.34.030.

4 (2)((+a)) The court in a fact-finding hearing may consider the
5 history of past involvement of child protective services or law
6 enforcement agencies with the family for the purpose of establishing a
7 pattern of conduct, behavior, or inaction with regard to the health,
8 safety, or welfare of the child on the part of the child's parent,
9 guardian, or legal custodian, or for the purpose of establishing that
10 reasonable efforts have been made by the department to prevent or
11 eliminate the need for removal of the child from the child's home. No
12 report of child abuse or neglect that has been destroyed or expunged
13 under RCW 26.44.031 may be used for such purposes.

14 (3)(a) The parent, guardian, or legal custodian of the child may
15 waive his or her right to a fact-finding hearing by stipulating or
16 agreeing to the entry of an order of dependency establishing that the
17 child is dependent within the meaning of RCW 13.34.030. The parent,
18 guardian, or legal custodian may also stipulate or agree to an order of
19 disposition pursuant to RCW 13.34.130 at the same time. Any stipulated
20 or agreed order of dependency or disposition must be signed by the
21 parent, guardian, or legal custodian and his or her attorney, unless
22 the parent, guardian, or legal custodian has waived his or her right to
23 an attorney in open court, and by the petitioner and the attorney,
24 guardian ad litem, or court-appointed special advocate for the child,
25 if any. If the department of social and health services is not the
26 petitioner and is required by the order to supervise the placement of
27 the child or provide services to any party, the department must also
28 agree to and sign the order.

29 (b) Entry of any stipulated or agreed order of dependency or
30 disposition is subject to approval by the court. The court shall
31 receive and review a social study before entering a stipulated or
32 agreed order and shall consider whether the order is consistent with
33 the allegations of the dependency petition and the problems that
34 necessitated the child's placement in out-of-home care. No social file
35 or social study may be considered by the court in connection with the
36 fact-finding hearing or prior to factual determination, except as
37 otherwise admissible under the rules of evidence.

1 (c) Prior to the entry of any stipulated or agreed order of
2 dependency, the parent, guardian, or legal custodian of the child and
3 his or her attorney must appear before the court and the court within
4 available resources must inquire and establish on the record that:

5 (i) The parent, guardian, or legal custodian understands the terms
6 of the order or orders he or she has signed, including his or her
7 responsibility to participate in remedial services as provided in any
8 disposition order;

9 (ii) The parent, guardian, or legal custodian understands that
10 entry of the order starts a process that could result in the filing of
11 a petition to terminate his or her relationship with the child within
12 the time frames required by state and federal law if he or she fails to
13 comply with the terms of the dependency or disposition orders or fails
14 to substantially remedy the problems that necessitated the child's
15 placement in out-of-home care;

16 (iii) The parent, guardian, or legal custodian understands that the
17 entry of the stipulated or agreed order of dependency is an admission
18 that the child is dependent within the meaning of RCW 13.34.030 and
19 shall have the same legal effect as a finding by the court that the
20 child is dependent by at least a preponderance of the evidence, and
21 that the parent, guardian, or legal custodian shall not have the right
22 in any subsequent proceeding for termination of parental rights or
23 dependency guardianship pursuant to this chapter or nonparental custody
24 pursuant to chapter 26.10 RCW to challenge or dispute the fact that the
25 child was found to be dependent; and

26 (iv) The parent, guardian, or legal custodian knowingly and
27 willingly stipulated and agreed to and signed the order or orders,
28 without duress, and without misrepresentation or fraud by any other
29 party.

30 If a parent, guardian, or legal custodian fails to appear before
31 the court after stipulating or agreeing to entry of an order of
32 dependency, the court may enter the order upon a finding that the
33 parent, guardian, or legal custodian had actual notice of the right to
34 appear before the court and chose not to do so. The court may require
35 other parties to the order, including the attorney for the parent,
36 guardian, or legal custodian, to appear and advise the court of the
37 parent's, guardian's, or legal custodian's notice of the right to
38 appear and understanding of the factors specified in this subsection.

1 A parent, guardian, or legal custodian may choose to waive his or her
2 presence at the in-court hearing for entry of the stipulated or agreed
3 order of dependency by submitting to the court through counsel a
4 completed stipulated or agreed dependency fact-finding/disposition
5 statement in a form determined by the Washington state supreme court
6 pursuant to General Rule GR 9.

7 ~~((3))~~ (4) Immediately after the entry of the findings of fact,
8 the court shall hold a disposition hearing, unless there is good cause
9 for continuing the matter for up to fourteen days. If good cause is
10 shown, the case may be continued for longer than fourteen days. Notice
11 of the time and place of the continued hearing may be given in open
12 court. If notice in open court is not given to a party, that party
13 shall be notified by certified mail of the time and place of any
14 continued hearing. Unless there is reasonable cause to believe the
15 health, safety, or welfare of the child would be jeopardized or efforts
16 to reunite the parent and child would be hindered, the court shall
17 direct the department to notify those adult persons who: (a) Are
18 related by blood or marriage to the child in the following degrees:
19 Parent, grandparent, brother, sister, stepparent, stepbrother,
20 stepsister, uncle, or aunt; (b) are known to the department as having
21 been in contact with the family or child within the past twelve months;
22 and (c) would be an appropriate placement for the child. Reasonable
23 cause to dispense with notification to a parent under this section must
24 be proved by clear, cogent, and convincing evidence.

25 The parties need not appear at the fact-finding or dispositional
26 hearing if the parties, their attorneys, the guardian ad litem, and
27 court-appointed special advocates, if any, are all in agreement.

28 NEW SECTION. **Sec. 10.** Sections 1 through 3 of this act take
29 effect October 1, 2008.

30 NEW SECTION. **Sec. 11.** The secretary of the department of social
31 and health services may take the necessary steps to ensure that
32 sections 1 through 3 of this act are implemented on their effective
33 date.

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