

HOUSE BILL REPORT

SB 5280

As Passed House - Amended:

April 11, 2023

Title: An act relating to the duty of clergy to report child abuse or neglect.

Brief Description: Concerning the duty of clergy to report child abuse or neglect.

Sponsors: Senators Frame, Boehnke, Hunt, Kuderer, Lovelett, Lovick, Nguyen, Nobles, Saldaña, Wellman and Wilson, C..

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 3/21/23, 3/24/23 [DPA].

Floor Activity:

Passed House: 4/11/23, 75-20.

Brief Summary of Bill (As Amended by House)

- Requires that a "member of the clergy" report child abuse or neglect if there is reasonable cause to believe that a child has suffered abuse or neglect.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: Do pass as amended. Signed by 8 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Couture, Assistant Ranking Minority Member; Callan, Goodman, Ortiz-Self and Rule.

Minority Report: Do not pass. Signed by 3 members: Representatives Eslick, Ranking Minority Member; Dent and Walsh.

Staff: Luke Wickham (786-7146).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Mandatory Reporting of Child Abuse and Neglect.

State law identifies certain individuals as having a requirement to report child abuse or neglect if there is reasonable cause to believe that a child has suffered abuse or neglect. These individuals must report this information to a law enforcement agency or to the Department of Children, Youth, and Families (DCYF).

Mandatory reporters of child abuse and neglect include:

- medical practitioners;
- county coroners;
- medical examiners;
- law enforcement officers;
- professional school personnel;
- registered or licensed nurses;
- social service counselors;
- psychologists;
- pharmacists;
- employees of the DCYF;
- licensed or certified child care providers or their employees;
- employees of the Department of Social and Health Services;
- juvenile probation officers;
- placement and liaison specialists;
- responsible living skills program staff;
- HOPE Center staff;
- the Family and Children's Ombuds or any volunteer in that office;
- host home programs;
- any person in an official supervisory capacity with a profit or nonprofit organization that has reason to believe a person over whom her or she exercises supervisory authority has abused or neglected a child;
- Department of Corrections personnel;
- adults who have reasonable cause to believe that a child who resides with the adult is a victim of severe abuse;
- guardians ad litem and court appointed special advocates; and
- administrative, academic, or athletic department employees of public and private institutions of higher education.

Any mandated reporter who knowingly fails to make a report is guilty of a gross misdemeanor.

Clergy-Penitent Privilege.

A member of the clergy, a Christian Science practitioner, or a priest cannot be examined as to any confession or sacred confidence made without the consent of a person making the confession or sacred confidence.

Summary of Amended Bill:

Members of the clergy are required to report child abuse or neglect when the clergy member has reasonable cause to believe that a child has suffered abuse or neglect to the proper law enforcement or the Department of Children, Youth, and Families.

The term "member of the clergy" is defined in the bill to mean any regularly licensed, accredited, or ordained minister, priest, rabbi, imam, elder, or similarly situated religious or spiritual leader of any church, religious denomination, religious body, spiritual community, or sect, or person performing official duties that are recognized as the duties of a member of the clergy under the discipline, tenets, doctrine, or custom of the person's religious group whether acting in an individual capacity or as an employee, agent, or official of any public or private organization or institution.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This legislation is the product of great investigative reporting regarding abuse inside a particular faith community where abuse is only reported within the faith and not to persons outside the faith.

Similar legislation was proposed 20 years ago. Some child abuse only comes to an end based on mandated reporting.

The confession exemption should be removed to strengthen the bill's ability to protect children and does not violate the free exercise of religion.

We have seen the evidence of the harm to children and their families when the knowledge of abuse is kept in the dark: children are denied healing and justice while their abusers perpetrate further abuse.

The Washington constitution grants absolute freedom of conscience in all matters of religion, but explicitly says that it is not to be construed to exclude acts of licentiousness.

All children deserve to be protected, and there should be no exception to provide that protection.

This bill will do much to help protect children. The Watchtower organization, the

governing authority over Jehovah's Witnesses, and other faith communities use certain loopholes including the clergy-penitent privilege to prevent any sharing of child abuse or neglect information. These organizations need to be forced to alert appropriate state officials.

To do nothing is to condone violence.

Washington will be failing in its duty if the confessional exemption, or loophole, is not removed. There have been numerous examples of religious coverups of child abuse and neglect.

When a victim of child abuse or neglect makes an allegation against another member of certain religious communities, this starts an internal investigation by the elders. They make detailed notes and fill out official forms with details of the abuse and neglect and after confronting the user, obtain a confession of the crimes.

These forms have been described by some law enforcement and legal experts as if they were detailed police reports. The policies and practices of these religious groups continue to demonstrate their priority of placing brand image and rights of perpetrators above the protection of children within the faith communities and also does nothing to protect children outside the community.

These organizations need to be forced to alert the proper authorities of dangerous predators.

The Catholic church has taken great internal steps to improve their standards, but there is a concern that they're trying to weaken the bill which will affect the religions who have not taken the great steps that they have taken.

Members of certain religious organizations are punished or shunned based on speaking out against the church. Children must be protected by the authority figures in their lives.

Church elders are instructed by their legal department not to report crimes, including the barbaric rape of children, to the police, particularly in states where clergy mandated reporting does not exist. These churches maintain a permanent database of these crimes which is inaccessible to law enforcement.

Anyone can create a religion and start that religion to get a 501(c)(3) tax exemption as a religious organization, and they can just make up their own rules as they go and claim that anything is a confession.

It is a very dangerous thing to allow any organization to conceal information, documents, and anything that deals with child sexual abuse. This information should be shared with law enforcement.

(Opposed) None.

(Other) This bill should be passed in the bill's original form with no changes to eliminate the clergy-penitent privilege which has long existed under state law. The Catholic Church recognizes the wrongful acts of abuse to children that have occurred under its watch.

The catholic bishops of Washington support the clergy reporting components of the underlying bill because the Catholic church considers clergy to be mandatory reporters at all times in every setting with one critical exception during the second rite of reconciliation, also known as confessions.

When the priest celebrates the sacrament of reconciliation, the priest is fulfilling the ministry of the good shepherd who seeks the lost sheep.

Jesus commanded his apostles and their successors to do so because the forgiveness of sins is necessary for salvation. The seriousness of the sacrament prohibits priests from disclosing anything said in the confessional; if they do so they are excommunicated.

In response to a tragic history of abuse in the past, the United States established a charter for the protection of children and young people in 2002, also known as the Dallas Charter, which is a comprehensive set of procedures for addressing allegations of sexual abuse of minors, including provisions for accountability, prevention of future acts, healing, and reconciliation. An outside consulting firm also collects data and performs on-site audits at church dioceses and parishes so that church schools, parishes, and ministries can be safe places for children and their families.

Removing the exception for information obtained during confession will accomplish nothing and will only serve to undermine the freedom of religion. Throughout history, priests have been murdered and imprisoned for refusing to break the seal of the confessional for love of their people. They will never do it.

Any attempt to harm the privacy and confidentiality of the sacrament would harm the very souls these public servants vowed to protect. Please respect the constitutional right of Catholics in our state to come to confession and unburden their hearts without fear. Removing the confession-penitent privilege would undermine the purpose of the bill in protecting children and put priests in harm's way by subjecting them to excommunication.

This committee should understand how broad these exceptions are before it takes steps to intrude on the sacrament of confession.

The constitution and state laws recognize privileges because some relationships are deemed so important they cannot be impacted.

To further candid communication, courts and legislatures have granted a privilege for

information exchanged between attorney-client and clergy-penitent.

One test courts use to determine a law's constitutionality in this context is whether the government is equally zealous in restricting similar secular activities.

No court has ever approved government invasion in the sacrament of confession.

There are already 13 states, including West Virginia, with laws that demonstrate mandated reporting by clergy with no exceptions, including the penitent-clergy privilege, is still aligned with First Amendment religious rights and clearly in line with a child's basic right to safety.

There are, however, plenty of states that have stories of horrific abuse in the news. One of those stories involves the coverup of abuse that included 188 clergy members. Washington should be proactive and join the states who value the true safety of children and not wait until there is a shameful legacy to address.

The confessional exemption undermines the entire bill.

There are at least six states, including Texas that explicitly disallow clergy-penitent privilege as grounds for failing to report child sexual abuse, which also includes New Hampshire, North Carolina, Oklahoma, Rhode Island, West Virginia, and Guam. Australia, the United Kingdom, and several other organizations have commissioned independent studies and all concluded that no exemption is the best policy.

The concerns raised by the church are hypocritical and do not reflect reality.

Persons Testifying: (In support) Senator Noel Frame, prime sponsor; Janet Hedgepath, League of Women Voters Washington; Mitchel Melin; Mark O'Donnell; and Christopher Marino Hardin.

(Other) Kristiana de Leon, Association of Secular Elected Officials; Bishop Frank Schuster, Washington State Catholic Conference; and Eric Kniffin, Ethics and Public Policy Center.

Persons Signed In To Testify But Not Testifying: None.