
SUBSTITUTE SENATE BILL 5392

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Health & Human Services (originally sponsored by Senators Talmadge, Deccio, Fraser, L. Smith, McCaslin, Moyer, Oke and Winsley)

Read first time 03/02/93.

1 AN ACT Relating to abuse of children and incompetent persons;
2 amending RCW 13.34.110, 13.34.120, 13.34.145, 13.34.150, 13.34.162,
3 26.44.020, 26.44.030, 26.44.040, 26.44.063, 26.44.067, and 26.44.100;
4 adding new sections to chapter 13.34 RCW; adding new sections to
5 chapter 26.44 RCW; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.34 RCW
8 to read as follows:

9 (1) The provisions of this section shall apply when a court orders
10 a party to undergo an alcohol or substance abuse diagnostic
11 investigation and evaluation.

12 (2) The facility conducting the investigation and evaluation shall
13 make a written report to the court stating its findings and
14 recommendations including family-based services or treatment when
15 appropriate. If its findings and recommendations support treatment, it
16 shall also recommend a treatment plan setting out:

17 (a) Type of treatment;

18 (b) Nature of treatment;

19 (c) Length of treatment;

- 1 (d) A treatment time schedule; and
- 2 (e) Approximate cost of the treatment.

3 The affected person shall be included in developing the appropriate
4 plan of treatment. The plan of treatment must be signed by treatment
5 provider and the affected person. The initial written report based on
6 the treatment plan and response to treatment shall be sent to
7 appropriate persons six weeks after initiation of treatment, and after
8 three months, after six months, after twelve months, and thereafter
9 every six months if treatment exceeds twelve months. Reports are to be
10 filed in a timely manner. Close-out of the treatment record must
11 include summary of pretreatment and posttreatment, with final outcome
12 and disposition. The report shall also include recommendations for
13 ongoing stability and decrease in destructive behavior.

14 The report with the treatment plan shall be filed with the court
15 and a copy given to the person evaluated and the person's counsel. A
16 copy of the treatment plan shall also be given to the department's
17 caseworker and to the guardian ad litem. Any program for alcoholism
18 shall meet the program requirements contained in RCW 10.05.150.

19 (3) If the court has ordered treatment pursuant to a dependency
20 proceeding it shall also require the treatment program to provide, in
21 the reports required by subsection (2) of this section, status reports
22 to the court, the department, the supervising child-placing agency if
23 any, and the person or person's counsel regarding: (a) The person's
24 cooperation with the treatment plan proposed; and (b) the person's
25 progress in treatment.

26 (4) In addition, if the party fails or neglects to carry out and
27 fulfill any term or condition of the treatment plan, the program or
28 agency administering the treatment shall report such breach to the
29 court, the department, the guardian ad litem, the supervising child-
30 placing agency if any, and the person or person's counsel, within
31 twenty-four hours, together with its recommendation. These reports
32 shall be made as a declaration by the person who is personally
33 responsible for providing the treatment.

34 (5) Nothing in this chapter may be construed as allowing the court
35 to require the department to pay for the cost of any alcohol or
36 substance abuse treatment program.

37 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.34 RCW
38 to read as follows:

1 (1) The court or the department, upon receiving a report under
2 section 1(4) of this act, may schedule a show cause hearing to
3 determine whether the person is in violation of the treatment
4 conditions. All parties shall be given notice of the hearing. The
5 court shall hold the hearing within ten days of the request for a
6 hearing. At the hearing, testimony, declarations, reports, or other
7 relevant information may be presented on the person's alleged failure
8 to comply with the treatment plan and the person shall have the right
9 to present similar information on his or her own behalf.

10 (2) If the court finds that there has been a violation of the
11 treatment conditions it shall modify the dependency order, as
12 necessary, to ensure the safety of the child. The modified order shall
13 remain in effect until the party is in full compliance with the
14 treatment requirements.

15 **Sec. 3.** RCW 13.34.110 and 1991 c 340 s 3 are each amended to read
16 as follows:

17 The court shall hold a fact-finding hearing on the petition and,
18 unless the court dismisses the petition, shall make written findings of
19 fact, stating the reasons therefor, and after it has announced its
20 findings of fact shall hold a hearing to consider disposition of the
21 case immediately following the fact-finding hearing or at a continued
22 hearing within fourteen days or longer for good cause shown. The
23 parties need not appear at the fact-finding or dispositional hearing if
24 ((all)) the parties, their attorneys, the guardian ad litem, and court-
25 appointed special advocates are all in agreement((+but)). The court
26 shall receive and review a social study before entering an order based
27 on agreement. No social file or social study may be considered by the
28 court in connection with the fact-finding hearing or prior to factual
29 determination, except as otherwise admissible under the rules of
30 evidence. Notice of the time and place of the continued hearing may be
31 given in open court. If notice in open court is not given to a party,
32 that party shall be notified by mail of the time and place of any
33 continued hearing.

34 All hearings may be conducted at any time or place within the
35 limits of the county, and such cases may not be heard in conjunction
36 with other business of any other division of the superior court. The
37 general public shall be excluded, and only such persons may be admitted
38 who are found by the judge to have a direct interest in the case or in

1 the work of the court. If a child resides in foster care or in the
2 home of a relative pursuant to a disposition order entered under RCW
3 13.34.130, the court may allow the child's foster parent or relative
4 care provider to attend dependency review proceedings pertaining to the
5 child for the sole purpose of providing information about the child to
6 the court.

7 Stenographic notes or any device which accurately records the
8 proceedings may be required as provided in other civil cases pursuant
9 to RCW 2.32.200.

10 **Sec. 4.** RCW 13.34.120 and 1987 c 524 s 5 are each amended to read
11 as follows:

12 (1) To aid the court in its decision on disposition, a social
13 study, consisting of a written evaluation of matters relevant to the
14 disposition of the case, shall be made by the person or agency filing
15 the petition. The study shall include all social records and may also
16 include facts relating to the child's cultural heritage, and shall be
17 made available to the court. The court shall consider the social file
18 ~~((and))~~, social study, guardian ad litem report, the court-appointed
19 special advocates report and any reports filed by a party at the
20 disposition hearing in addition to evidence produced at the fact-
21 finding hearing. At least ten working days before the disposition
22 hearing, the department shall mail to the parent and his or her
23 attorney a copy of the agency's social study and proposed service plan,
24 which shall be in writing or in a form understandable to the parents or
25 custodians. In addition, the department shall provide an opportunity
26 for parents to review and comment on the plan at the community service
27 office. If the parents disagree with the agency's plan or any part
28 thereof, the parents shall submit to the court at least twenty-four
29 hours before the hearing, in writing, or signed oral statement, an
30 alternative plan to correct the problems which led to the finding of
31 dependency. This section shall not interfere with the right of the
32 parents or custodians to submit oral arguments regarding the
33 disposition plan at the hearing.

34 (2) In addition to the requirements set forth in subsection (1) of
35 this section, a predisposition study to the court in cases of
36 dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) shall
37 contain the following information:

1 (a) A statement of the specific harm or harms to the child that
2 intervention is designed to alleviate;

3 (b) A description of the specific programs, for both the parents
4 and child, that are needed in order to prevent serious harm to the
5 child; the reasons why such programs are likely to be useful; the
6 availability of any proposed services; and the agency's overall plan
7 for ensuring that the services will be delivered;

8 (c) If removal is recommended, a full description of the reasons
9 why the child cannot be protected adequately in the home, including a
10 description of any previous efforts to work with the parents and the
11 child in the home; the in-home treatment programs which have been
12 considered and rejected; and the parents' attitude toward placement of
13 the child;

14 (d) A statement of the likely harms the child will suffer as a
15 result of removal. This section should include an exploration of the
16 nature of the parent-child attachment and the meaning of separation and
17 loss to both the parents and the child;

18 (e) A description of the steps that will be taken to minimize harm
19 to the child that may result if separation occurs; and

20 (f) Behavior that will be expected before determination that
21 supervision of the family or placement is no longer necessary.

22 **Sec. 5.** RCW 13.34.145 and 1989 1st ex.s. c 17 s 18 are each
23 amended to read as follows:

24 (1) In all cases where a child has been placed in substitute care
25 for at least fifteen months, a permanency planning hearing shall be
26 held before the court no later than eighteen months following
27 commencement of the placement episode.

28 (2) At the permanency planning hearing, the court shall enter
29 findings as required by RCW (~~(13.34.130(4))~~) 13.34.130(5). In addition
30 the court shall: (a) Approve a permanent plan of care which can
31 include one of the following: Adoption, guardianship, or placement of
32 the child in the home of the child's parent; (b) require filing of a
33 petition for termination of parental rights; or (c) dismiss the
34 dependency, unless the court finds, based on clear, cogent, and
35 convincing evidence, that it is in the best interest of the child to
36 continue the dependency beyond eighteen months, based on a permanent
37 plan of care. Extensions may only be granted in increments of twelve
38 months or less.

1 **Sec. 6.** RCW 13.34.150 and 1990 c 246 s 6 are each amended to read
2 as follows:

3 Any order made by the court in the case of a dependent child may be
4 changed, modified, or set aside, only upon a showing of a change in
5 circumstance or as provided in section 2 of this act.

6 **Sec. 7.** RCW 13.34.162 and 1988 c 275 s 15 are each amended to read
7 as follows:

8 A determination of child support shall be based upon the child
9 support schedule and standards (~~((adopted))~~) provided under chapter 26.19
10 RCW (~~((26.19.040))~~).

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 26.44 RCW
12 to read as follows:

13 (1) This chapter shall not be construed to authorize interference
14 with child-raising practices, including reasonable parental discipline,
15 which are not injurious to the child's health, welfare, and safety.

16 (2) Nothing in this chapter may be used to prohibit the reasonable
17 use of corporal punishment as a means of discipline.

18 (3) No parent or guardian may be deemed abusive or neglectful
19 solely by reason of the parent's or child's blindness, deafness,
20 developmental disability, or other handicap.

21 (4) A person reporting injury, abuse, or neglect to an adult
22 dependent person shall not suffer negative consequences if the person
23 reporting believes in good faith that the adult dependent person has
24 been found legally incompetent or disabled.

25 **Sec. 9.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read
26 as follows:

27 For the purpose of and as used in this chapter:

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

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

33 (3) "Practitioner of the healing arts" or "practitioner" means a
34 person licensed by this state to practice (~~((podiatry))~~) podiatric
35 medicine and surgery, optometry, chiropractic, nursing, dentistry,
36 osteopathy and surgery, or medicine and surgery or to provide other

1 health services. The term "practitioner" shall include a duly
2 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
3 person who is being furnished Christian Science treatment by a duly
4 accredited Christian Science practitioner shall not be considered, for
5 that reason alone, a neglected person for the purposes of this chapter.

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

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

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

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

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

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

26 (10) "Pharmacist" shall mean any registered pharmacist under the
27 provisions of chapter 18.64 RCW, whether acting in an individual
28 capacity or as an employee or agent of any public or private
29 organization or institution.

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

34 (12) "~~((Child))~~ Abuse or neglect" shall mean the injury, sexual
35 abuse, sexual exploitation, ~~((or))~~ negligent treatment, or maltreatment
36 of a child, adult dependent, or developmentally disabled person by any
37 person under circumstances which indicate that the child's or adult's
38 health, welfare, and safety is harmed ~~((thereby))~~. An abused child is
39 a child who has been subjected to child abuse or neglect as defined

1 herein(~~(: PROVIDED, That this subsection shall not be construed to~~
2 ~~authorize interference with child raising practices, including~~
3 ~~reasonable parental discipline, which are not proved to be injurious to~~
4 ~~the child's health, welfare, and safety: AND PROVIDED FURTHER, That~~
5 ~~nothing in this section shall be used to prohibit the reasonable use of~~
6 ~~corporal punishment as a means of discipline. No parent or guardian~~
7 ~~shall be deemed abusive or neglectful solely by reason of the parent's~~
8 ~~or child's blindness, deafness, developmental disability, or other~~
9 ~~handicap)).~~

10 (13) "Child protective services section" shall mean the child
11 protective services section of the department.

12 (14) "Adult dependent persons (~~(not able to provide for their own~~
13 ~~protection through the criminal justice system))" shall be defined as~~
14 those persons over the age of eighteen years who have been found to be
15 legally incompetent or disabled pursuant to chapter 11.88 RCW (~~(or~~
16 ~~found disabled to such a degree pursuant to said chapter, that such~~
17 ~~protection is indicated: PROVIDED, That no persons reporting injury,~~
18 ~~abuse, or neglect to an adult dependent person as defined herein shall~~
19 ~~suffer negative consequences if such a judicial determination of~~
20 ~~incompetency or disability has not taken place and the person reporting~~
21 ~~believes in good faith that the adult dependent person has been found~~
22 ~~legally incompetent pursuant to chapter 11.88 RCW)).~~

23 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
24 encouraging a child to engage in prostitution by any person; or (b)
25 allowing, permitting, encouraging, or engaging in the obscene or
26 pornographic photographing, filming, or depicting of a child (~~(for~~
27 ~~commercial purposes as those acts are defined by state law)) by any
28 person.~~

29 (16) "Negligent treatment or maltreatment" means an act or omission
30 which evidences a serious disregard of consequences of such magnitude
31 as to constitute a clear and present danger to the child's health,
32 welfare, and safety.

33 (17) "Developmentally disabled person" means a person who has a
34 disability defined in RCW (~~(71.20.016))~~ 71A.10.020.

35 (18) "Child protective services" means those services provided by
36 the department designed to protect children from child abuse and
37 neglect and safeguard the general welfare of such children and shall
38 include investigations of child abuse and neglect reports, including
39 reports regarding child care centers and family child care homes, and

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

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

15 **Sec. 10.** RCW 26.44.030 and 1991 c 111 s 1 are each amended to read
16 as follows:

17 (1) When any practitioner, professional school personnel,
18 registered or licensed nurse, social service counselor, psychologist,
19 pharmacist, licensed or certified child care providers or their
20 employees, employee of the department, or juvenile probation officer
21 has reasonable cause to believe that a child or adult dependent or
22 developmentally disabled person, has suffered abuse or neglect, he or
23 she shall report such incident, or cause a report to be made, to the
24 proper law enforcement agency or to the department as provided in RCW
25 26.44.040. The reporting requirement shall also apply to any adult who
26 has reasonable cause to believe that a child or adult dependent or
27 developmentally disabled person, who resides with them, has suffered
28 abuse or neglect. The report shall be made at the first opportunity,
29 but in no case longer than forty-eight hours after there is reasonable
30 cause to believe that the child or adult has suffered abuse or neglect.
31 The report shall 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
36 children, dependent adults, or developmentally disabled persons are or
37 may be at risk of abuse or neglect by the accused, the reporting
38 requirement of subsection (1) of this section shall apply.

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

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

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

36 (6) Any county prosecutor or city attorney receiving a report under
37 subsection (5) of this section shall notify the victim, any persons the
38 victim requests, and the local office of the department, of the

1 decision to charge or decline to charge a crime, within five days of
2 making the decision.

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

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

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

33 (10) Upon receiving reports of abuse or neglect, the department or
34 law enforcement agency may interview children. The interviews may be
35 conducted on school premises, at day-care facilities, at the child's
36 home, or at other suitable locations outside of the presence of
37 parents. Parental notification of the interview shall occur at the
38 earliest possible point in the investigation that will not jeopardize
39 the safety or protection of the child or the course of the

1 investigation. Prior to commencing the interview the department or law
2 enforcement agency shall determine whether the child wishes a third
3 party to be present for the interview and, if so, shall make reasonable
4 efforts to accommodate the child's wishes. Unless the child objects,
5 the department or law enforcement agency shall make reasonable efforts
6 to include a third party in any interview so long as the presence of
7 the third party will not jeopardize the course of the investigation.

8 (11) Upon receiving a report of incidents, conditions, or
9 circumstances of child abuse and neglect, the department shall have
10 access to all relevant records of the child in the possession of
11 mandated reporters and their employees.

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

16 (13) The department (~~(of social and health services)~~) shall(~~(~~
17 ~~within funds appropriated for this purpose,~~) use a risk assessment
18 ~~((tool))~~ process when investigating child abuse and neglect referrals.
19 ~~((The tool shall be used, on a pilot basis, in three local office~~
20 ~~service areas.))~~ The department shall present the risk factors at all
21 hearings in which the placement of a dependent child is an issue. The
22 department shall, within funds appropriated for this purpose, offer
23 enhanced community-based services to persons who are determined not to
24 require further state intervention.

25 The department shall provide annual reports to the (~~(ways and~~
26 ~~means))~~ appropriate committees of the senate and house of
27 representatives on the (~~(use))~~ effectiveness of the (~~(tool by December~~
28 ~~1, 1989. The report shall include recommendations on the continued use~~
29 ~~and possible expanded use of the tool))~~ risk assessment process.

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

34 **Sec. 11.** RCW 26.44.040 and 1987 c 206 s 4 are each amended to read
35 as follows:

36 An immediate oral report shall be made by telephone or otherwise to
37 the proper law enforcement agency or the department of social and
38 health services and, upon request, shall be followed by a report in

1 writing. Such reports shall contain the following information, if
2 known:

3 (1) The name, address, and age of the child or adult dependent or
4 developmentally disabled person;

5 (2) The name and address of the child's parents, stepparents,
6 guardians, or other persons having custody of the child or the
7 residence of the adult dependent or developmentally disabled person;

8 (3) The nature and extent of the injury or injuries;

9 (4) The nature and extent of the neglect;

10 (5) The nature and extent of the sexual abuse;

11 (6) Any evidence of previous injuries, including their nature and
12 extent; and

13 (7) Any other information which may be helpful in establishing the
14 cause of the child's or adult dependent or developmentally disabled
15 person's death, injury, or injuries and the identity of the alleged
16 perpetrator or perpetrators.

17 **Sec. 12.** RCW 26.44.063 and 1988 c 190 s 3 are each amended to read
18 as follows:

19 (1) It is the intent of the legislature to minimize trauma to a
20 child involved in an allegation of sexual or physical abuse. The
21 legislature declares that removing the child from the home often has
22 the effect of further traumatizing the child. It is, therefore, the
23 legislature's intent that the alleged offender, rather than the child,
24 shall be removed from the home and that this should be done at the
25 earliest possible point of intervention in accordance with RCW
26 10.31.100, 13.34.130, this section, and RCW 26.44.130.

27 (2) In any judicial proceeding in which it is alleged that a child
28 has been subjected to sexual or physical abuse, if the court finds
29 reasonable grounds to believe that an incident of sexual or physical
30 abuse has occurred, the court may, on its own motion, or the motion of
31 the guardian ad litem or other parties, issue a temporary restraining
32 order or preliminary injunction restraining or enjoining the person
33 accused of committing the abuse from:

34 (a) Molesting or disturbing the peace of the alleged victim;

35 (b) Entering the family home of the alleged victim except as
36 specifically authorized by the court; or

37 (c) Having any contact with the alleged victim, except as
38 specifically authorized by the court.

1 (3) In issuing a temporary restraining order or preliminary
2 injunction, the court may impose any additional restrictions that the
3 court in its discretion determines are necessary to protect the child
4 from further abuse or emotional trauma pending final resolution of the
5 abuse allegations.

6 (4) The court shall issue a temporary restraining order prohibiting
7 a person from entering the family home if the court finds that the
8 order would eliminate the need for an out-of-home placement to protect
9 the child's right to nurturance, health, and safety and is sufficient
10 to protect the child from further sexual or physical abuse or coercion.

11 (5) The court may issue a temporary restraining order without
12 requiring notice to the party to be restrained or other parties only if
13 it finds on the basis of the moving affidavit or other evidence that
14 irreparable injury could result if an order is not issued until the
15 time for responding has elapsed.

16 (6) A temporary restraining order or preliminary injunction:

17 (a) Does not prejudice the rights of a party or any child which are
18 to be adjudicated at subsequent hearings in the proceeding; and

19 (b) May be revoked or modified.

20 (7) The person having physical custody of the child shall have an
21 affirmative duty to assist in the enforcement of the restraining order
22 including but not limited to a duty to notify the court as soon as
23 practicable of any violation of the order, a duty to request the
24 assistance of law enforcement officers to enforce the order, and a duty
25 to notify the department of social and health services of any violation
26 of the order as soon as practicable if the department is a party to the
27 action. Failure by the custodial party to discharge these affirmative
28 duties shall be subject to contempt proceedings.

29 (8) Willful violation of a court order entered under this section
30 is a misdemeanor. A written order shall contain the court's directive
31 and shall bear the legend: "Violation of this order with actual notice
32 of its terms is a criminal offense under chapter 26.44 RCW, is also
33 subject to contempt proceedings, and will subject a violator to
34 arrest."

35 **Sec. 13.** RCW 26.44.067 and 1989 c 373 s 23 are each amended to
36 read as follows:

37 (1) Any person having had actual notice of the existence of a
38 restraining order issued by a court of competent jurisdiction pursuant

1 to RCW 26.44.063 who refuses to comply with the provisions of such
2 order (~~when requested by any peace officer of the state~~) shall be
3 guilty of a misdemeanor.

4 (2) The notice requirements of subsection (1) of this section may
5 be satisfied by the peace officer giving oral or written evidence to
6 the person subject to the order by reading from or handing to that
7 person a copy certified by a notary public or the clerk of the court to
8 be an accurate copy of the original court order which is on file. The
9 copy may be supplied by the court or any party.

10 (3) The remedies provided in this section shall not apply unless
11 restraining orders subject to this section shall bear this legend:
12 VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL
13 OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT
14 PROCEEDINGS.

15 (4) It is a defense to prosecution under subsection (1) of this
16 section that the court order was issued contrary to law or court rule.
17 No right of action shall accrue against any peace officer acting upon
18 a properly certified copy of a court order lawful on its face if such
19 officer employs otherwise lawful means to effect the arrest.

20 **Sec. 14.** RCW 26.44.100 and 1985 c 183 s 1 are each amended to read
21 as follows:

22 The legislature finds parents and children often are not aware of
23 their due process rights when agencies are investigating allegations of
24 child abuse and neglect. The legislature reaffirms that all citizens,
25 including parents, shall be afforded due process, that protection of
26 children remains the priority of the legislature, and that this
27 protection includes protecting the family unit from unnecessary
28 disruption. To facilitate this goal, the legislature wishes to ensure
29 that parents and children be advised in writing and orally, if
30 feasible, of their basic rights and other specific information as set
31 forth in this (~~aet~~) chapter, provided that nothing contained in this
32 (~~aet~~) chapter shall cause any delay in protective custody action.

33 NEW SECTION. **Sec. 15.** A new section is added to chapter 26.44 RCW
34 to read as follows:

35 (1) If a person who has unsupervised visitation rights with a minor
36 child pursuant to a court order is accused of sexually or physically
37 abusing a child and the alleged abuse has been reported to the proper

1 authorities for investigation, the law enforcement officer conducting
2 the investigation may file a motion with the court for a temporary
3 restraining order to restrain the alleged abuser's visitation rights
4 during the investigation. The investigating law enforcement officer
5 shall submit an affidavit stating that the person is currently under
6 investigation for sexual or physical abuse of a child, that there is a
7 risk of harm to the child if a temporary restraining order is not
8 entered, and that the prosecuting attorney has informed the officer
9 that the attorney does not have enough information at the time to
10 determine whether prosecution is warranted. The restraining order
11 shall be issued for up to ninety days or until the investigation has
12 been concluded in favor of the alleged abuser, whichever is shorter.

13 (2) Willful violation of a court order entered under this section
14 is a misdemeanor. The court order shall state: "Violation of this
15 order is a criminal offense under chapter 26.44 RCW and will subject
16 the violator to arrest."

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