
SUBSTITUTE SENATE BILL 5087

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Roach, Swecker, Schow and Oke)

Read first time 03/05/97.

1 AN ACT Relating to interviews of children conducted by the
2 department of social and health services; amending RCW 26.44.030 and
3 9A.72.120; adding a new section to chapter 26.44 RCW; adding a new
4 section to chapter 9A.44 RCW; adding a new section to chapter 9.73 RCW;
5 and prescribing penalties.

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

7 **Sec. 1.** RCW 26.44.030 and 1996 c 278 s 2 are each amended to read
8 as follows:

9 (1)(a) When any practitioner, county coroner or medical examiner,
10 law enforcement officer, professional school personnel, registered or
11 licensed nurse, social service counselor, psychologist, pharmacist,
12 licensed or certified child care providers or their employees, employee
13 of the department, or juvenile probation officer has reasonable cause
14 to believe that a child or adult dependent or developmentally disabled
15 person, has suffered abuse or neglect, he or she shall report such
16 incident, or cause a report to be made, to the proper law enforcement
17 agency or to the department as provided in RCW 26.44.040.

18 (b) The reporting requirement shall also apply to department of
19 corrections personnel who, in the course of their employment, observe

1 offenders or the children with whom the offenders are in contact. If,
2 as a result of observations or information received in the course of
3 his or her employment, any department of corrections personnel has
4 reasonable cause to believe that a child or adult dependent or
5 developmentally disabled person has suffered abuse or neglect, he or
6 she shall report the incident, or cause a report to be made, to the
7 proper law enforcement agency or to the department as provided in RCW
8 26.44.040.

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

21 (d) The report shall be made at the first opportunity, but in no
22 case longer than forty-eight hours after there is reasonable cause to
23 believe that the child or adult has suffered abuse or neglect. The
24 report shall include the identity of the accused if known.

25 (2) The reporting requirement of subsection (1) of this section
26 does not apply to the discovery of abuse or neglect that occurred
27 during childhood if it is discovered after the child has become an
28 adult. However, if there is reasonable cause to believe other
29 children, dependent adults, or developmentally disabled persons are or
30 may be at risk of abuse or neglect by the accused, the reporting
31 requirement of subsection (1) of this section shall apply.

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

37 (4) The department, upon receiving a report of an incident of abuse
38 or neglect pursuant to this chapter, involving a child or adult
39 dependent or developmentally disabled person who has died or has had

1 physical injury or injuries inflicted upon him or her other than by
2 accidental means or who has been subjected to sexual abuse, shall
3 report such incident to the proper law enforcement agency. In
4 emergency cases, where the child, adult dependent, or developmentally
5 disabled person's welfare is endangered, the department shall notify
6 the proper law enforcement agency within twenty-four hours after a
7 report is received by the department. In all other cases, the
8 department shall notify the law enforcement agency within seventy-two
9 hours after a report is received by the department. If the department
10 makes an oral report, a written report shall also be made to the proper
11 law enforcement agency within five days thereafter.

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

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

33 (7) The department may conduct ongoing case planning and
34 consultation with those persons or agencies required to report under
35 this section, with consultants designated by the department, and with
36 designated representatives of Washington Indian tribes if the client
37 information exchanged is pertinent to cases currently receiving child
38 protective services or department case services for the developmentally
39 disabled. Upon request, the department shall conduct such planning and

1 consultation with those persons required to report under this section
2 if the department determines it is in the best interests of the child
3 or developmentally disabled person. Information considered privileged
4 by statute and not directly related to reports required by this section
5 shall not be divulged without a valid written waiver of the privilege.

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

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

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

1 (11) Upon receiving a report of child abuse and neglect, the
2 department or investigating law enforcement agency shall have access to
3 all relevant records of the child in the possession of mandated
4 reporters and their employees.

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

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

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

18 (14) Upon receipt of a report of abuse or neglect the law
19 enforcement agency may arrange to interview the person making the
20 report and any collateral sources to determine if any malice is
21 involved in the reporting.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW
23 to read as follows:

24 (1) When an interview of a child regarding allegations of sexual
25 abuse is conducted by the department, that interview shall be recorded
26 by audiotape. Videotape may be used if it is readily available.
27 Failure to record the interview shall not affect the admissibility of
28 statements pursuant to RCW 9A.44.120 unless the failure was willful.
29 The willful failure of the department to record, by audiotape or
30 videotape, an interview of a child regarding allegations of sexual
31 abuse creates a presumption that such statements are inadmissible for
32 the purpose of RCW 9A.44.120.

33 (2) The department shall not make any copies of an audiotape or
34 videotape recorded under this section. The original tape shall be
35 immediately transmitted to the prosecuting attorney's office or the
36 local law enforcement agency to be preserved as evidence.

37 (3) Only persons accused of alleged sexual abuse or the person's
38 attorney may view or listen to the tape as necessary to prepare an

1 adequate defense, but the tape shall remain in the custody of the
2 prosecuting attorney's office or the local law enforcement agency. If
3 the tape has been introduced as evidence it shall remain in the custody
4 of the court. If the charges against the accused are dismissed or if
5 the accused is found not guilty, all tapes shall be destroyed.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.44 RCW
7 to read as follows:

8 If an audiotape or videotape is made in compliance with the
9 provisions of this act, it shall not be used for the purpose of
10 investigating or determining whether abuse or neglect occurred, or
11 admitted into evidence in any proceeding under this title or Title 9,
12 9A, 70, 71, or 74 RCW. The department of social and health services
13 may use any audiotape or videotape made under this act only for the
14 purpose of conducting personnel evaluations of the person or persons
15 who conduct any interview recorded on the tape.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.73 RCW
17 to read as follows:

18 This chapter does not apply to any person, government entity or
19 agency, or private entity or agency acting in accordance with sections
20 2 and 3 of this act.

21 **Sec. 5.** RCW 9A.72.120 and 1994 c 271 s 205 are each amended to
22 read as follows:

23 (1) A person is guilty of tampering with a witness if he or she
24 attempts to induce a witness or person he or she has reason to believe
25 is about to be called as a witness in any official proceeding or a
26 person whom he or she has reason to believe may have information
27 relevant to a criminal investigation or the abuse or neglect of a minor
28 child to:

29 (a) Testify falsely or, without right or privilege to do so, to
30 withhold any testimony; or

31 (b) Absent himself or herself from such proceedings; or

32 (c) Withhold from a law enforcement agency information which he or
33 she has relevant to a criminal investigation or the abuse or neglect of
34 a minor child to the agency; or

1 (d) Alter in any way his or her statements in an official
2 proceeding or investigative interview, including interviews under this
3 act.
4 (2) Tampering with a witness is a class C felony.

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