

SSB 5321 - H COMM AMD

By Committee on Early Learning & Children's Services

ADOPTED 04/05/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 26.44.020 and 2006 c 339 s 108 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

12 ~~(10) "Pharmacist" means any registered pharmacist under chapter~~
13 ~~18.64 RCW, whether acting in an individual capacity or as an employee~~
14 ~~or agent of any public or private organization or institution.~~

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

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

26 ~~(13) "Child protective services section" means the child protective~~
27 ~~services section of the department.~~

28 ~~(14) "Sexual exploitation" includes: (a) Allowing, permitting, or~~
29 ~~encouraging a child to engage in prostitution by any person; or (b)~~
30 ~~allowing, permitting, encouraging, or engaging in the obscene or~~
31 ~~pornographic photographing, filming, or depicting of a child by any~~
32 ~~person.~~

33 ~~(15) "Negligent treatment or maltreatment" means an act or a~~
34 ~~failure to act, or the cumulative effects of a pattern of conduct,~~
35 ~~behavior, or inaction, that evidences a serious disregard of~~
36 ~~consequences of such magnitude as to constitute a clear and present~~
37 ~~danger to a child's health, welfare, or safety, including but not~~
38 ~~limited to conduct prohibited under RCW 9A.42.100. When considering~~

1 ~~whether a clear and present danger exists, evidence of a parent's~~
2 ~~substance abuse as a contributing factor to negligent treatment or~~
3 ~~maltreatment shall be given great weight. The fact that siblings share~~
4 ~~a bedroom is not, in and of itself, negligent treatment or~~
5 ~~maltreatment. Poverty, homelessness, or exposure to domestic violence~~
6 ~~as defined in RCW 26.50.010 that is perpetrated against someone other~~
7 ~~than the child does not constitute negligent treatment or maltreatment~~
8 ~~in and of itself.~~

9 ~~(16) "Child protective services" means those services provided by~~
10 ~~the department designed to protect children from child abuse and~~
11 ~~neglect and safeguard such children from future abuse and neglect, and~~
12 ~~conduct investigations of child abuse and neglect reports.~~
13 ~~Investigations may be conducted regardless of the location of the~~
14 ~~alleged abuse or neglect. Child protective services includes referral~~
15 ~~to services to ameliorate conditions that endanger the welfare of~~
16 ~~children, the coordination of necessary programs and services relevant~~
17 ~~to the prevention, intervention, and treatment of child abuse and~~
18 ~~neglect, and services to children to ensure that each child has a~~
19 ~~permanent home. In determining whether protective services should be~~
20 ~~provided, the department shall not decline to provide such services~~
21 ~~solely because of the child's unwillingness or developmental inability~~
22 ~~to describe the nature and severity of the abuse or neglect.~~

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

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

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

35 (1) "Abuse or neglect" means sexual abuse, sexual exploitation, or
36 injury of a child by any person under circumstances which cause harm to
37 the child's health, welfare, or safety, excluding conduct permitted
38 under RCW 9A.16.100; or the negligent treatment or maltreatment of a

1 child by a person responsible for or providing care to the child. An
2 abused child is a child who has been subjected to child abuse or
3 neglect as defined in this section.

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

6 (3) "Child protective services" means those services provided by
7 the department designed to protect children from child abuse and
8 neglect and safeguard such children from future abuse and neglect, and
9 conduct investigations of child abuse and neglect reports.
10 Investigations may be conducted regardless of the location of the
11 alleged abuse or neglect. Child protective services includes referral
12 to services to ameliorate conditions that endanger the welfare of
13 children, the coordination of necessary programs and services relevant
14 to the prevention, intervention, and treatment of child abuse and
15 neglect, and services to children to ensure that each child has a
16 permanent home. In determining whether protective services should be
17 provided, the department shall not decline to provide such services
18 solely because of the child's unwillingness or developmental inability
19 to describe the nature and severity of the abuse or neglect.

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

22 (5) "Clergy" means any regularly licensed or ordained minister,
23 priest, or rabbi of any church or religious denomination, whether
24 acting in an individual capacity or as an employee or agent of any
25 public or private organization or institution.

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

28 (7) "Department" means the state department of social and health
29 services.

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

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

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

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

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

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

23 (14) "Pharmacist" means any registered pharmacist under chapter
24 18.64 RCW, whether acting in an individual capacity or as an employee
25 or agent of any public or private organization or institution.

26 (15) "Practitioner of the healing arts" or "practitioner" means a
27 person licensed by this state to practice podiatric medicine and
28 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
29 medicine and surgery, or medicine and surgery or to provide other
30 health services. The term "practitioner" includes a duly accredited
31 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
32 is being furnished Christian Science treatment by a duly accredited
33 Christian Science practitioner will not be considered, for that reason
34 alone, a neglected person for the purposes of this chapter.

35 (16) "Professional school personnel" include, but are not limited
36 to, teachers, counselors, administrators, child care facility
37 personnel, and school nurses.

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

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

9 (19) "Sexual exploitation" includes: (a) Allowing, permitting, or
10 encouraging a child to engage in prostitution by any person; or (b)
11 allowing, permitting, encouraging, or engaging in the obscene or
12 pornographic photographing, filming, or depicting of a child by any
13 person.

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

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

23 (22) "Unfounded" means the determination following an investigation
24 by the department that available information indicates that, more
25 likely than not, child abuse or neglect did not occur, or that there is
26 insufficient evidence for the department to determine whether the
27 alleged child abuse did or did not occur.

28 **Sec. 2.** RCW 26.44.030 and 2005 c 417 s 1 are each amended to read
29 as follows:

30 (1)(a) When any practitioner, county coroner or medical examiner,
31 law enforcement officer, professional school personnel, registered or
32 licensed nurse, social service counselor, psychologist, pharmacist,
33 licensed or certified child care providers or their employees, employee
34 of the department, juvenile probation officer, placement and liaison
35 specialist, responsible living skills program staff, HOPE center staff,
36 or state family and children's ombudsman or any volunteer in the
37 ombudsman's office has reasonable cause to believe that a child has

1 suffered abuse or neglect, he or she shall report such incident, or
2 cause a report to be made, to the proper law enforcement agency or to
3 the department as provided in RCW 26.44.040.

4 (b) When any person, in his or her official supervisory capacity
5 with a nonprofit or for-profit organization, has reasonable cause to
6 believe that a child has suffered abuse or neglect caused by a person
7 over whom he or she regularly exercises supervisory authority, he or
8 she shall report such incident, or cause a report to be made, to the
9 proper law enforcement agency, provided that the person alleged to have
10 caused the abuse or neglect is employed by, contracted by, or
11 volunteers with the organization and coaches, trains, educates, or
12 counsels a child or children or regularly has unsupervised access to a
13 child or children as part of the employment, contract, or voluntary
14 service. No one shall be required to report under this section when he
15 or she obtains the information solely as a result of a privileged
16 communication as provided in RCW 5.60.060.

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

19 For the purposes of this subsection, the following definitions
20 apply:

21 (i) "Official supervisory capacity" means a position, status, or
22 role created, recognized, or designated by any nonprofit or for-profit
23 organization, either for financial gain or without financial gain,
24 whose scope includes, but is not limited to, overseeing, directing, or
25 managing another person who is employed by, contracted by, or
26 volunteers with the nonprofit or for-profit organization.

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

30 (c) The reporting requirement also applies to department of
31 corrections personnel who, in the course of their employment, observe
32 offenders or the children with whom the offenders are in contact. If,
33 as a result of observations or information received in the course of
34 his or her employment, any department of corrections personnel has
35 reasonable cause to believe that a child has suffered abuse or neglect,
36 he or she shall report the incident, or cause a report to be made, to
37 the proper law enforcement agency or to the department as provided in
38 RCW 26.44.040.

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

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

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

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

26 (4) The department, upon receiving a report of an incident of
27 alleged abuse or neglect pursuant to this chapter, involving a child
28 who has died or has had physical injury or injuries inflicted upon him
29 or her other than by accidental means or who has been subjected to
30 alleged sexual abuse, shall report such incident to the proper law
31 enforcement agency. In emergency cases, where the child's welfare is
32 endangered, the department shall notify the proper law enforcement
33 agency within twenty-four hours after a report is received by the
34 department. In all other cases, the department shall notify the law
35 enforcement agency within seventy-two hours after a report is received
36 by the department. If the department makes an oral report, a written
37 report must also be made to the proper law enforcement agency within
38 five days thereafter.

1 (5) Any law enforcement agency receiving a report of an incident of
2 alleged abuse or neglect pursuant to this chapter, involving a child
3 who has died or has had physical injury or injuries inflicted upon him
4 or her other than by accidental means, or who has been subjected to
5 alleged sexual abuse, shall report such incident in writing as provided
6 in RCW 26.44.040 to the proper county prosecutor or city attorney for
7 appropriate action whenever the law enforcement agency's investigation
8 reveals that a crime may have been committed. The law enforcement
9 agency shall also notify the department of all reports received and the
10 law enforcement agency's disposition of them. In emergency cases,
11 where the child's welfare is endangered, the law enforcement agency
12 shall notify the department within twenty-four hours. In all other
13 cases, the law enforcement agency shall notify the department within
14 seventy-two hours after a report is received by the law enforcement
15 agency.

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

21 (7) The department may conduct ongoing case planning and
22 consultation with those persons or agencies required to report under
23 this section, with consultants designated by the department, and with
24 designated representatives of Washington Indian tribes if the client
25 information exchanged is pertinent to cases currently receiving child
26 protective services. Upon request, the department shall conduct such
27 planning and consultation with those persons required to report under
28 this section if the department determines it is in the best interests
29 of the child. Information considered privileged by statute and not
30 directly related to reports required by this section must not be
31 divulged without a valid written waiver of the privilege.

32 (8) Any case referred to the department by a physician licensed
33 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
34 opinion that child abuse, neglect, or sexual assault has occurred and
35 that the child's safety will be seriously endangered if returned home,
36 the department shall file a dependency petition unless a second
37 licensed physician of the parents' choice believes that such expert
38 medical opinion is incorrect. If the parents fail to designate a

1 second physician, the department may make the selection. If a
2 physician finds that a child has suffered abuse or neglect but that
3 such abuse or neglect does not constitute imminent danger to the
4 child's health or safety, and the department agrees with the
5 physician's assessment, the child may be left in the parents' home
6 while the department proceeds with reasonable efforts to remedy
7 parenting deficiencies.

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

12 (10) Upon receiving a report((s)) of alleged abuse or neglect, the
13 department shall make reasonable efforts to learn the name, address,
14 and telephone number of each person making a report of abuse or neglect
15 under this section. The department shall provide assurances of
16 appropriate confidentiality of the identification of persons reporting
17 under this section. If the department is unable to learn the
18 information required under this subsection, the department shall only
19 investigate cases in which:

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

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

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

27 (11)(a) For reports of alleged abuse or neglect that are accepted
28 for investigation by the department, the investigation shall be
29 conducted within time frames established by the department in rule. In
30 no case shall the investigation extend longer than ninety days from the
31 date the report is received, unless the investigation is being
32 conducted under a written protocol pursuant to RCW 26.44.180 and a law
33 enforcement agency or prosecuting attorney has determined that a longer
34 investigation period is necessary. At the completion of the
35 investigation, the department shall make a finding that the report of
36 child abuse or neglect is founded or unfounded.

37 (b) If a court in a civil or criminal proceeding, considering the
38 same facts or circumstances as are contained in the report being

1 investigated by the department, makes a judicial finding by a
2 preponderance of the evidence or higher that the subject of the pending
3 investigation has abused or neglected the child, the department shall
4 adopt the finding in its investigation.

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

7 (a) May interview children. The interviews may be conducted on
8 school premises, at day-care facilities, at the child's home, or at
9 other suitable locations outside of the presence of parents. Parental
10 notification of the interview must occur at the earliest possible point
11 in the investigation that will not jeopardize the safety or protection
12 of the child or the course of the investigation. Prior to commencing
13 the interview the department or law enforcement agency shall determine
14 whether the child wishes a third party to be present for the interview
15 and, if so, shall make reasonable efforts to accommodate the child's
16 wishes. Unless the child objects, the department or law enforcement
17 agency shall make reasonable efforts to include a third party in any
18 interview so long as the presence of the third party will not
19 jeopardize the course of the investigation((-

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

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

24 ~~((+12+))~~ (13) The department shall maintain investigation records
25 and conduct timely and periodic reviews of all founded cases
26 ~~((constituting))~~ of abuse and neglect. The department shall maintain
27 a log of screened-out nonabusive cases.

28 ~~((+13+))~~ (14) The department shall use a risk assessment process
29 when investigating alleged child abuse and neglect referrals. The
30 department shall present the risk factors at all hearings in which the
31 placement of a dependent child is an issue. Substance abuse must be a
32 risk factor. The department shall, within funds appropriated for this
33 purpose, offer enhanced community-based services to persons who are
34 determined not to require further state intervention.

35 ~~((+14+))~~ (15) Upon receipt of a report of alleged abuse or neglect
36 the law enforcement agency may arrange to interview the person making
37 the report and any collateral sources to determine if any malice is
38 involved in the reporting.

1 ~~((15) The department shall make reasonable efforts to learn the~~
2 ~~name, address, and telephone number of each person making a report of~~
3 ~~abuse or neglect under this section. The department shall provide~~
4 ~~assurances of appropriate confidentiality of the identification of~~
5 ~~persons reporting under this section. If the department is unable to~~
6 ~~learn the information required under this subsection, the department~~
7 ~~shall only investigate cases in which: (a) The department believes~~
8 ~~there is a serious threat of substantial harm to the child; (b) the~~
9 ~~report indicates conduct involving a criminal offense that has, or is~~
10 ~~about to occur, in which the child is the victim; or (c) the department~~
11 ~~has, after investigation, a report of abuse or neglect that has been~~
12 ~~founded with regard to a member of the household within three years of~~
13 ~~receipt of the referral.))~~

14 **Sec. 3.** RCW 26.44.031 and 1997 c 282 s 1 are each amended to read
15 as follows:

16 (1) To protect the privacy in reporting and the maintenance of
17 reports of nonaccidental injury, neglect, death, sexual abuse, and
18 cruelty to children by their parents, and to safeguard against
19 arbitrary, malicious, or erroneous information or actions, the
20 department shall not disclose or maintain information related to
21 ((unfounded referrals in files or)) reports of child abuse or neglect
22 ((for longer than six years)) except as provided in this section or as
23 otherwise required by state and federal law.

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

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

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

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

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

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

4 (5)(a) If the department fails to comply with this section, an
5 individual who is the subject of a report may institute proceedings for
6 injunctive or other appropriate relief for enforcement of the
7 requirement to purge information. These proceedings may be instituted
8 in the superior court for the county in which the person resides or, if
9 the person is not then a resident of this state, in the superior court
10 for Thurston county.

11 (b) If the department fails to comply with subsection (4) of this
12 section and an individual who is the subject of the report is harmed by
13 the disclosure of information, in addition to the relief provided in
14 (a) of this subsection, the court may award a penalty of up to one
15 thousand dollars and reasonable attorneys' fees and court costs to the
16 petitioner.

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

19 (6) Nothing in this section shall prevent the department from
20 retaining general, nonidentifying information which is required for
21 state and federal reporting and management purposes.

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

24 (1) Except as provided in RCW 70.24.105, whenever a child is placed
25 in out-of-home care by the department or a child-placing agency, the
26 department or agency shall share information known to the department or
27 agency about the child and the child's family with the care provider
28 and shall consult with the care provider regarding the child's case
29 plan. If the child is dependent pursuant to a proceeding under chapter
30 13.34 RCW, the department or agency shall keep the care provider
31 informed regarding the dates and location of dependency review and
32 permanency planning hearings pertaining to the child.

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

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

3 (a) Has received a medical diagnosis of fetal alcohol syndrome or
4 fetal alcohol effect;

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

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

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

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

15 ~~((+3))~~ (5) Nothing in this section shall be construed to limit the
16 authority of the department or child-placing agencies to disclose
17 client information or to maintain client confidentiality as provided by
18 law.

19 (6) As used in this section:

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

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

26 (i) Suicide attempts or suicidal behavior or ideation;

27 (ii) Self-mutilation or similar self-destructive behavior;

28 (iii) Fire-setting or a developmentally inappropriate fascination
29 with fire;

30 (iv) Animal torture;

31 (v) Property destruction; or

32 (vi) Substance or alcohol abuse.

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

36 (i) Observed assaultive behavior;

37 (ii) Reported and documented history of the child willfully
38 assaulting or inflicting bodily harm; or

1 (iii) Attempting to assault or inflict bodily harm on other
2 children or adults under circumstances where the child has the apparent
3 ability or capability to carry out the attempted assaults including
4 threats to use a weapon.

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

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

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

13 (i) The child is a sexually reactive youth, exhibits high-risk
14 behaviors, or is physically assaultive or physically aggressive as
15 defined in RCW 74.13.280, and this information and the child's prior
16 behavior was not disclosed to the care provider as required by RCW
17 74.13.280; and

18 (ii) The care provider did not know or have reason to know that the
19 child needed supervision as a sexually reactive or physically
20 assaultive or physically aggressive youth, or because of a documented
21 history of high-risk behaviors, as a result of the care provider's
22 involvement with or independent knowledge of the child or training and
23 experience; or

24 (b) The child was not within the reasonable control of the care
25 provider at the time of the incident that is the subject of the
26 allegation, and the care provider was acting in good faith and did not
27 know or have reason to know that reasonable control or supervision of
28 the child was necessary to prevent harm or risk of harm to the child or
29 other persons.

30 (2) Allegations of child abuse or neglect that meet the provisions
31 of this section shall be designated as "unfounded" as defined in RCW
32 26.44.020.

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

35 (1) An agency may be denied a license, or any license issued
36 pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended,

1 revoked, modified, or not renewed by the secretary upon proof (a) that
2 the agency has failed or refused to comply with the provisions of
3 chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated
4 pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or
5 (b) that the conditions required for the issuance of a license under
6 chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect
7 to such licenses. RCW 43.20A.205 governs notice of a license denial,
8 revocation, suspension, or modification and provides the right to an
9 adjudicative proceeding.

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

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

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

21 (c) The conditions required for issuance of a license under chapter
22 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such
23 licenses.

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

29 (4) The department may assess civil monetary penalties upon proof
30 that an agency has failed or refused to comply with the rules adopted
31 under the provisions of this chapter and RCW 74.13.031 or that an
32 agency subject to licensing under this chapter and RCW 74.13.031 is
33 operating without a license except that civil monetary penalties shall
34 not be levied against a licensed foster home. Monetary penalties
35 levied against unlicensed agencies that submit an application for
36 licensure within thirty days of notification and subsequently become
37 licensed will be forgiven. These penalties may be assessed in addition
38 to or in lieu of other disciplinary actions. Civil monetary penalties,

1 if imposed, may be assessed and collected, with interest, for each day
2 an agency is or was out of compliance. Civil monetary penalties shall
3 not exceed two hundred fifty dollars per violation for group homes and
4 child-placing agencies. Each day upon which the same or substantially
5 similar action occurs is a separate violation subject to the assessment
6 of a separate penalty. The department shall provide a notification
7 period before a monetary penalty is effective and may forgive the
8 penalty levied if the agency comes into compliance during this period.
9 The department may suspend, revoke, or not renew a license for failure
10 to pay a civil monetary penalty it has assessed pursuant to this
11 chapter within ten days after such assessment becomes final. Chapter
12 43.20A RCW governs notice of a civil monetary penalty and provides the
13 right of an adjudicative proceeding. The preponderance of evidence
14 standard shall apply in adjudicative proceedings related to assessment
15 of civil monetary penalties.

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

18 A foster parent critical support and retention program is
19 established to retain foster parents who care for sexually reactive
20 children, physically assaultive children, or children with other high-
21 risk behaviors, as defined in RCW 74.13.280. Services shall consist of
22 short-term therapeutic and educational interventions to support the
23 stability of the placement. The foster parent critical support and
24 retention program is to be implemented under the division of children
25 and family services' contract and supervision. A contractor must
26 demonstrate experience providing in-home case management, as well as
27 experience working with caregivers of children with significant
28 behavioral issues that pose a threat to others or themselves or the
29 stability of the placement.

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

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

1 (1) Availability at any time of the day or night to address
2 specific concerns related to the identified child;

3 (2) Assessment of risk and development of a safety and supervision
4 plan;

5 (3) Home-based foster parent training utilizing evidence-based
6 models; and

7 (4) Referral to relevant community services and training provided
8 by the local children's administration office or community agencies.

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

11 (1) The court shall hold a fact-finding hearing on the petition
12 and, unless the court dismisses the petition, shall make written
13 findings of fact, stating the reasons therefor. The rules of evidence
14 shall apply at the fact-finding hearing and the parent, guardian, or
15 legal custodian of the child shall have all of the rights provided in
16 RCW 13.34.090(1). The petitioner shall have the burden of establishing
17 by a preponderance of the evidence that the child is dependent within
18 the meaning of RCW 13.34.030.

19 (2)((+a)) The court in a fact-finding hearing may consider the
20 history of past involvement of child protective services or law
21 enforcement agencies with the family for the purpose of establishing a
22 pattern of conduct, behavior, or inaction with regard to the health,
23 safety, or welfare of the child on the part of the child's parent,
24 guardian, or legal custodian, or for the purpose of establishing that
25 reasonable efforts have been made by the department to prevent or
26 eliminate the need for removal of the child from the child's home. No
27 report of child abuse or neglect that has been destroyed or expunged
28 under RCW 26.44.031 may be used for such purposes.

29 (3)(a) The parent, guardian, or legal custodian of the child may
30 waive his or her right to a fact-finding hearing by stipulating or
31 agreeing to the entry of an order of dependency establishing that the
32 child is dependent within the meaning of RCW 13.34.030. The parent,
33 guardian, or legal custodian may also stipulate or agree to an order of
34 disposition pursuant to RCW 13.34.130 at the same time. Any stipulated
35 or agreed order of dependency or disposition must be signed by the
36 parent, guardian, or legal custodian and his or her attorney, unless
37 the parent, guardian, or legal custodian has waived his or her right to

1 an attorney in open court, and by the petitioner and the attorney,
2 guardian ad litem, or court-appointed special advocate for the child,
3 if any. If the department of social and health services is not the
4 petitioner and is required by the order to supervise the placement of
5 the child or provide services to any party, the department must also
6 agree to and sign the order.

7 (b) Entry of any stipulated or agreed order of dependency or
8 disposition is subject to approval by the court. The court shall
9 receive and review a social study before entering a stipulated or
10 agreed order and shall consider whether the order is consistent with
11 the allegations of the dependency petition and the problems that
12 necessitated the child's placement in out-of-home care. No social file
13 or social study may be considered by the court in connection with the
14 fact-finding hearing or prior to factual determination, except as
15 otherwise admissible under the rules of evidence.

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

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

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

31 (iii) The parent, guardian, or legal custodian understands that the
32 entry of the stipulated or agreed order of dependency is an admission
33 that the child is dependent within the meaning of RCW 13.34.030 and
34 shall have the same legal effect as a finding by the court that the
35 child is dependent by at least a preponderance of the evidence, and
36 that the parent, guardian, or legal custodian shall not have the right
37 in any subsequent proceeding for termination of parental rights or

1 dependency guardianship pursuant to this chapter or nonparental custody
2 pursuant to chapter 26.10 RCW to challenge or dispute the fact that the
3 child was found to be dependent; and

4 (iv) The parent, guardian, or legal custodian knowingly and
5 willingly stipulated and agreed to and signed the order or orders,
6 without duress, and without misrepresentation or fraud by any other
7 party.

8 If a parent, guardian, or legal custodian fails to appear before
9 the court after stipulating or agreeing to entry of an order of
10 dependency, the court may enter the order upon a finding that the
11 parent, guardian, or legal custodian had actual notice of the right to
12 appear before the court and chose not to do so. The court may require
13 other parties to the order, including the attorney for the parent,
14 guardian, or legal custodian, to appear and advise the court of the
15 parent's, guardian's, or legal custodian's notice of the right to
16 appear and understanding of the factors specified in this subsection.
17 A parent, guardian, or legal custodian may choose to waive his or her
18 presence at the in-court hearing for entry of the stipulated or agreed
19 order of dependency by submitting to the court through counsel a
20 completed stipulated or agreed dependency fact-finding/disposition
21 statement in a form determined by the Washington state supreme court
22 pursuant to General Rule GR 9.

23 ~~((3))~~ (4) Immediately after the entry of the findings of fact,
24 the court shall hold a disposition hearing, unless there is good cause
25 for continuing the matter for up to fourteen days. If good cause is
26 shown, the case may be continued for longer than fourteen days. Notice
27 of the time and place of the continued hearing may be given in open
28 court. If notice in open court is not given to a party, that party
29 shall be notified by certified mail of the time and place of any
30 continued hearing. Unless there is reasonable cause to believe the
31 health, safety, or welfare of the child would be jeopardized or efforts
32 to reunite the parent and child would be hindered, the court shall
33 direct the department to notify those adult persons who: (a) Are
34 related by blood or marriage to the child in the following degrees:
35 Parent, grandparent, brother, sister, stepparent, stepbrother,
36 stepsister, uncle, or aunt; (b) are known to the department as having
37 been in contact with the family or child within the past twelve months;

1 and (c) would be an appropriate placement for the child. Reasonable
2 cause to dispense with notification to a parent under this section must
3 be proved by clear, cogent, and convincing evidence.

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

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

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

SSB 5321 - H COMM AMD

By Committee on Early Learning & Children's Services

ADOPTED 04/05/2007

13 On page 1, line 1 of the title, after "information;" strike the
14 remainder of the title and insert "amending RCW 26.44.020, 26.44.030,
15 26.44.031, 74.13.280, 74.15.130, 74.13.650, 74.13.660, and 13.34.110;
16 adding a new section to chapter 74.13 RCW; creating a new section; and
17 providing an effective date."

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