

SENATE BILL 5361

State of Washington 52nd Legislature 1991 Regular Session

By Senators Talmadge, L. Smith and Stratton.

Read first time January 29, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to child protection; amending RCW 13.34.020 and
2 43.43.760; reenacting and amending RCW 43.43.735; adding new sections
3 to chapter 36.27 RCW; adding a new section to chapter 26.44 RCW; adding
4 a new section to chapter 43.43 RCW; adding a new section to chapter
5 9.94A RCW; creating new sections; and making appropriations.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
8 safeguard children in situations where there is a reasonable basis for
9 believing the potential for physical or sexual abuse exists. In an
10 effort to prevent the possibility of abuse, a person who has been
11 accused of physically or sexually abusing a child should be restrained
12 from exercising visitation rights with a minor child if a law
13 enforcement officer who is conducting an investigation of the alleged
14 abuse requests a temporary restraining order from the court. The
15 safety of all children is enhanced when sexual assault cases are

1 properly investigated and prosecuted. Specialized training in the
2 investigation and prosecution of sexual assault cases, with an emphasis
3 on child victims, is needed as well as the creation of a sexual assault
4 prosecution assistance program.

5 Due to a lack of rehabilitative knowledge and services, there is a
6 significant likelihood that a person who has been convicted of physical
7 or sexual abuse of a child will reoffend. Monitoring of the offender's
8 contacts with children could prevent the occurrence of future offenses.
9 In employment positions where services are provided to children,
10 developmentally disabled persons, and vulnerable adults, a background
11 check, including a check of military records, is necessary to determine
12 the person's suitability for employment. In order to deter prospective
13 abuse, a child should be removed immediately from the care of a parent
14 or guardian who has been convicted of crimes against children or other
15 persons as defined in the law and a dependency proceeding should be
16 commenced. When a dependency proceeding is in progress and a child has
17 been in a foster home for a period of six months or more, that foster
18 parent acquires the right to be a party to the dependency proceeding so
19 that the court may have comprehensive information about the foster
20 child.

21 PART I

22 NEW SECTION. **Sec. 101.** FINDINGS. The legislature finds that
23 sexual assault cases, particularly those in which children are
24 victimized, are difficult to prosecute successfully. To prosecute such
25 cases successfully requires that the prosecutors and investigators have
26 a high degree of training and skill in handling sexual assaults. The
27 legislature further finds that in the less populated areas of the
28 state, it is difficult for local prosecutors and law enforcement

1 agencies to obtain the needed specialization to handle these cases.
2 Therefore, the legislature intends to establish a mechanism to provide
3 the training and special investigators to more effectively prosecute
4 these cases.

5 NEW SECTION. **Sec. 102.** TRAINING FOR INVESTIGATING AND
6 PROSECUTING. (1) Each year the criminal justice training commission
7 shall offer an intensive, week-long training session on investigating
8 and prosecuting sexual assault cases for up to twenty prosecuting
9 attorneys and deputy prosecuting attorneys. The training shall place
10 particular emphasis on the investigation and prosecution of sexual
11 assault cases involving child victims.

12 (2) The commission shall seek advice from the Washington
13 association of prosecuting attorneys and the Washington coalition of
14 sexual assault programs in planning the curriculum and recruiting
15 faculty for this program.

16 NEW SECTION. **Sec. 103.** SEXUAL ASSAULT PROSECUTION ASSISTANCE
17 PROGRAM. (1) There is created in the department of community
18 development the sexual assault prosecution assistance program to assist
19 county prosecuting attorneys in the investigation and prosecution of
20 sexual assault and child abuse cases, primarily for those cases
21 involving child victims. The department of community development shall
22 contract with the Washington state association of prosecuting attorneys
23 to employ a project coordinator who shall be responsible for the
24 training, assignment, and overall supervision of investigators trained
25 and employed by the sexual assault programs.

26 (2) The department of community development shall employ ten
27 investigators who shall be assigned to the program and shall be under
28 the supervision of the project coordinator. The investigators shall be

1 specially trained in investigating sexual assault cases, with primary
2 focus on those cases involving child victims. The project coordinator
3 shall assign each investigator to a prosecuting attorney in areas of
4 the state where law enforcement officers who specialize in
5 investigating child sexual assault or abuse are not available. The
6 prosecuting attorney shall be responsible for the daily supervision of
7 the investigators and may agree to make the investigator available for
8 investigations on a regional basis and may be made available to child
9 protective services, if requested.

10 NEW SECTION. **Sec. 104.** SEXUAL ASSAULT COMMITTEE. A state-wide
11 committee on sexual assault is established. The committee shall be
12 comprised of five prosecuting attorneys, one representative of the
13 department of social and health services, a representative of the
14 Washington association of sheriffs and police chiefs, two
15 representatives from the Washington coalition of sexual assault
16 programs, and four legislators, two from each house, one from each
17 caucus. The committee shall oversee the project and provide advice to
18 the project coordinator.

19 NEW SECTION. **Sec. 105.** LEGAL ADVOCATES. The department of social
20 and health services shall provide up to one legal advocate per sexual
21 assault program that qualifies for funding under the victims of sexual
22 assault fund. The legal advocates shall have completed a training
23 program to be designed and administered by the Washington association
24 of prosecuting attorneys and the Washington coalition of sexual assault
25 programs.

26 NEW SECTION. **Sec. 106.** Sections 102 through 105 of this act
27 are each added to chapter 36.27 RCW.

PART II

1

2 NEW SECTION. **Sec. 201.** A new section is added to chapter 26.44
3 RCW to read as follows:

4 RESTRAINED VISITATION RIGHTS. (1) If a person who has unsupervised
5 visitation rights with a minor child pursuant to a court order is
6 accused of sexually or physically abusing a child and the alleged abuse
7 has been reported to the proper authorities for investigation, the law
8 enforcement officer conducting the investigation may file a motion with
9 the court for a temporary restraining order to restrain the alleged
10 abuser's visitation rights during the investigation. The investigating
11 law enforcement officer shall submit an affidavit stating that the
12 person is currently under investigation for sexual or physical abuse of
13 a child and that the prosecuting attorney does not have enough
14 information at the time to determine whether prosecution is warranted.
15 The restraining order shall be issued for up to ninety days or until
16 the investigation has been concluded in favor of the alleged abuser,
17 whichever is shorter.

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

22 PART III

23 **Sec. 301.** RCW 13.34.020 and 1990 c 284 s 31 are each amended to
24 read as follows:

25 The legislature declares that the family unit is a fundamental
26 resource of American life which should be nurtured. Toward the
27 continuance of this principle, the legislature declares that the family

1 unit should remain intact unless a child's right to conditions of basic
2 nurture, health, or safety is jeopardized. When the rights of basic
3 nurture, physical and mental health, and safety of the child and the
4 legal rights of the parents are in conflict, the rights and safety of
5 the child should prevail. If a parent or guardian has been convicted
6 of any of the crimes enumerated in RCW 43.43.830, the child shall be
7 removed from the care of the parent and a dependency proceeding
8 instituted immediately. The right of a child to basic nurturing
9 includes the right to a safe, stable, and permanent home and a speedy
10 resolution of any proceeding under this chapter.

11 PART IV

12 NEW SECTION. **Sec. 401.** A new section is added to chapter 43.43
13 RCW to read as follows:

14 (1) All applicants as defined in RCW 43.43.830(1)(a) and (b) shall
15 be fingerprinted at a local law enforcement agency and pay the cost for
16 such fingerprinting. The fingerprints shall be stored by the
17 Washington state patrol criminal identification system for the purpose
18 of transmittal to the federal bureau of investigation identification
19 division when a written request for a federal background check of an
20 applicant is received. The state patrol may waive the requirement for
21 fingerprints if a federal waiver is obtained.

22 (2) Federal bureau of investigation criminal history record
23 information may be received only by a state or local governmental
24 agency and shall not be provided to private entities. If a business or
25 organization made the request for a federal background check, the
26 governmental agency in receipt of the records shall, based upon the
27 criminal history record information, determine the applicant's

1 suitability for employment and inform the inquiring business or
2 organization.

3 **Sec. 402.** RCW 43.43.760 and 1985 c 201 s 15 are each amended to
4 read as follows:

5 (1) Whenever a resident of this state appears before any law
6 enforcement agency and requests an impression of his or her
7 fingerprints to be made, such agency may comply with his or her request
8 and make the required copies of the impressions on forms marked
9 "Personal Identification". The required copies shall be forwarded to
10 the section and marked "for personal identification only".

11 The section shall accept and file such fingerprints submitted
12 voluntarily by such resident, for the purpose of securing a more
13 certain and easy identification in case of death, injury, loss of
14 memory, or other similar circumstances. Upon the request of such
15 person, the section shall return his or her identification data.

16 (2) Whenever any person is an applicant for appointment to any
17 position or is an applicant for employment or is an applicant for a
18 license to be issued by any governmental agency, and the law or a
19 regulation of such governmental agency requires that the applicant be
20 of good moral character or not have been convicted of a crime, or is an
21 applicant for appointment to or employment with a criminal justice
22 agency, or the department, the applicant may request any law
23 enforcement agency to make an impression of his or her fingerprints to
24 be submitted to the section. The law enforcement agency may comply
25 with such request and make copies of the impressions on forms marked
26 "applicant", and submit such copies to the section.

27 The section shall accept such fingerprints and shall cause its
28 files to be examined and shall promptly send to the appointing
29 authority, employer, or licensing authority indicated on the form of

1 application, a transcript of the record of previous crimes committed by
2 the person described on the data submitted, or a transcript of the
3 dependency record information regarding the person described on the
4 data submitted, or if there is no record of his or her commission of
5 any crimes, or if there is no dependency record information, a
6 statement to that effect.

7 (3) The Washington state patrol shall charge fees for processing of
8 noncriminal justice system requests for criminal history record
9 information pursuant to this section which will cover, as nearly as
10 practicable, the direct and indirect costs to the patrol of processing
11 such requests.

12 Any law enforcement agency may charge a fee (~~(not to exceed five~~
13 ~~dollars)~~) that has been adopted by administrative rule for the purpose
14 of taking fingerprint impressions or searching its files of
15 identification for noncriminal purposes.

16 **Sec. 403.** RCW 43.43.735 and 1989 c 334 s 9 and 1989 c 6 s 2 are
17 each reenacted and amended to read as follows:

18 (1) It shall be the duty of the sheriff or director of public
19 safety of every county, and the chief of police of every city or town,
20 and of every chief officer of other law enforcement agencies duly
21 operating within this state, to cause the photographing and
22 fingerprinting of all adults and juveniles lawfully arrested for the
23 commission of any criminal offense constituting a felony or gross
24 misdemeanor. (a) When such juveniles are brought directly to a
25 juvenile detention facility, the juvenile court administrator is also
26 authorized, but not required, to cause the photographing,
27 fingerprinting, and record transmittal to the appropriate law
28 enforcement agency; and (b) a further exception may be made when the

1 arrest is for a violation punishable as a gross misdemeanor and the
2 arrested person is not taken into custody.

3 (2) It shall be the right, but not the duty, of the sheriff or
4 director of public safety of every county, and the chief of police of
5 every city or town, and every chief officer of other law enforcement
6 agencies operating within this state to photograph and record the
7 fingerprints of all adults lawfully arrested, all persons who are the
8 subject of dependency record information, or all persons who are the
9 subject of protection proceeding record information.

10 (3) For cases adjudicated under Title 26 RCW in which a finding of
11 sexual or physical abuse is entered, the court shall require the
12 offender to be photographed and fingerprinted by law enforcement. Law
13 enforcement shall transmit the photographs and fingerprints to the
14 Washington state patrol for retention in the event a background check
15 is requested.

16 (4) Such sheriffs, directors of public safety, chiefs of police,
17 and other chief law enforcement officers, may record, in addition to
18 photographs and fingerprints, the palmprints, soleprints, toeprints, or
19 any other identification data of all persons whose photograph and
20 fingerprints are required or allowed to be taken under this section,
21 all persons who are the subject of dependency record information, or
22 all persons who are the subject of protection proceeding record
23 information, when in the discretion of such law enforcement officers it
24 is necessary for proper identification of the arrested person or the
25 investigation of the crime with which he or she is charged.

26 ((+4)) (5) It shall be the duty of the department of licensing or
27 the court having jurisdiction over the dependency action and protection
28 proceedings under chapter 74.34 RCW to cause the fingerprinting of all
29 persons who are the subject of a disciplinary board final decision,
30 dependency record information, protection proceeding record

1 information, or to obtain other necessary identifying information, as
2 specified by the section in rules adopted under chapter 34.05 RCW to
3 carry out the provisions of this subsection.

4 ~~((5))~~ (6) The court having jurisdiction over the dependency or
5 protection proceeding action may obtain and record, in addition to
6 fingerprints, the photographs, palmprints, soleprints, toeprints, or
7 any other identification data of all persons who are the subject of
8 dependency record information or protection proceeding record
9 information, when in the discretion of the court it is necessary for
10 proper identification of the person.

11 PART V

12 NEW SECTION. **Sec. 501.** A new section is added to chapter 9.94A
13 RCW to read as follows:

14 MONITORING OFFENDERS. (1) When a person is found guilty of, or
15 pleads nolo contendere to, a violation of chapter 9.68A or 9A.44 RCW,
16 RCW 9A.32.030, 9A.32.040, 9A.32.050, 9A.32.055, 9A.32.060, 9A.32.070,
17 9A.36.011, 9A.36.021, 9A.36.031, 9A.36.041, 9A.40.020, 9A.40.030,
18 9A.40.040, 9A.42.020, 9A.42.030, or 9A.64.020, and in which the victim
19 was a child, the court shall make a special finding that the offender
20 is subject to the provisions of this section and shall order that upon
21 completion of the offender's sentence the person shall be monitored as
22 provided in subsection (2) of this section for a period of ten years.
23 If the court finds that extraordinary circumstances exist or that such
24 monitoring should not be imposed in a specific case, the court may
25 waive such monitoring.

26 (2) The secretary of social and health services shall monitor
27 persons found by the court to be subject to monitoring under subsection
28 (1) of this section. The monitoring services shall:

- 1 (a) Be performed by workers or volunteer workers who are trained
2 and qualified to work with child abuse offenders;
- 3 (b) Include at least two face-to-face contacts with the offender
4 each month;
- 5 (c) Include recommendations for services that the offender might
6 need at any time during the monitoring period; and
- 7 (d) Ascertain whether and under what conditions the offender is in
8 the presence of a child or children.

9 PART VI

10 NEW SECTION. **Sec. 601.** Section and part headings as used in
11 this act do not constitute any part of the law.

12 NEW SECTION. **Sec. 602.** The sum of eighty thousand dollars, or
13 as much thereof as may be necessary, is appropriated for the biennium
14 ending June 30, 1993, from the general fund to the criminal justice
15 training commission for the purposes of section 102 of this act.

16 NEW SECTION. **Sec. 603.** The sum of one million two hundred
17 eighty thousand dollars, or as much thereof as may be necessary, is
18 appropriated for the biennium ending June 30, 1993, from the general
19 fund to the department of community development for the purposes of
20 section 103 of this act.

21 NEW SECTION. **Sec. 604.** The sum of one million dollars, or as
22 much thereof as may be necessary, is appropriated for the biennium
23 ending June 30, 1993, from the general fund to the department of social
24 and health services for the purposes of section 105 of this act.