

1 **SB 6672 - H AMD 432 RULED BEYOND SCOPE AND OBJECT 3-1-96**

2 By Representative McMahan

3 On page 1, strike everything after the enacting clause and
4 insert the following:

5
6 "Sec. 1. RCW 26.44.030 and 1995 c 311 s 17 are each amended
7 to read as follows:

8 (1)(a) When any practitioner, county coroner or medical
9 examiner, law enforcement officer, department of corrections
10 personnel, professional school personnel, registered or licensed
11 nurse, social service counselor, psychologist, pharmacist, licensed
12 or certified child care providers or their employees, employee of
13 the department, or juvenile probation officer has reasonable cause
14 to believe that a child or adult dependent or developmentally
15 disabled person, has suffered abuse or neglect, he or she shall
16 report such incident, or cause a report to be made, to the proper
17 law enforcement agency or to the department as provided in RCW
18 26.44.040.

19 (b) The reporting requirement shall also apply to any adult
20 who has reasonable cause to believe that a child or adult dependent
21 or developmentally disabled person, who resides with them, has
22 suffered severe abuse, and is able or capable of making a report.
23 For the purposes of this subsection, "severe abuse" means any of
24 the following: Any single act of abuse that causes physical trauma
25 of sufficient severity that, if left untreated, could cause death;
26 any single act of sexual abuse that causes significant bleeding,
27 deep bruising, or significant external or internal swelling; or
28 more than one act of physical abuse, each of which causes bleeding,
29 deep bruising, significant external or internal swelling, bone
30 fracture, or unconsciousness.

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

6 (2) The reporting requirement of subsection (1) of this
7 section does not apply to the discovery of abuse or neglect that
8 occurred during childhood if it is discovered after the child has
9 become an adult. However, if there is reasonable cause to believe
10 other children, dependent adults, or developmentally disabled
11 persons are or may be at risk of abuse or neglect by the accused,
12 the reporting requirement of subsection (1) of this section shall
13 apply.

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

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

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

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

23 (7) The department may conduct ongoing case planning and
24 consultation with those persons or agencies required to report
25 under this section, with consultants designated by the department,
26 and with designated representatives of Washington Indian tribes if
27 the client information exchanged is pertinent to cases currently
28 receiving child protective services or department case services for
29 the developmentally disabled. Upon request, the department shall
30 conduct such planning and consultation with those persons required
31 to report under this section if the department determines it is in
32 the best interests of the child or developmentally disabled person.
33 Information considered privileged by statute and not directly

1 related to reports required by this section shall not be divulged
2 without a valid written waiver of the privilege.

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

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

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

1 to include a third party in any interview so long as the presence
2 of the third party will not jeopardize the course of the
3 investigation.

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

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

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

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

21 (14) The department or a law enforcement agency that receives
22 a report of suspected abuse or neglect must require the person
23 reporting the incident to provide their name, address, and
24 telephone number. Upon receipt of a report of abuse or neglect the
25 law enforcement agency may arrange to interview the person making
26 the report and any collateral sources to determine if any malice is
27 involved in the reporting.

28
29 **Sec. 2.** RCW 26.44.035 and 1985 c 259 s 3 are each amended to
30 read as follows:

31 (1) If the department or a law enforcement agency responds to
32 a complaint of child abuse or neglect and discovers that another
33 agency has also responded to the complaint, the agency shall notify

1 the other agency of their presence, and the agencies shall
2 coordinate the investigation and keep each other apprised of
3 progress.

4 (2) Except as provided in subsection (3) of this section,
5 ((The)) the department, each law enforcement agency, each county
6 prosecuting attorney, each city attorney, and each court shall make
7 as soon as practicable a written record and shall maintain records
8 of all incidents of suspected child abuse reported to that person
9 or agency. Records kept under this section shall be identifiable
10 by means of an agency code for child abuse.

11 (3) If the department, law enforcement agency, or prosecutor
12 determines that the allegations of abuse and neglect were the
13 result of a false report, all records of the allegation shall be
14 destroyed. The agency investigating the case must also direct any
15 criminal justice agency in possession of nonconviction data
16 concerning the false allegation to destroy the nonconviction data
17 pursuant to RCW 10.97.060.

18
19 **Sec. 3.** RCW 26.44.060 and 1988 c 142 s 3 are each amended to
20 read as follows:

21 (1)(a) Except as provided in (b) of this subsection, any
22 person participating in good faith in the making of a report
23 pursuant to this chapter or testifying as to alleged child abuse or
24 neglect in a judicial proceeding shall in so doing be immune from
25 any liability arising out of such reporting or testifying under any
26 law of this state or its political subdivisions.

27 (b) A person convicted of a violation of subsection (4) of
28 this section shall not be immune from liability under (a) of this
29 subsection.

30 (2) An administrator of a hospital or similar institution or
31 any physician licensed pursuant to chapters 18.71 or 18.57 RCW
32 taking a child into custody pursuant to RCW 26.44.056 shall not be

1 subject to criminal or civil liability for such taking into
2 custody.

3 (3) Conduct conforming with the reporting requirements of this
4 chapter shall not be deemed a violation of the confidential
5 communication privilege of RCW 5.60.060 (3) and (4), 18.53.200, and
6 18.83.110. Nothing in this chapter shall be construed as to
7 supersede or abridge remedies provided in chapter 4.92 RCW.

8 (4) A person who, intentionally and in bad faith or
9 maliciously, knowingly makes a false report of abuse or neglect
10 shall be guilty of a misdemeanor punishable in accordance with RCW
11 9A.20.021. A person who is convicted of making a false report of
12 abuse or neglect is liable to the state for the state's costs of
13 investigating and prosecuting the case. The person is also liable
14 to the falsely accused person for costs incurred due to the
15 investigation or prosecution. This subsection does not limit civil
16 remedies available to a person who is falsely accused of abuse or
17 neglect.

18
19 **Sec. 4.** RCW 10.97.060 and 1977 ex.s. c 314 s 6 are each
20 amended to read as follows:

21 (1) Except as provided in subsection (2) of this section,
22 criminal history record information which consists of nonconviction
23 data only shall be subject to deletion from criminal justice agency
24 files which are available and generally searched for the purpose of
25 responding to inquiries concerning the criminal history of a named
26 or otherwise identified individual when two years or longer have
27 elapsed since the record became nonconviction data as a result of
28 the entry of a disposition favorable to the defendant, or upon the
29 passage of three years from the date of arrest or issuance of a
30 citation or warrant for an offense for which a conviction was not
31 obtained unless the defendant is a fugitive, or the case is under
32 active prosecution according to a current certification made by the
33 prosecuting attorney.

1 Such criminal history record information consisting of
2 nonconviction data shall be deleted upon the request of the person
3 who is the subject of the record(~~(:—PROVIDED, HOWEVER, That)~~).
4 The criminal justice agency maintaining the data may, at its
5 option, refuse to make the deletion if:

6 ~~((1))~~ (a) The disposition was a deferred prosecution or
7 similar diversion of the alleged offender;

8 ~~((2))~~ (b) The person who is the subject of the record has
9 had a prior conviction for a felony or gross misdemeanor;

10 ~~((3))~~ (c) The individual who is the subject of the record
11 has been arrested for or charged with another crime during the
12 intervening period.

13 (2) Criminal justice agencies must delete nonconviction data
14 concerning allegations of abuse or neglect made under chapter 26.44
15 RCW when notified, pursuant to RCW 26.44.035, that the data must be
16 deleted from the files. The person who is the subject of the
17 record is not required to request deletion of the nonconviction
18 data under this subsection.

19 (3) Nothing in this chapter is intended to restrict the
20 authority of any court, through appropriate judicial proceedings,
21 to order the modification or deletion of a record in a particular
22 cause or concerning a particular individual or event.

23
24 NEW SECTION. Sec. 5. If any part of this act is found to be
25 in conflict with federal requirements that are a prescribed
26 condition to the allocation of federal funds to the state, the
27 conflicting part of this act is inoperative solely to the extent of
28 the conflict and with respect to the agencies directly affected,
29 and this finding does not affect the operation of the remainder of
30 this act in its application to the agencies concerned."

31
32 Please correct the title accordingly

EFFECT: All Department of Corrections personnel are made mandatory reporters of child abuse and neglect. Reporters of suspected child abuse and neglect who contact a law enforcement agency must provide their name to the agency. If a law enforcement agency or the department determines that the report was false, all records in possession of the agency, and all nonconviction data in the possession of any other criminal justice agency must be destroyed. Reporters who maliciously make false reports are liable for the costs to the state for investigating and prosecuting the report, and for the costs incurred by the falsely accused person.