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HOUSE BILL 1895

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State of Washington

56th Legislature

1999 Regular Session

By Representative Boldt

Read first time 02/09/1999. Referred to Committee on Children & Family Services.

1 AN ACT Relating to mandatory recording of statements made by child  
2 witnesses to and victims of child abuse; amending RCW 26.44.030,  
3 26.44.035, and 26.44.080; reenacting and amending RCW 26.44.050; and  
4 prescribing penalties.

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

6 **Sec. 1.** RCW 26.44.030 and 1998 c 328 s 5 are each amended to read  
7 as follows:

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

1 (b) The reporting requirement shall also apply to department of  
2 corrections personnel who, in the course of their employment, observe  
3 offenders or the children with whom the offenders are in contact. If,  
4 as a result of observations or information received in the course of  
5 his or her employment, any department of corrections personnel has  
6 reasonable cause to believe that a child or adult dependent or  
7 developmentally disabled person has suffered abuse or neglect, he or  
8 she shall report the incident, or cause a report to be made, to the  
9 proper law enforcement agency or to the department as provided in RCW  
10 26.44.040.

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

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

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

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

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

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

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

36 (7) The department may conduct ongoing case planning and  
37 consultation with those persons or agencies required to report under  
38 this section, with consultants designated by the department, and with  
39 designated representatives of Washington Indian tribes if the client

1 information exchanged is pertinent to cases currently receiving child  
2 protective services or department case services for the developmentally  
3 disabled. Upon request, the department shall conduct such planning and  
4 consultation with those persons required to report under this section  
5 if the department determines it is in the best interests of the child  
6 or developmentally disabled person. Information considered privileged  
7 by statute and not directly related to reports required by this section  
8 shall not be divulged without a valid written waiver of the privilege.

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

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

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

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

3 (b) When interviewing the alleged child victim and child witness,  
4 the interviewer must record the interview by the use of videotape,  
5 audiotape, or certified court stenographer.

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

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

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

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

23 (14) Upon receipt of a report of alleged abuse or neglect the law  
24 enforcement agency may arrange to interview the person making the  
25 report and any collateral sources to determine if any malice is  
26 involved in the reporting.

27 (15) The department shall make reasonable efforts to learn the  
28 name, address, and telephone number of each person making a report of  
29 abuse or neglect under this section. The department shall provide  
30 assurances of appropriate confidentiality of the identification of  
31 persons reporting under this section. If the department is unable to  
32 learn the information required under this subsection, the department  
33 shall only investigate cases in which: (a) The department believes  
34 there is a serious threat of substantial harm to the child; (b) the  
35 report indicates conduct involving a criminal offense that has, or is  
36 about to occur, in which the child is the victim; or (c) the department  
37 has, after investigation, a report of abuse or neglect that has been  
38 founded with regard to a member of the household within three years of  
39 receipt of the referral.

1       **Sec. 2.** RCW 26.44.035 and 1997 c 386 s 26 are each amended to read  
2 as follows:

3       If the department or a law enforcement agency responds to a  
4 complaint of alleged child abuse or neglect and discovers that another  
5 agency has also responded to the complaint, the agency shall notify the  
6 other agency of their presence, and the agencies shall coordinate the  
7 investigation and keep each other apprised of progress.

8       The department, each law enforcement agency, each county  
9 prosecuting attorney, each city attorney, and each court shall make as  
10 soon as practicable a written record and shall maintain records of all  
11 incidents of suspected child abuse reported to that person or agency.  
12 Records kept under this section shall be identifiable by means of an  
13 agency code for child abuse. Any agency that conducts a child witness  
14 interview, including the department, a law enforcement agency, the  
15 county prosecutor's office, or the city attorney's office, shall make  
16 and maintain a verbatim record or near verbatim record of the interview  
17 as required by RCW 26.44.030(10).

18       **Sec. 3.** RCW 26.44.050 and 1987 c 450 s 7 and 1987 c 206 s 5 are  
19 each reenacted and amended to read as follows:

20       Upon the receipt of a report concerning the possible occurrence of  
21 abuse or neglect, it shall be the duty of the law enforcement agency or  
22 the department of social and health services to investigate and provide  
23 the protective services section with a report in accordance with the  
24 provision of chapter 74.13 RCW, and where necessary to refer such  
25 report to the court.

26       A law enforcement officer may take, or cause to be taken, a child  
27 into custody without a court order if there is probable cause to  
28 believe that the child is abused or neglected and that the child would  
29 be injured or could not be taken into custody if it were necessary to  
30 first obtain a court order pursuant to RCW 13.34.050. The law  
31 enforcement agency or the department of social and health services  
32 investigating such a report is hereby authorized to photograph,  
33 videotape, or audiotape such a child or adult dependent or  
34 developmentally disabled person for the purpose of providing  
35 documentary evidence of the physical condition of the child, adult  
36 dependent or developmentally disabled person.

1       **Sec. 4.** RCW 26.44.080 and 1982 c 129 s 10 are each amended to read  
2 as follows:

3       (1) Every person who is required to make, or to cause to be made,  
4 a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly  
5 fails to make, or fails to cause to be made, such report, shall be  
6 guilty of a gross misdemeanor.

7       (2) A person required to maintain investigation records that  
8 include verbatim or near verbatim records of child interviews under RCW  
9 26.44.030 and 26.44.035 who knowingly fails to maintain or knowingly  
10 destroys those records is guilty of a gross misdemeanor.

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