

HOUSE BILL REPORT

HB 1054

As Reported by House Committee On:
Children & Family Services

Title: An act relating to duty of clergy to report child abuse or neglect.

Brief Description: Specifying circumstances under which a clergy must report child abuse or neglect.

Sponsors: Representatives Dickerson, Skinner, Romero, Haigh, O'Brien, Kenney, Darneille, Kagi, Clements, Sommers, Chase, Miloscia, McDermott, Kirby, Schual-Berke, Lovick and Kessler.

Brief History:

Committee Activity:

Children & Family Services: 1/23/03, 2/10/03 [DPS].

Brief Summary of Substitute Bill

- Includes clergy in the list of mandatory reporters and clarifies when the clergy must report child abuse or neglect.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Darneille, Vice Chair; Dickerson, Miloscia and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Boldt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Bailey and Shabro.

Staff: Sonja Hallum (786-7092).

Background:

Washington has a law that requires various persons to report suspected child abuse to authorities. These persons are called mandatory reporters.— Under current law, it is mandatory that certain persons having reasonable cause to believe that a child has suffered abuse or neglect report the incident or cause the incident to be reported to the

appropriate law enforcement agency or the Department of Social and Health Services (DSHS). There are a number of mandatory reporters listed in the current law. A priest or other member of the clergy is not included in the list of mandatory reporters and is not required to make a report to law enforcement or the DSHS if he or she suspects or knows a child is abused or neglected.

The reporting requirement also extends to any adult who is able or capable of making a report and who has reasonable cause to believe that a child who resides with them has suffered severe abuse. An individual who is not a mandatory reporter is encouraged by statute to report suspected child abuse to the proper law enforcement agency or the DSHS.

There are certain relationships whose confidentiality the law protects by prohibiting the compelled disclosure of confidences. These relationships include marital, attorney-client, and the priest-penitent relationships. A priest or clergy member cannot, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs. Thus, the penitent holds the privilege and is the only person who can waive the privilege.

Current law allows the reporting of suspected child abuse or neglect under the mandatory reporter requirements without it being a violation of the confidential communications privilege. This law specifically references the privilege arising from the clergy/priest-penitent privilege.

Summary of Substitute Bill:

Members of the clergy are added to the list of persons who must report suspected child abuse or neglect to the DSHS. The definition of "member of the clergy" includes a broad range of religions.

The mandatory reporting requirement does not apply to any information a member of the clergy receives while acting in his or her professional character when the information is obtained as a result of a confession which is privileged under the priest-penitent privilege and the member of the clergy is authorized to hear the confession and required to keep it secret.

The statute of limitations for the prosecution of a violation of the reporting requirement by a member of the clergy is extended to up to 10 years following the date the duty to report arose.

Substitute Bill Compared to Original Bill:

The definition of clergy is broadened in the substitute to include more religions and persons within those religions.

The original bill contained an exception to the mandatory reporting requirement. The reporting requirement does not apply if the information is privileged under the priest-penitent privilege and the confession was made directly to the clergy by the perpetrator. However, the reporting requirement does apply if the member of the clergy receives information from a source other than the perpetrator even if the information is otherwise privileged and is the same information as the privileged information received from the perpetrator.

The substitute changes the exception to the reporting requirement in the original bill in that the reporting requirement does not apply to any information the clergy receives as a result of a confession which is privileged when the member of the clergy is authorized to hear the confession and is required by his or her religion to keep the confession secret. The exception applies if the requirements are met even if the member of the clergy receives the information from a person other than the perpetrator.

The substitute changes the statute of limitations for the prosecution of violation of the reporting requirement by the clergy to allow for prosecutions up to 10 years, rather than 15 years, following the date the duty to report arose.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) We must do all we can to protect the children of the state. Not including clergy in the list of mandatory reporters is a serious omission. Clergy were previously required to report as mandatory reporters in this state. This state is one of 20 states not requiring reporting. The Catholic church has been working to put a system in place. Confessional should be protected. The Archdiocese of Seattle has had a reporting policy in place since the 1980s and has been reporting abuse. The Legislature should be specific and this bill accomplishes this goal. The law should apply when providing spiritual support and counseling except in the confessional.

(Concerns, Original bill): It is more difficult to make clear distinctions in religions other than the Catholic religion. Concern was expressed about the extent of the privilege and that this is too broad an exemption. Time hurts the prosecution of these kinds of cases. There are enforcement issues because of the statutes of limitation in both criminal and

civil cases

Testimony Against: None.

Testified: (In support) Representative Dickerson, prime sponsor; Christine Gregoire, Attorney General; Gwen Caggiano, Survivors Network for Those Abused by Priests; Diane Osborne; Tom McBride, Washington Association of Prosecuting Attorneys; Cheryl Reed, Washington Council for Prevention of Child Abuse or Neglect; Suzanne Brown, Washington Coalition of Sexual Assault Project; Julie Watts, Washington Association of Churches; Scott Brady, Snap Seattle; Lisa Ann Oliver, Puget Sound Voice of the Faithful; and Mike Grady, parent and member of St. James.

(With concerns) Kevin Glackin-Coley and Sister Sharon Park, Washington State Catholic Conference; Timothy Kosnoff, Attorney for Child Sexual Abuse Survivors; and Laurie Lippold, Children's Home Society.