

HOUSE BILL REPORT

HB 2597

As Reported by House Committee On:
Children & Family Services

Title: An act relating to the duty of a member of the clergy to report sexual abuse of a child.

Brief Description: Requiring clergy to report sexual abuse of a child.

Sponsors: Representatives Dickerson, Kagi, Darneille, Pettigrew, Kenney, Ruderman, Kirby and Chase.

Brief History:

Committee Activity:

Children & Family Services: 2/5/04 [DPS].

Brief Summary of Substitute Bill

- Requires a member of the clergy to report to law enforcement or the Department of Social and Health Services when he or she has reasonable cause to believe that a child has suffered sexual abuse and the alleged perpetrator is a member of the same church or an employee of the church or religious organization.
- Creates an exception to the reporting requirement for information the member of the clergy obtains as a result of a confession which is privileged under the clergy/priest-penitent privilege.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Darneille, Vice Chair; Boldt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Bailey, Dickerson, Miloscia, Pettigrew and Shabro.

Staff: Sonja Hallum (786-7092).

Background:

Washington law requires certain persons to report suspected child abuse or neglect 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 mandated reporters listed in the current law. A priest or other clergyperson 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 mandated 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 clergy/priest-penitent relationships.

A clergyperson or priest is not required to disclose any confessions 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. However, voluntarily reporting abuse or neglect of a child is not a violation of this confidence. 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:

The definition of "clergy" is changed to reference a "member of the clergy" which includes a broad range of positions within numerous religions. The term "sex offense" is defined for the purposes of the reporting statute to include all offenses defined as "sex offenses" under the statute requiring the registration of sex offenders in the Washington Criminal Code.

A member of the clergy is required to report to law enforcement or the DSHS when he or she has reasonable cause to believe that a child has suffered sexual abuse and the alleged perpetrator is a member of the clergy or an employee of the same church or religious organization.

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 clergy/priest-penitent

privilege and the member of the clergy is authorized to hear the confession and has a duty to keep it secret. However, the member of the clergy must report if the member of the clergy receives the information from any source other than a confession, or while he or she is acting in some other capacity which would otherwise require him or her to make the report.

The substitute bill states that there is nothing in the chapter which may be construed to create civil liability of any kind or to add to the reporting obligations of any other member of the clergy beyond the requirements stated in the section.

Substitute Bill Compared to Original Bill:

The substitute bill changes the definition of "member of the clergy" to specify additional types of persons and organizations covered under the definition. A definition of "sexual abuse" is added to include any offense defined as a sex offense under the statute requiring registration of sex offenders in the Washington Criminal Code.

The substitute bill creates an exception to the reporting requirement in the original bill. The substitute bill states that the reporting requirement does not apply to any information the member of the clergy receives as a result of a confession that is privileged under the clergy/priest-penitent privilege. Therefore, all information received in confession is privileged and is protected from disclosure. However, a member of the clergy is required to report information he or she receives while acting in another capacity in which he or she would otherwise be required to report.

The substitute bill expressly states that there is nothing in the chapter that may be construed as creating civil liability or adding to the reporting obligations of any other member of the clergy beyond the requirements stated in that section.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support on proposed substitute bill) This legislation is meant to deal with a very serious problem. This is a narrower form of the version from last year. It is a compromise that continues to protect the institution of the confession. This is not just a Catholic problem. It is a problem for all religious institutions. This is an excellent start requiring people in institutions to take steps. We would like to see it broader to protect different kinds of abuse. The sooner a report is made the sooner we can protect the children.

(With concerns on proposed substitute bill) We had a problem with the original bill and the lack of protection for the clergy-penitent privilege, but this is mitigated by the proposed substitute. The definition of clergy is overly broad.

Testimony Against: (Opposed on proposed substitute bill) We should not add clergy to the list of mandatory reporters. When the State begins to tell the church what it should do, this is dangerous. All other mandatory reporters have some relation to the State, but churches don't have any relation to the State. There are sufficient civil and legal penalties already so this isn't necessary. What evidence is there that the state will do a better job of responding to the needs of children than the church?

Persons Testifying: (In support on proposed substitute bill) Representative Dickerson, prime sponsor; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Seth Dawson, Washington State Association of Child Advocacy Centers; Kevin Glackin-Coley, Children's Alliance; Kristen Rogers, Washington Association of Churches; and Joan Sharp, Washington Council for Prevention of Child Abuse and Neglect.

(With concerns on proposed substitute bill) Donna Christensen, Washington State Catholic Conference.

(Neutral on proposed substitute bill) Jerry Sheehan, American Civil Liberties Union of Washington.

(Opposed on proposed substitute bill) Bob Higley, Washington Evangelicals for Responsible Government.

Persons Signed In To Testify But Not Testifying: None.