
SUBSTITUTE HOUSE BILL 2597

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Dickerson, Kagi, Darneille, Pettigrew, Kenney, Ruderman, Kirby and Chase)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to the duty of a member of the clergy to report
2 sexual abuse of a child; and amending RCW 26.44.020 and 26.44.030.

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

4 **Sec. 1.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Court" means the superior court of the state of Washington,
9 juvenile department.

10 (2) "Law enforcement agency" means the police department, the
11 prosecuting attorney, the state patrol, the director of public safety,
12 or the office of the sheriff.

13 (3) "Practitioner of the healing arts" or "practitioner" means a
14 person licensed by this state to practice podiatric medicine and
15 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
16 medicine and surgery, or medicine and surgery or to provide other
17 health services. The term "practitioner" includes a duly accredited
18 Christian Science practitioner: PROVIDED, HOWEVER, That a person who

1 is being furnished Christian Science treatment by a duly accredited
2 Christian Science practitioner will not be considered, for that reason
3 alone, a neglected person for the purposes of this chapter.

4 (4) "Institution" means a private or public hospital or any other
5 facility providing medical diagnosis, treatment or care.

6 (5) "Department" means the state department of social and health
7 services.

8 (6) "Child" or "children" means any person under the age of
9 eighteen years of age.

10 (7) "Professional school personnel" include, but are not limited
11 to, teachers, counselors, administrators, child care facility
12 personnel, and school nurses.

13 (8) "Social service counselor" means anyone engaged in a
14 professional capacity during the regular course of employment in
15 encouraging or promoting the health, welfare, support or education of
16 children, or providing social services to adults or families, including
17 mental health, drug and alcohol treatment, and domestic violence
18 programs, whether in an individual capacity, or as an employee or agent
19 of any public or private organization or institution.

20 (9) "Psychologist" means any person licensed to practice psychology
21 under chapter 18.83 RCW, whether acting in an individual capacity or as
22 an employee or agent of any public or private organization or
23 institution.

24 (10) "Pharmacist" means any registered pharmacist under chapter
25 18.64 RCW, whether acting in an individual capacity or as an employee
26 or agent of any public or private organization or institution.

27 (11) "Member of the clergy" means any regularly licensed,
28 accredited, certified, or ordained minister, priest, ((~~or~~)) rabbi,
29 imam, or similarly situated religious or spiritual leader of any church
30 ((~~or~~)), religious organization, religious denomination, religious body,
31 spiritual community, or sect, who performs official duties recognized
32 as the duties of a member of the clergy under the discipline, tenets,
33 doctrine, or custom of the member of the clergy's church, religious
34 organization, religious denomination, religious body, spiritual
35 community, or sect, whether acting in an individual capacity or as an
36 employee ((~~or~~)), agent, officer, or official of any public or private
37 organization or institution.

1 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
2 exploitation, negligent treatment, or maltreatment of a child by any
3 person under circumstances which indicate that the child's health,
4 welfare, and safety is harmed, excluding conduct permitted under RCW
5 9A.16.100. "Sexual abuse" includes any offense defined as a sex
6 offense in RCW 9A.44.130. An abused child is a child who has been
7 subjected to child abuse or neglect as defined in this section.

8 (13) "Child protective services section" means the child protective
9 services section of the department.

10 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
11 encouraging a child to engage in prostitution by any person; or (b)
12 allowing, permitting, encouraging, or engaging in the obscene or
13 pornographic photographing, filming, or depicting of a child by any
14 person.

15 (15) "Negligent treatment or maltreatment" means an act or omission
16 that evidences a serious disregard of consequences of such magnitude as
17 to constitute a clear and present danger to the child's health,
18 welfare, and safety. The fact that siblings share a bedroom is not, in
19 and of itself, negligent treatment or maltreatment.

20 (16) "Child protective services" means those services provided by
21 the department designed to protect children from child abuse and
22 neglect and safeguard such children from future abuse and neglect, and
23 conduct investigations of child abuse and neglect reports.
24 Investigations may be conducted regardless of the location of the
25 alleged abuse or neglect. Child protective services includes referral
26 to services to ameliorate conditions that endanger the welfare of
27 children, the coordination of necessary programs and services relevant
28 to the prevention, intervention, and treatment of child abuse and
29 neglect, and services to children to ensure that each child has a
30 permanent home. In determining whether protective services should be
31 provided, the department shall not decline to provide such services
32 solely because of the child's unwillingness or developmental inability
33 to describe the nature and severity of the abuse or neglect.

34 (17) "Malice" or "maliciously" means an evil intent, wish, or
35 design to vex, annoy, or injure another person. Such malice may be
36 inferred from an act done in willful disregard of the rights of
37 another, or an act wrongfully done without just cause or excuse, or an
38 act or omission of duty betraying a willful disregard of social duty.

1 (18) "Sexually aggressive youth" means a child who is defined in
2 RCW 74.13.075(1)(b) as being a sexually aggressive youth.

3 (19) "Unfounded" means available information indicates that, more
4 likely than not, child abuse or neglect did not occur. No unfounded
5 allegation of child abuse or neglect may be disclosed to a child-
6 placing agency, private adoption agency, or any other provider licensed
7 under chapter 74.15 RCW.

8 **Sec. 2.** RCW 26.44.030 and 2003 c 207 s 4 are each amended to read
9 as follows:

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

21 (b) The reporting requirement also applies to department of
22 corrections personnel who, in the course of their employment, observe
23 offenders or the children with whom the offenders are in contact. If,
24 as a result of observations or information received in the course of
25 his or her employment, any department of corrections personnel has
26 reasonable cause to believe that a child has suffered abuse or neglect,
27 he or she shall report the incident, or cause a report to be made, to
28 the proper law enforcement agency or to the department as provided in
29 RCW 26.44.040.

30 (c) The reporting requirement shall also apply to any adult who has
31 reasonable cause to believe that a child who resides with them, has
32 suffered severe abuse, and is able or capable of making a report. For
33 the purposes of this subsection, "severe abuse" means any of the
34 following: Any single act of abuse that causes physical trauma of
35 sufficient severity that, if left untreated, could cause death; any
36 single act of sexual abuse that causes significant bleeding, deep
37 bruising, or significant external or internal swelling; or more than

1 one act of physical abuse, each of which causes bleeding, deep
2 bruising, significant external or internal swelling, bone fracture, or
3 unconsciousness.

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

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

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

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

31 (5) Any law enforcement agency receiving a report of an incident of
32 alleged abuse or neglect pursuant to this chapter, involving a child
33 who has died or has had physical injury or injuries inflicted upon him
34 or her other than by accidental means, or who has been subjected to
35 alleged sexual abuse, shall report such incident in writing as provided
36 in RCW 26.44.040 to the proper county prosecutor or city attorney for
37 appropriate action whenever the law enforcement agency's investigation
38 reveals that a crime may have been committed. The law enforcement

1 agency shall also notify the department of all reports received and the
2 law enforcement agency's disposition of them. In emergency cases,
3 where the child's welfare is endangered, the law enforcement agency
4 shall notify the department within twenty-four hours. In all other
5 cases, the law enforcement agency shall notify the department within
6 seventy-two hours after a report is received by the law enforcement
7 agency.

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

13 (7) The department may conduct ongoing case planning and
14 consultation with those persons or agencies required to report under
15 this section, with consultants designated by the department, and with
16 designated representatives of Washington Indian tribes if the client
17 information exchanged is pertinent to cases currently receiving child
18 protective services. Upon request, the department shall conduct such
19 planning and consultation with those persons required to report under
20 this section if the department determines it is in the best interests
21 of the child. Information considered privileged by statute and not
22 directly related to reports required by this section must not be
23 divulged without a valid written waiver of the privilege.

24 (8) Any case referred to the department by a physician licensed
25 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
26 opinion that child abuse, neglect, or sexual assault has occurred and
27 that the child's safety will be seriously endangered if returned home,
28 the department shall file a dependency petition unless a second
29 licensed physician of the parents' choice believes that such expert
30 medical opinion is incorrect. If the parents fail to designate a
31 second physician, the department may make the selection. If a
32 physician finds that a child has suffered abuse or neglect but that
33 such abuse or neglect does not constitute imminent danger to the
34 child's health or safety, and the department agrees with the
35 physician's assessment, the child may be left in the parents' home
36 while the department proceeds with reasonable efforts to remedy
37 parenting deficiencies.

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

5 (10) Upon receiving reports of alleged abuse or neglect, the
6 department or law enforcement agency may interview children. The
7 interviews may be conducted on school premises, at day-care facilities,
8 at the child's home, or at other suitable locations outside of the
9 presence of parents. Parental notification of the interview must occur
10 at the earliest possible point in the investigation that will not
11 jeopardize the safety or protection of the child or the course of the
12 investigation. Prior to commencing the interview the department or law
13 enforcement agency shall determine whether the child wishes a third
14 party to be present for the interview and, if so, shall make reasonable
15 efforts to accommodate the child's wishes. Unless the child objects,
16 the department or law enforcement agency shall make reasonable efforts
17 to include a third party in any interview so long as the presence of
18 the third party will not jeopardize the course of the investigation.

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

23 (12) The department shall maintain investigation records and
24 conduct timely and periodic reviews of all cases constituting abuse and
25 neglect. The department shall maintain a log of screened-out
26 nonabusive cases.

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

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

1 (15) The department shall make reasonable efforts to learn the
2 name, address, and telephone number of each person making a report of
3 abuse or neglect under this section. The department shall provide
4 assurances of appropriate confidentiality of the identification of
5 persons reporting under this section. If the department is unable to
6 learn the information required under this subsection, the department
7 shall only investigate cases in which: (a) The department believes
8 there is a serious threat of substantial harm to the child; (b) the
9 report indicates conduct involving a criminal offense that has, or is
10 about to occur, in which the child is the victim; or (c) the department
11 has, after investigation, a report of abuse or neglect that has been
12 founded with regard to a member of the household within three years of
13 receipt of the referral.

14 (16)(a) When any member of the clergy has reasonable cause to
15 believe that a child has suffered sexual abuse and the accused is
16 another member of the clergy, or an employee, of the same church,
17 religious organization, religious denomination, religious body,
18 spiritual community, or sect, he or she shall report such incident, or
19 cause a report to be made, to the proper law enforcement agency or to
20 the department as provided in RCW 26.44.040.

21 (b) The reporting requirement of (a) of this subsection does not
22 apply to a member of the clergy with regard to information obtained
23 solely as a result of a confession made under the clergy-penitent
24 privilege as provided in RCW 5.60.060(3).

25 (c) Nothing in this section exempts a member of the clergy from
26 making a report of child sexual abuse as required in subsection (1)(a)
27 of this section when the member of the clergy is acting in some other
28 capacity that would otherwise require him or her to make a report.

29 (d) Nothing in this chapter may be construed to create civil
30 liability of any kind or to add reporting obligations of members of the
31 clergy beyond those specifically stated in this section.

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