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**SUBSTITUTE HOUSE BILL 3148**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Judiciary (originally sponsored by  
Representatives Kagi, Darneille and Roberts)

READ FIRST TIME 02/03/06.

1            AN ACT Relating to investigations of child abuse and neglect;  
2 amending RCW 26.44.010 and 26.44.125; adding a new section to chapter  
3 26.44 RCW; and adding a new section to chapter 4.24 RCW.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 26.44 RCW  
6 to read as follows:

7            The legislature finds that judicial interpretation of child abuse  
8 investigation statutes has imposed potentially irreconcilable duties on  
9 the department of social and health services and governmental entities  
10 that are obligated to investigate child abuse and neglect referrals.  
11 Courts have ruled that investigators of child abuse allegations have  
12 the obligation to protect children by removing them from unsafe homes  
13 but also have ruled that these same statutes establish an equal duty to  
14 protect the family unit, even where the parent is the alleged abuser.  
15 The legislature finds that concerns about tort liability arising from  
16 these conflicting duties impair investigators' ability to perform their  
17 statutory obligations. While recognizing the rights of parents and the  
18 importance of the family unit, the legislature finds that the paramount  
19 purpose of this chapter is to benefit children.    When the child's

1 interests of basic nurture, physical and mental health, and safety  
2 conflict with the parents' interests, the interests of the child should  
3 prevail. In conducting investigations under this chapter, safety of  
4 the child during or immediately after the investigation shall be the  
5 department's paramount concern.

6 The legislature expressly intends to:

7 (1) Overrule *Tyner v. DSHS* and other cases in which the courts have  
8 held that this chapter creates an implied right of action for parents  
9 or other caretakers who are alleged abusers;

10 (2) Codify the portions of the holdings in *M.W. v. DSHS* and  
11 *Roberson v. Perez* that tort liability arising out of this chapter is  
12 confined to the initial placement decision and not the manner in which  
13 the investigation was conducted;

14 (3) Have the interests of the parents protected through the  
15 judicial review and other procedures established pursuant to RCW  
16 26.44.100 through 26.44.125 and chapter 13.34 RCW.

17 **Sec. 2.** RCW 26.44.010 and 1999 c 176 s 27 are each amended to read  
18 as follows:

19 The Washington state legislature finds and declares: The bond  
20 between a child and his or her parent, custodian, or guardian is of  
21 paramount importance, and any intervention into the life of a child is  
22 also an intervention into the life of the parent, custodian, or  
23 guardian; however, instances of nonaccidental injury, neglect, death,  
24 sexual abuse and cruelty to children by their parents, custodians or  
25 guardians have occurred, and in the instance where a child is deprived  
26 of his or her right to conditions of minimal nurture, health, and  
27 safety, the state is justified in emergency intervention based upon  
28 verified information; and therefore the Washington state legislature  
29 hereby provides for the reporting of such cases to the appropriate  
30 public authorities. It is the intent of the legislature that, as a  
31 result of such reports, protective services shall be made available in  
32 an effort to prevent further abuses, and to safeguard the general  
33 welfare of such children(~~(: PROVIDED, That such)~~). When the child's  
34 interests of basic nurture, physical and mental health, and safety  
35 conflict with the parents' interests, the interests of the child should  
36 prevail. When determining whether a child should be placed outside the  
37 parent's home during or immediately following an investigation of

1 alleged child abuse or neglect, the safety of the child shall be the  
2 department's paramount concern. Reports of child abuse and neglect  
3 shall be maintained and disseminated with strictest regard for the  
4 privacy of the subjects of such reports and so as to safeguard against  
5 arbitrary, malicious or erroneous information or actions(~~(:—PROVIDED~~  
6 ~~FURTHER, That))~~). This chapter shall not be construed to authorize  
7 interference with child-raising practices, including reasonable  
8 parental discipline, which are not proved to be injurious to the  
9 child's health, welfare and safety.

10 NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW  
11 to read as follows:

12 (1) Governmental entities, and their officers, agents, employees,  
13 and volunteers, are not liable in tort to alleged perpetrators of abuse  
14 or neglect for acts or omissions in investigation of reports of child  
15 abuse under chapter 26.44 RCW.

16 (2) The duty to conduct a reasonable investigation of child abuse  
17 or neglect upon a referral runs only to children who are the subject of  
18 a referral under chapter 26.44 RCW and is limited to the duty to act  
19 reasonably when making a placement decision during or immediately  
20 following the investigation.

21 **Sec. 4.** RCW 26.44.125 and 1998 c 314 s 9 are each amended to read  
22 as follows:

23 (1) A person who is named as an alleged perpetrator after October  
24 1, 1998, in a founded report of child abuse or neglect has the right to  
25 seek review and amendment of the finding as provided in this section.  
26 Nothing in this chapter creates any other cause of action or right of  
27 review for a person who is named as an alleged perpetrator of child  
28 abuse or neglect.

29 (2) Within twenty calendar days after receiving written notice from  
30 the department under RCW 26.44.100 that a person is named as an alleged  
31 perpetrator in a founded report of child abuse or neglect, he or she  
32 may request that the department review the finding. The request must  
33 be made in writing. If a request for review is not made as provided in  
34 this subsection, the alleged perpetrator may not further challenge the  
35 finding and shall have no right to agency review or to an adjudicative  
36 hearing or judicial review of the finding.

1 (3) Upon receipt of a written request for review, the department  
2 shall review and, if appropriate, may amend the finding. Management  
3 level staff within the children's administration designated by the  
4 secretary shall be responsible for the review. The review must be  
5 conducted in accordance with procedures the department establishes by  
6 rule. Upon completion of the review, the department shall notify the  
7 alleged perpetrator in writing of the agency's determination. The  
8 notification must be sent by certified mail, return receipt requested,  
9 to the person's last known address.

10 (4) If, following agency review, the report remains founded, the  
11 person named as the alleged perpetrator in the report may request an  
12 adjudicative hearing to contest the finding. The adjudicative  
13 proceeding is governed by chapter 34.05 RCW and this section. The  
14 request for an adjudicative proceeding must be filed within thirty  
15 calendar days after receiving notice of the agency review  
16 determination. If a request for an adjudicative proceeding is not made  
17 as provided in this subsection, the alleged perpetrator may not further  
18 challenge the finding and shall have no right to agency review or to an  
19 adjudicative hearing or judicial review of the finding.

20 (5) Reviews and hearings conducted under this section are  
21 confidential and shall not be open to the public. Information about  
22 reports, reviews, and hearings may be disclosed only in accordance with  
23 federal and state laws pertaining to child welfare records and child  
24 protective services reports.

25 (6) The department may adopt rules to implement this section.

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