
ENGROSSED SUBSTITUTE SENATE BILL 5922

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens, Hargrove, Roach, Schmidt, Zarelli, Carrell and Finkbeiner)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to investigations of child abuse or neglect;
2 amending RCW 26.44.030, 26.44.100, 26.44.110, 26.44.115, and 13.34.062;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 improve the quality and effectiveness of services to families and
7 children. It is also the intent of the legislature to require
8 departmental employees investigating child abuse and neglect to advise
9 individuals subject to child abuse and neglect investigations of the
10 complaint or allegation made against them.

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

13 (1)(a) When any practitioner, county coroner or medical examiner,
14 law enforcement officer, professional school personnel, registered or
15 licensed nurse, social service counselor, psychologist, pharmacist,
16 licensed or certified child care providers or their employees, employee
17 of the department, juvenile probation officer, placement and liaison
18 specialist, responsible living skills program staff, HOPE center staff,

1 or state family and children's ombudsman or any volunteer in the
2 ombudsman's office has reasonable cause to believe that a child has
3 suffered abuse or neglect, he or she shall report such incident, or
4 cause a report to be made, to the proper law enforcement agency or to
5 the department as provided in RCW 26.44.040.

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

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

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

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

36 (3) Any other person who has reasonable cause to believe that a
37 child has suffered abuse or neglect may report such incident to the

1 proper law enforcement agency or to the department of social and health
2 services as provided in RCW 26.44.040.

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

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

1 designated representatives of Washington Indian tribes if the client
2 information exchanged is pertinent to cases currently receiving child
3 protective services. Upon request, the department shall conduct such
4 planning and consultation with those persons required to report under
5 this section if the department determines it is in the best interests
6 of the child. Information considered privileged by statute and not
7 directly related to reports required by this section must not be
8 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) 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 must occur
32 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. The department or law enforcement agency must advise a
35 parent who is the subject of an abuse or neglect investigation of the
36 complaints and allegations against him or her at the initial contact
37 with that parent after he or she is identified as the subject,
38 consistent with the laws maintaining the confidentiality of persons

1 making complaints or allegations, unless such notice will jeopardize
2 the safety or protection of the child or the course of the
3 investigation. Prior to commencing the interview the department or law
4 enforcement agency shall determine whether the child wishes a third
5 party to be present for the interview and, if so, shall make reasonable
6 efforts to accommodate the child's wishes. Unless the child objects,
7 the department or law enforcement agency shall make reasonable efforts
8 to include a third party in any interview so long as the presence of
9 the third party will not jeopardize the course of the investigation.

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

14 (12) The department shall maintain investigation records and
15 conduct timely and periodic reviews of all cases constituting abuse and
16 neglect. The department shall maintain a log of screened-out
17 nonabusive cases.

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

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

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

1 has, after investigation, a report of abuse or neglect that has been
2 founded with regard to a member of the household within three years of
3 receipt of the referral.

4 **Sec. 3.** RCW 26.44.100 and 1998 c 314 s 8 are each amended to read
5 as follows:

6 (1) The legislature finds parents and children subject to a child
7 abuse and neglect investigation often are not aware of their due
8 process rights when agencies are investigating complaints and
9 allegations of child abuse and neglect. The legislature reaffirms that
10 all citizens, including parents, shall be afforded due process, that
11 protection of children remains the priority of the legislature, and
12 that this protection includes protecting the family unit from
13 unnecessary disruption. To facilitate this goal, the legislature
14 wishes to ensure that parents and children subject to child abuse and
15 neglect investigations be advised in writing and orally, if feasible,
16 of the name of the investigator, who the investigator represents, and
17 the specific complaints or allegations made against them, consistent
18 with the laws protecting the rights of the person making the report,
19 unless such notice will jeopardize the safety or protection of the
20 child or the course of the investigation. They must also be advised of
21 their basic rights and other specific information as set forth in this
22 chapter, provided that nothing contained in this chapter shall cause
23 any delay in protective custody action.

24 (2) The department shall notify the alleged perpetrator of the
25 allegations of child abuse and neglect at the earliest possible point
26 in the investigation that will not jeopardize the safety and protection
27 of the child or the investigation process.

28 Whenever the department completes an investigation of a child abuse
29 or neglect report under chapter 26.44 RCW, the department shall notify
30 the alleged perpetrator of the report and the department's
31 investigative findings. The notice shall also advise the alleged
32 perpetrator that:

33 (a) A written response to the report may be provided to the
34 department and that such response will be filed in the record following
35 receipt by the department;

36 (b) Information in the department's record may be considered in

1 subsequent investigations or proceedings related to child protection or
2 child custody;

3 (c) Founded reports of child abuse and neglect may be considered in
4 determining whether the person is disqualified from being licensed to
5 provide child care, employed by a licensed child care agency, or
6 authorized by the department to care for children; and

7 (d) An alleged perpetrator named in a founded report of child abuse
8 or neglect has the right to seek review of the finding as provided in
9 this chapter.

10 (3) The notification required by this section shall be made by
11 certified mail, return receipt requested, to the person's last known
12 address.

13 (4) The duty of notification created by this section is subject to
14 the ability of the department to ascertain the location of the person
15 to be notified. The department shall exercise reasonable, good-faith
16 efforts to ascertain the location of persons entitled to notification
17 under this section.

18 **Sec. 4.** RCW 26.44.110 and 1985 c 183 s 3 are each amended to read
19 as follows:

20 If a child has been taken into custody by law enforcement pursuant
21 to RCW 26.44.050, the law enforcement agency shall leave a written
22 statement with a parent or in the residence of the parent if no parent
23 is present. The statement shall advise the parent of the complaints or
24 allegations made against them consistent with the laws protecting the
25 rights of the child and the person making the report and give the
26 reasons for the removal of the child from the home, the name of the law
27 enforcement investigator, who the investigator represents, and the
28 telephone number of the child protective services office in the
29 parent's jurisdiction.

30 **Sec. 5.** RCW 26.44.115 and 2000 c 122 s 39 are each amended to read
31 as follows:

32 If a child is taken into custody by child protective services
33 pursuant to a court order issued under RCW 13.34.062, the child
34 protective services worker shall take reasonable steps to advise the
35 parents immediately, regardless of the time of day, of the complaints
36 or allegations made against them consistent with the laws protecting

1 the rights of the person making the report, that the child has been
2 taken into custody, the reasons why the child was taken into custody,
3 and general information about the child's placement. The department
4 shall comply with RCW 13.34.060 when providing notice under this
5 section, unless such notice will jeopardize the safety or protection of
6 the child or the course of the investigation.

7 **Sec. 6.** RCW 13.34.062 and 2004 c 147 s 2 are each amended to read
8 as follows:

9 (1) The written notice of custody and rights required by RCW
10 13.34.060 shall be in substantially the following form:

11 "NOTICE

12 Your child has been placed in temporary custody under the
13 supervision of Child Protective Services (or other person or agency).
14 You have important legal rights and you must take steps to protect your
15 interests.

16 1. A court hearing will be held before a judge within 72 hours of
17 the time your child is taken into custody excluding Saturdays, Sundays,
18 and holidays. You should call the court at ____(insert appropriate
19 phone number here)____ for specific information about the date, time,
20 and location of the court hearing.

21 2. You have the right to know of the complaints or allegations made
22 against you consistent with the laws protecting the rights of the
23 person making the report.

24 3. You have the right to have a lawyer represent you at the
25 hearing. Your right to representation continues after the shelter care
26 hearing. You have the right to records the department intends to rely
27 upon. A lawyer can look at the files in your case, talk to child
28 protective services and other agencies, tell you about the law, help
29 you understand your rights, and help you at hearings. If you cannot
30 afford a lawyer, the court will appoint one to represent you. To get
31 a court-appointed lawyer you must contact: ____(explain local
32 procedure)____.

33 ~~((3-))~~ 4. At the hearing, you have the right to speak on your own
34 behalf, to introduce evidence, to examine witnesses, and to receive a
35 decision based solely on the evidence presented to the judge.

36 ~~((4-))~~ 5. If your hearing occurs before a court commissioner, you
37 have the right to have the decision of the court commissioner reviewed

1 by a superior court judge. To obtain that review, you must, within ten
2 days after the entry of the decision of the court commissioner, file
3 with the court a motion for revision of the decision, as provided in
4 RCW 2.24.050.

5 You should be present at any shelter care hearing. If you do not
6 come, the judge will not hear what you have to say.

7 You may call the Child Protective Services' caseworker for more
8 information about your child. The caseworker's name and telephone
9 number are: (insert name and telephone number).

10 ((5-)) 6. You have a right to a case conference to develop a
11 written service agreement following the shelter care hearing. The
12 service agreement may not conflict with the court's order of shelter
13 care. You may request that a multidisciplinary team, family group
14 conference, or prognostic staffing be convened for your child's case.
15 You may participate in these processes with your counsel present."

16 Upon receipt of the written notice, the parent, guardian, or legal
17 custodian shall acknowledge such notice by signing a receipt prepared
18 by child protective services. If the parent, guardian, or legal
19 custodian does not sign the receipt, the reason for lack of a signature
20 shall be written on the receipt. The receipt shall be made a part of
21 the court's file in the dependency action.

22 If after making reasonable efforts to provide notification, child
23 protective services is unable to determine the whereabouts of the
24 parents, guardian, or legal custodian, the notice shall be delivered or
25 sent to the last known address of the parent, guardian, or legal
26 custodian.

27 (2) If child protective services is not required to give notice
28 under RCW 13.34.060(2) and subsection (1) of this section, the juvenile
29 court counselor assigned to the matter shall make all reasonable
30 efforts to advise the parents, guardian, or legal custodian of the time
31 and place of any shelter care hearing, request that they be present,
32 and inform them of their basic rights as provided in RCW 13.34.090.

33 (3) Reasonable efforts to advise and to give notice, as required in
34 RCW 13.34.060(2) and subsections (1) and (2) of this section, shall
35 include, at a minimum, investigation of the whereabouts of the parent,
36 guardian, or legal custodian. If such reasonable efforts are not
37 successful, or the parent, guardian, or legal custodian does not appear

1 at the shelter care hearing, the petitioner shall testify at the
2 hearing or state in a declaration:

3 (a) The efforts made to investigate the whereabouts of, and to
4 advise, the parent, guardian, or legal custodian; and

5 (b) Whether actual advice of rights was made, to whom it was made,
6 and how it was made, including the substance of any oral communication
7 or copies of written materials used.

8 (4) The court shall hear evidence regarding notice given to, and
9 efforts to notify, the parent, guardian, or legal custodian and shall
10 examine the need for shelter care. The court shall hear evidence
11 regarding the efforts made to place the child with a relative. The
12 court shall make an express finding as to whether the notice required
13 under RCW 13.34.060(2) and subsections (1) and (2) of this section was
14 given to the parent, guardian, or legal custodian. All parties have
15 the right to present testimony to the court regarding the need or lack
16 of need for shelter care. Hearsay evidence before the court regarding
17 the need or lack of need for shelter care must be supported by sworn
18 testimony, affidavit, or declaration of the person offering such
19 evidence.

20 (5)(a) A shelter care order issued pursuant to RCW 13.34.065 shall
21 include the requirement for a case conference as provided in RCW
22 13.34.067. However, if the parent is not present at the shelter care
23 hearing, or does not agree to the case conference, the court shall not
24 include the requirement for the case conference in the shelter care
25 order.

26 (b) If the court orders a case conference, the shelter care order
27 shall include notice to all parties and establish the date, time, and
28 location of the case conference which shall be no later than thirty
29 days prior to the fact-finding hearing.

30 (c) The court may order a conference or meeting as an alternative
31 to the case conference required under RCW 13.34.067 so long as the
32 conference or meeting ordered by the court meets all requirements under
33 RCW 13.34.067, including the requirement of a written agreement
34 specifying the services to be provided to the parent.

35 (6) A shelter care order issued pursuant to RCW 13.34.065 may be
36 amended at any time with notice and hearing thereon. The shelter care
37 decision of placement shall be modified only upon a showing of change

1 in circumstances. No child may be placed in shelter care for longer
2 than thirty days without an order, signed by the judge, authorizing
3 continued shelter care.

4 (7) Any parent, guardian, or legal custodian who for good cause is
5 unable to attend the initial shelter care hearing may request that a
6 subsequent shelter care hearing be scheduled. The request shall be
7 made to the clerk of the court where the petition is filed prior to the
8 initial shelter care hearing. Upon the request of the parent, the
9 court shall schedule the hearing within seventy-two hours of the
10 request, excluding Saturdays, Sundays, and holidays. The clerk shall
11 notify all other parties of the hearing by any reasonable means.

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