
SENATE BILL 6331

State of Washington

59th Legislature

2006 Regular Session

By Senators Carrell and Stevens

Read first time 01/11/2006. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to unfounded or meritless child abuse or neglect
2 referrals; amending RCW 26.44.020, 26.44.020, and 26.44.031; providing
3 an effective date; and providing an expiration date.

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

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

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

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

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

14 (3) "Practitioner of the healing arts" or "practitioner" means a
15 person licensed by this state to practice podiatric medicine and
16 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
17 medicine and surgery, or medicine and surgery or to provide other
18 health services. The term "practitioner" includes a duly accredited
19 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) "Clergy" means any regularly licensed or ordained minister,
28 priest, or rabbi of any church or religious denomination, whether
29 acting in an individual capacity or as an employee or agent of any
30 public or private organization or institution.

31 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
32 exploitation, negligent treatment, or maltreatment of a child by any
33 person under circumstances which indicate that the child's health,
34 welfare, and safety is harmed, excluding conduct permitted under RCW
35 9A.16.100. An abused child is a child who has been subjected to child
36 abuse or neglect as defined in this section.

37 (13) "Child protective services section" means the child protective
38 services section of the department.

1 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
2 encouraging a child to engage in prostitution by any person; or (b)
3 allowing, permitting, encouraging, or engaging in the obscene or
4 pornographic photographing, filming, or depicting of a child by any
5 person.

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

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

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

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

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

37 (20) "Meritless" means available information indicates that, more
38 likely than not, the child abuse or neglect allegation was based on

1 arbitrary, malicious, or erroneous information or actions. No
2 meritless allegation of child abuse or neglect may be disclosed to a
3 child-placing agency, private adoption agency, or any other provider
4 licensed under chapter 74.15 RCW.

5 **Sec. 2.** RCW 26.44.020 and 2005 c 512 s 5 are each amended to read
6 as follows:

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

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

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

14 (3) "Practitioner of the healing arts" or "practitioner" means a
15 person licensed by this state to practice podiatric medicine and
16 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
17 medicine and surgery, or medicine and surgery or to provide other
18 health services. The term "practitioner" includes a duly accredited
19 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
20 is being furnished Christian Science treatment by a duly accredited
21 Christian Science practitioner will not be considered, for that reason
22 alone, a neglected person for the purposes of this chapter.

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

25 (5) "Department" means the state department of social and health
26 services.

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

29 (7) "Professional school personnel" include, but are not limited
30 to, teachers, counselors, administrators, child care facility
31 personnel, and school nurses.

32 (8) "Social service counselor" means anyone engaged in a
33 professional capacity during the regular course of employment in
34 encouraging or promoting the health, welfare, support or education of
35 children, or providing social services to adults or families, including
36 mental health, drug and alcohol treatment, and domestic violence

1 programs, whether in an individual capacity, or as an employee or agent
2 of any public or private organization or institution.

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

7 (10) "Pharmacist" means any registered pharmacist under chapter
8 18.64 RCW, whether acting in an individual capacity or as an employee
9 or agent of any public or private organization or institution.

10 (11) "Clergy" means any regularly licensed or ordained minister,
11 priest, or rabbi of any church or religious denomination, whether
12 acting in an individual capacity or as an employee or agent of any
13 public or private organization or institution.

14 (12) "Abuse or neglect" means sexual abuse, sexual exploitation, or
15 injury of a child by any person under circumstances which cause harm to
16 the child's health, welfare, or safety, excluding conduct permitted
17 under RCW 9A.16.100; or the negligent treatment or maltreatment of a
18 child by a person responsible for or providing care to the child. An
19 abused child is a child who has been subjected to child abuse or
20 neglect as defined in this section.

21 (13) "Child protective services section" means the child protective
22 services section of the department.

23 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
24 encouraging a child to engage in prostitution by any person; or (b)
25 allowing, permitting, encouraging, or engaging in the obscene or
26 pornographic photographing, filming, or depicting of a child by any
27 person.

28 (15) "Negligent treatment or maltreatment" means an act or a
29 failure to act, or the cumulative effects of a pattern of conduct,
30 behavior, or inaction, that evidences a serious disregard of
31 consequences of such magnitude as to constitute a clear and present
32 danger to a child's health, welfare, or safety. When considering
33 whether a clear and present danger exists, evidence of a parent's
34 substance abuse as a contributing factor to negligent treatment or
35 maltreatment shall be given great weight. The fact that siblings share
36 a bedroom is not, in and of itself, negligent treatment or
37 maltreatment. Poverty, homelessness, or exposure to domestic violence

1 as defined in RCW 26.50.010 that is perpetrated against someone other
2 than the child do [does] not constitute negligent treatment or
3 maltreatment in and of themselves [itself].

4 (16) "Child protective services" means those services provided by
5 the department designed to protect children from child abuse and
6 neglect and safeguard such children from future abuse and neglect, and
7 conduct investigations of child abuse and neglect reports.
8 Investigations may be conducted regardless of the location of the
9 alleged abuse or neglect. Child protective services includes referral
10 to services to ameliorate conditions that endanger the welfare of
11 children, the coordination of necessary programs and services relevant
12 to the prevention, intervention, and treatment of child abuse and
13 neglect, and services to children to ensure that each child has a
14 permanent home. In determining whether protective services should be
15 provided, the department shall not decline to provide such services
16 solely because of the child's unwillingness or developmental inability
17 to describe the nature and severity of the abuse or neglect.

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

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

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

30 (20) "Meritless" means available information indicates that, more
31 likely than not, the child abuse or neglect allegation was based on
32 arbitrary, malicious, or erroneous information or actions. No
33 meritless allegation of child abuse or neglect may be disclosed to a
34 child-placing agency, private adoption agency, or any other provider
35 licensed under chapter 74.15 RCW.

36 **Sec. 3.** RCW 26.44.031 and 1997 c 282 s 1 are each amended to read
37 as follows:

1 (1) To protect the privacy in reporting and the maintenance of
2 reports of nonaccidental injury, neglect, death, sexual abuse, and
3 cruelty to children by their parents, and to safeguard against
4 arbitrary, malicious, or erroneous information or actions, the
5 department shall not maintain information in any form related to
6 unfounded or meritless referrals in files or reports of child abuse or
7 neglect for longer than (~~six years~~) one year except as provided in
8 this section.

9 At the end of (~~six years~~) one year from receipt of the unfounded
10 report, the information shall be purged unless an additional report has
11 been received in the intervening period. Meritless referrals shall be
12 purged at the end of one year from receipt of the report.

13 (2)(a) If the department fails to comply with subsection (1) of
14 this section, any aggrieved person may institute proceedings for
15 injunctive or other appropriate relief for enforcement of the
16 requirement to purge information. These proceedings may be instituted
17 in the superior court for the county in which the person resides or, if
18 the person is not then a resident of this state, in the superior court
19 for Thurston county.

20 (b) In a proceeding under this subsection, the court shall enforce
21 obedience to the requirement to purge information by enjoining
22 compliance upon the secretary of the department. The court may issue
23 such writs and processes as are necessary to carry out its orders and
24 may award a penalty of up to one thousand dollars and reasonable
25 attorneys' fees and court costs to the aggrieved person who instituted
26 the proceedings.

27 (c) A proceeding under this subsection does not preclude other
28 methods of enforcement provided for by law.

29 NEW SECTION. Sec. 4. Section 1 of this act expires January 1,
30 2007.

31 NEW SECTION. Sec. 5. Section 2 of this act takes effect January
32 1, 2007.

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