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HOUSE BILL 1419

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Kagi, Dickerson, Walsh, Roberts, Hunt, and Appleton

Read first time 01/21/09. Referred to Committee on Early Learning & Children's Services.

1            AN ACT Relating to sexually aggressive youth; amending RCW  
2 26.44.160 and 74.13.075; and creating a new section.

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

4            NEW SECTION.    **Sec. 1.**    The legislature finds that children who  
5 commit sexually aggressive acts are at risk of repeating such behavior  
6 if they and their families do not receive treatment and counseling.  
7 This is especially true of children under the age of twelve who are  
8 referred to the department of social and health services by a  
9 prosecuting attorney pursuant to RCW 26.44.160. To reduce the number  
10 of future victims of sexual abuse and to reduce recidivism of children  
11 who commit sexually aggressive acts the legislature finds that all such  
12 children and their families, including children who are referred by  
13 prosecutors pursuant to RCW 26.44.160, be eligible for treatment  
14 regardless of whether they are the subject of a proceeding under  
15 chapter 13.34 RCW.

16            **Sec. 2.**    RCW 26.44.160 and 1993 c 402 s 2 are each amended to read  
17 as follows:

18            (1) If a law enforcement agency receives a complaint that alleges

1 that a child under age twelve has committed a sex offense as defined in  
2 RCW 9.94A.030, the agency shall investigate the complaint. If the  
3 investigation reveals that probable cause exists to believe that the  
4 youth may have committed a sex offense and the child is at least eight  
5 years of age, the agency shall refer the case to the proper county  
6 prosecuting attorney for appropriate action to determine whether the  
7 child may be prosecuted or is a sexually aggressive youth. If the  
8 child is less than eight years old, the law enforcement agency shall  
9 refer the case to the department.

10 (2) If the prosecutor or a judge determines the child cannot be  
11 prosecuted for the alleged sex offense because the child is incapable  
12 of committing a crime as provided in RCW 9A.04.050 and the prosecutor  
13 believes that probable cause exists to believe that the child engaged  
14 in acts that would constitute a sex offense, the prosecutor shall refer  
15 the child as a sexually aggressive youth to the department. The  
16 prosecutor shall provide the department with an affidavit stating that  
17 the prosecutor has determined that probable cause exists to believe  
18 that the juvenile has committed acts that could be prosecuted as a sex  
19 offense but the case is not being prosecuted because the juvenile is  
20 incapable of committing a crime as provided in RCW 9A.04.050.

21 (3) The department shall investigate any referrals that allege that  
22 a child is a sexually aggressive youth. The purpose of the  
23 investigation shall be to determine whether the child is abused or  
24 neglected, as defined in this chapter, and whether the child or the  
25 child's parents are in need of services or treatment. The department  
26 may offer appropriate available services and treatment to a sexually  
27 aggressive youth and his or her parents or legal guardians as provided  
28 in RCW 74.13.075 and may refer the child and his or her parents to  
29 appropriate treatment and services available within the community. If  
30 the parents refuse to accept or fail to obtain appropriate treatment or  
31 services under circumstances that indicate that the refusal or failure  
32 is child abuse or neglect, as defined in this chapter, the department  
33 may pursue a dependency action as provided in chapter 13.34 RCW.

34 A child or the child's parents referred to the department under  
35 this section may be offered services by the department under RCW  
36 74.13.075 regardless of whether the child meets the definition of  
37 dependent child or is the subject of a proceeding under chapter 13.34  
38 RCW.

1 (4) Nothing in this section shall affect the responsibility of a  
2 law enforcement agency to report incidents of abuse or neglect as  
3 required in RCW 26.44.030(5).

4 **Sec. 3.** RCW 74.13.075 and 1994 c 169 s 1 are each amended to read  
5 as follows:

6 (1) For the purposes of funds appropriated for the treatment of  
7 sexually aggressive youth, the term "sexually aggressive youth" means  
8 those juveniles who:

9 (a) Have been abused and have committed a sexually aggressive act  
10 or other violent act that is sexual in nature; and

11 (i) Are in the care and custody of the state or a federally  
12 recognized Indian tribe located within the state; or

13 (ii) Are the subject of a proceeding under chapter 13.34 RCW or a  
14 child welfare proceeding held before a tribal court located within the  
15 state; or

16 (b) Cannot be detained under the juvenile justice system due to  
17 being under age twelve and incompetent to stand trial for acts that  
18 could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the  
19 juvenile was over twelve years of age, or competent to stand trial if  
20 under twelve years of age.

21 (2) A juvenile and/or his or her parents may receive treatment  
22 regardless of whether the child is the subject of a proceeding under  
23 chapter 13.34 RCW.

24 (3) In expending these funds, the department of social and health  
25 services shall establish in each region a case review committee to  
26 review all cases for which the funds are used. In determining whether  
27 to use these funds in a particular case, the committee shall consider:

28 (a) The age of the juvenile;

29 (b) The extent and type of abuse to which the juvenile has been  
30 subjected;

31 (c) The juvenile's past conduct;

32 (d) The benefits that can be expected from the treatment;

33 (e) The cost of the treatment; and

34 (f) The ability of the juvenile's parent or guardian to pay for the  
35 treatment.

36 ((+3+)) (4) The department may provide funds, under this section,  
37 for youth in the care and custody of a tribe or through a tribal court,

1 for the treatment of sexually aggressive youth only if: (a) The tribe  
2 uses the same or equivalent definitions and standards for determining  
3 which youth are sexually aggressive; and (b) the department seeks to  
4 recover any federal funds available for the treatment of youth.

5 (5) A juvenile's status as a sexually aggressive youth, and any  
6 protective plan, services, and treatment plans and progress reports  
7 provided with these funds are confidential and not subject to public  
8 disclosure by the department. This information shall be shared with  
9 relevant juvenile care agencies, law enforcement agencies, and schools,  
10 but remains confidential and not subject to public disclosure by those  
11 agencies.

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