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HOUSE BILL 1680

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State of Washington

62nd Legislature

2011 Regular Session

By Representatives Eddy, Anderson, Carlyle, Morris, Kagi, Takko, Maxwell, and Clibborn

Read first time 01/28/11. Referred to Committee on Judiciary.

1 AN ACT Relating to child abuse investigations and proceedings;  
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) Clarify that (a) child abuse investigators are entitled to the  
15 same witness immunity as other witnesses in court proceedings; and (b)  
16 liability shall not be imposed on the state in cases where the  
17 department or child abuse investigators are following orders of the  
18 court.

19 (4) Have the interests of the parents protected through the  
20 judicial review and other procedures established pursuant to RCW  
21 26.44.100 through 26.44.125 and chapter 13.34 RCW.

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

24 The Washington state legislature finds and declares: The bond  
25 between a child and his or her parent, custodian, or guardian is of  
26 paramount importance, and any intervention into the life of a child is  
27 also an intervention into the life of the parent, custodian, or  
28 guardian; however, instances of nonaccidental injury, neglect, death,  
29 sexual abuse and cruelty to children by their parents, custodians or  
30 guardians have occurred, and in the instance where a child is deprived  
31 of his or her right to conditions of minimal nurture, health, and  
32 safety, the state is justified in emergency intervention based upon  
33 verified information; and therefore the Washington state legislature  
34 hereby provides for the reporting of such cases to the appropriate  
35 public authorities. It is the intent of the legislature that, as a  
36 result of such reports, protective services shall be made available in  
37 an effort to prevent further abuses, and to safeguard the general

1 welfare of such children(~~(+ PROVIDED, That such)~~). When the child's  
2 interests of basic nurture, physical and mental health, and safety  
3 conflict with the parents' interests, the interests of the child should  
4 prevail. When determining whether a parent and child should be  
5 separated during or immediately following an investigation of alleged  
6 child abuse or neglect, the safety of the child shall be the  
7 department's paramount concern. Reports of child abuse and neglect  
8 shall be maintained and disseminated with strictest regard for the  
9 privacy of the subjects of such reports and so as to safeguard against  
10 arbitrary, malicious or erroneous information or actions(~~(+ PROVIDED~~  
11 ~~FURTHER, That)~~). This chapter shall not be construed to authorize  
12 interference with child-raising practices, including reasonable  
13 parental discipline, which are not proved to be injurious to the  
14 child's health, welfare and safety.

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

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

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

26 (3) The department and its employees shall comply with the orders  
27 of the court, including shelter care and other dependency orders, and  
28 are not liable for acts performed to comply with such court orders. In  
29 providing reports and recommendations to the court, caseworkers are  
30 entitled to the same witness immunity as would be provided to any other  
31 witness.

32 Sec. 4. RCW 26.44.125 and 1998 c 314 s 9 are each amended to read  
33 as follows:

34 (1) A person who is named as an alleged perpetrator after October  
35 1, 1998, in a founded report of child abuse or neglect has the right to  
36 seek review and amendment of the finding as provided in this section.

1 Nothing in this chapter creates any other cause of action or right of  
2 review for a person who is named as an alleged perpetrator of child  
3 abuse or neglect.

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

12 (3) Upon receipt of a written request for review, the department  
13 shall review and, if appropriate, may amend the finding. Management  
14 level staff within the children's administration designated by the  
15 secretary shall be responsible for the review. The review must be  
16 conducted in accordance with procedures the department establishes by  
17 rule. Upon completion of the review, the department shall notify the  
18 alleged perpetrator in writing of the agency's determination. The  
19 notification must be sent by certified mail, return receipt requested,  
20 to the person's last known address.

21 (4) If, following agency review, the report remains founded, the  
22 person named as the alleged perpetrator in the report may request an  
23 adjudicative hearing to contest the finding. The adjudicative  
24 proceeding is governed by chapter 34.05 RCW and this section. The  
25 request for an adjudicative proceeding must be filed within thirty  
26 calendar days after receiving notice of the agency review  
27 determination. If a request for an adjudicative proceeding is not made  
28 as provided in this subsection, the alleged perpetrator may not further  
29 challenge the finding and shall have no right to agency review or to an  
30 adjudicative hearing or judicial review of the finding.

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

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

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