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ENGROSSED HOUSE BILL 2509

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Hayes, Smith, and Johnson

Read first time 01/10/18. Referred to Committee on Early Learning & Human Services.

1 AN ACT Relating to mandatory reporting of child abuse and  
2 neglect; amending RCW 26.44.080; reenacting and amending RCW  
3 26.44.030; prescribing penalties; and providing an effective date.

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

5 **Sec. 1.** RCW 26.44.080 and 1982 c 129 s 10 are each amended to  
6 read as follows:

7 (1)(a) Every person who is required to make, or to cause to be  
8 made, a report pursuant to RCW 26.44.030 and 26.44.040, and who  
9 knowingly fails to make, or knowingly fails to cause to be made, such  
10 report, shall be guilty of a (~~gross~~) misdemeanor.

11 (b) Any person who knowingly obstructs the duty of a mandatory  
12 reporter to make a report pursuant to RCW 26.44.030 and 26.44.040  
13 shall be guilty of a gross misdemeanor.

14 (2) A class 1 civil infraction may be issued pursuant to chapter  
15 7.80 RCW to any person who is required to make, or to cause to be  
16 made, a report pursuant to RCW 26.44.030 and 26.44.040, and fails to  
17 make, or fails to cause to be made, such report, due to negligence,  
18 which shall be served by a notice of infraction in accordance with  
19 infraction rules included in chapter 7.80 RCW.

1       **Sec. 2.** RCW 26.44.030 and 2017 3rd sp.s. c 20 s 24 and 2017 3rd  
2 sp.s. c 6 s 322 are each reenacted and amended to read as follows:

3       (1)(a) When any practitioner, county coroner or medical examiner,  
4 law enforcement officer, professional school personnel, registered or  
5 licensed nurse, social service counselor, psychologist, pharmacist,  
6 employee of the department of children, youth, and families, licensed  
7 or certified child care providers or their employees, employee of the  
8 department of social and health services, juvenile probation officer,  
9 placement and liaison specialist, responsible living skills program  
10 staff, HOPE center staff, state family and children's ombuds or any  
11 volunteer in the ombuds's office, or host home program has reasonable  
12 cause to believe that a child has suffered abuse or neglect, he or  
13 she shall report such incident, or cause a report to be made, to the  
14 proper law enforcement agency or to the department as provided in RCW  
15 26.44.040.

16       (b) When any person, in his or her official supervisory capacity  
17 with a nonprofit or for-profit organization, has reasonable cause to  
18 believe that a child has suffered abuse or neglect caused by a person  
19 over whom he or she regularly exercises supervisory authority, he or  
20 she shall report such incident, or cause a report to be made, to the  
21 proper law enforcement agency, provided that the person alleged to  
22 have caused the abuse or neglect is employed by, contracted by, or  
23 volunteers with the organization and coaches, trains, educates, or  
24 counsels a child or children or regularly has unsupervised access to  
25 a child or children as part of the employment, contract, or voluntary  
26 service. No one shall be required to report under this section when  
27 he or she obtains the information solely as a result of a privileged  
28 communication as provided in RCW 5.60.060.

29       Nothing in this subsection (1)(b) shall limit a person's duty to  
30 report under (a) of this subsection.

31       For the purposes of this subsection, the following definitions  
32 apply:

33       (i) "Official supervisory capacity" means a position, status, or  
34 role created, recognized, or designated by any nonprofit or for-  
35 profit organization, either for financial gain or without financial  
36 gain, whose scope includes, but is not limited to, overseeing,  
37 directing, or managing another person who is employed by, contracted  
38 by, or volunteers with the nonprofit or for-profit organization.

39       (ii) "Organization" includes a sole proprietor, partnership,  
40 corporation, limited liability company, trust, association, financial

1 institution, governmental entity, other than the federal government,  
2 and any other individual or group engaged in a trade, occupation,  
3 enterprise, governmental function, charitable function, or similar  
4 activity in this state whether or not the entity is operated as a  
5 nonprofit or for-profit entity.

6 (iii) "Reasonable cause" means a person witnesses or receives a  
7 credible written or oral report alleging abuse, including sexual  
8 contact, or neglect of a child.

9 (iv) "Regularly exercises supervisory authority" means to act in  
10 his or her official supervisory capacity on an ongoing or continuing  
11 basis with regards to a particular person.

12 (v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

13 (c) The reporting requirement also applies to department of  
14 corrections personnel who, in the course of their employment, observe  
15 offenders or the children with whom the offenders are in contact. If,  
16 as a result of observations or information received in the course of  
17 his or her employment, any department of corrections personnel has  
18 reasonable cause to believe that a child has suffered abuse or  
19 neglect, he or she shall report the incident, or cause a report to be  
20 made, to the proper law enforcement agency or to the department as  
21 provided in RCW 26.44.040.

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

33 (e) The reporting requirement also applies to guardians ad litem,  
34 including court-appointed special advocates, appointed under Titles  
35 11 and 13 RCW and this title, who in the course of their  
36 representation of children in these actions have reasonable cause to  
37 believe a child has been abused or neglected.

38 (f) The reporting requirement in (a) of this subsection also  
39 applies to administrative and academic or athletic department  
40 employees, including student employees, of institutions of higher

1 education, as defined in RCW 28B.10.016, and of private institutions  
2 of higher education.

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

7 (2) The reporting requirement of subsection (1) of this section  
8 does not apply to the discovery of abuse or neglect that occurred  
9 during childhood if it is discovered after the child has become an  
10 adult. However, if there is reasonable cause to believe other  
11 children are or may be at risk of abuse or neglect by the accused,  
12 the reporting requirement of subsection (1) of this section does  
13 apply.

14 (3) Any other person who has reasonable cause to believe that a  
15 child has suffered abuse or neglect may report such incident to the  
16 proper law enforcement agency or to the department as provided in RCW  
17 26.44.040.

18 (4) The department, upon receiving a report of an incident of  
19 alleged abuse or neglect pursuant to this chapter, involving a child  
20 who has died or has had physical injury or injuries inflicted upon  
21 him or her other than by accidental means or who has been subjected  
22 to alleged sexual abuse, shall report such incident to the proper law  
23 enforcement agency, including military law enforcement, if  
24 appropriate. In emergency cases, where the child's welfare is  
25 endangered, the department shall notify the proper law enforcement  
26 agency within twenty-four hours after a report is received by the  
27 department. In all other cases, the department shall notify the law  
28 enforcement agency within seventy-two hours after a report is  
29 received by the department. If the department makes an oral report, a  
30 written report must also be made to the proper law enforcement agency  
31 within five days thereafter.

32 (5) Any law enforcement agency receiving a report of an incident  
33 of alleged abuse or neglect pursuant to this chapter, involving a  
34 child who has died or has had physical injury or injuries inflicted  
35 upon him or her other than by accidental means, or who has been  
36 subjected to alleged sexual abuse, shall report such incident in  
37 writing as provided in RCW 26.44.040 to the proper county prosecutor  
38 or city attorney for appropriate action whenever the law enforcement  
39 agency's investigation reveals that a crime may have been committed.  
40 The law enforcement agency shall also notify the department of all

1 reports received and the law enforcement agency's disposition of  
2 them. In emergency cases, where the child's welfare is endangered,  
3 the law enforcement agency shall notify the department within twenty-  
4 four hours. In all other cases, the law enforcement agency shall  
5 notify the department within seventy-two hours after a report is  
6 received by the law enforcement agency.

7 (6) Any county prosecutor or city attorney receiving a report  
8 under subsection (5) of this section shall notify the victim, any  
9 persons the victim requests, and the local office of the department,  
10 of the decision to charge or decline to charge a crime, within five  
11 days of making the decision.

12 (7) The department may conduct ongoing case planning and  
13 consultation with those persons or agencies required to report under  
14 this section, with consultants designated by the department, and with  
15 designated representatives of Washington Indian tribes if the client  
16 information exchanged is pertinent to cases currently receiving child  
17 protective services. Upon request, the department shall conduct such  
18 planning and consultation with those persons required to report under  
19 this section if the department determines it is in the best interests  
20 of the child. Information considered privileged by statute and not  
21 directly related to reports required by this section must not be  
22 divulged without a valid written waiver of the privilege.

23 (8) Any case referred to the department by a physician licensed  
24 under chapter 18.57 or 18.71 RCW on the basis of an expert medical  
25 opinion that child abuse, neglect, or sexual assault has occurred and  
26 that the child's safety will be seriously endangered if returned  
27 home, the department shall file a dependency petition unless a second  
28 licensed physician of the parents' choice believes that such expert  
29 medical opinion is incorrect. If the parents fail to designate a  
30 second physician, the department may make the selection. If a  
31 physician finds that a child has suffered abuse or neglect but that  
32 such abuse or neglect does not constitute imminent danger to the  
33 child's health or safety, and the department agrees with the  
34 physician's assessment, the child may be left in the parents' home  
35 while the department proceeds with reasonable efforts to remedy  
36 parenting deficiencies.

37 (9) Persons or agencies exchanging information under subsection  
38 (7) of this section shall not further disseminate or release the  
39 information except as authorized by state or federal statute.  
40 Violation of this subsection is a misdemeanor.

1 (10) Upon receiving a report of alleged abuse or neglect, the  
2 department shall make reasonable efforts to learn the name, address,  
3 and telephone number of each person making a report of abuse or  
4 neglect under this section. The department shall provide assurances  
5 of appropriate confidentiality of the identification of persons  
6 reporting under this section. If the department is unable to learn  
7 the information required under this subsection, the department shall  
8 only investigate cases in which:

9 (a) The department believes there is a serious threat of  
10 substantial harm to the child;

11 (b) The report indicates conduct involving a criminal offense  
12 that has, or is about to occur, in which the child is the victim; or

13 (c) The department has a prior founded report of abuse or neglect  
14 with regard to a member of the household that is within three years  
15 of receipt of the referral.

16 (11)(a) Upon receiving a report of alleged abuse or neglect, the  
17 department shall use one of the following discrete responses to  
18 reports of child abuse or neglect that are screened in and accepted  
19 for departmental response:

20 (i) Investigation; or

21 (ii) Family assessment.

22 (b) In making the response in (a) of this subsection the  
23 department shall:

24 (i) Use a method by which to assign cases to investigation or  
25 family assessment which are based on an array of factors that may  
26 include the presence of: Imminent danger, level of risk, number of  
27 previous child abuse or neglect reports, or other presenting case  
28 characteristics, such as the type of alleged maltreatment and the age  
29 of the alleged victim. Age of the alleged victim shall not be used as  
30 the sole criterion for determining case assignment;

31 (ii) Allow for a change in response assignment based on new  
32 information that alters risk or safety level;

33 (iii) Allow families assigned to family assessment to choose to  
34 receive an investigation rather than a family assessment;

35 (iv) Provide a full investigation if a family refuses the initial  
36 family assessment;

37 (v) Provide voluntary services to families based on the results  
38 of the initial family assessment. If a family refuses voluntary  
39 services, and the department cannot identify specific facts related  
40 to risk or safety that warrant assignment to investigation under this

1 chapter, and there is not a history of reports of child abuse or  
2 neglect related to the family, then the department must close the  
3 family assessment response case. However, if at any time the  
4 department identifies risk or safety factors that warrant an  
5 investigation under this chapter, then the family assessment response  
6 case must be reassigned to investigation;

7 (vi) Conduct an investigation, and not a family assessment, in  
8 response to an allegation that, the department determines based on  
9 the intake assessment:

10 (A) Poses a risk of "imminent harm" consistent with the  
11 definition provided in RCW 13.34.050, which includes, but is not  
12 limited to, sexual abuse and sexual exploitation as defined in this  
13 chapter;

14 (B) Poses a serious threat of substantial harm to a child;

15 (C) Constitutes conduct involving a criminal offense that has, or  
16 is about to occur, in which the child is the victim;

17 (D) The child is an abandoned child as defined in RCW 13.34.030;

18 (E) The child is an adjudicated dependent child as defined in RCW  
19 13.34.030, or the child is in a facility that is licensed, operated,  
20 or certified for care of children by the department under chapter  
21 74.15 RCW.

22 (c) The department may not be held civilly liable for the  
23 decision to respond to an allegation of child abuse or neglect by  
24 using the family assessment response under this section unless the  
25 state or its officers, agents, or employees acted with reckless  
26 disregard.

27 (12)(a) For reports of alleged abuse or neglect that are accepted  
28 for investigation by the department, the investigation shall be  
29 conducted within time frames established by the department in rule.  
30 In no case shall the investigation extend longer than ninety days  
31 from the date the report is received, unless the investigation is  
32 being conducted under a written protocol pursuant to RCW 26.44.180  
33 and a law enforcement agency or prosecuting attorney has determined  
34 that a longer investigation period is necessary. At the completion of  
35 the investigation, the department shall make a finding that the  
36 report of child abuse or neglect is founded or unfounded.

37 (b) If a court in a civil or criminal proceeding, considering the  
38 same facts or circumstances as are contained in the report being  
39 investigated by the department, makes a judicial finding by a  
40 preponderance of the evidence or higher that the subject of the

1 pending investigation has abused or neglected the child, the  
2 department shall adopt the finding in its investigation.

3 (13) For reports of alleged abuse or neglect that are responded  
4 to through family assessment response, the department shall:

5 (a) Provide the family with a written explanation of the  
6 procedure for assessment of the child and the family and its  
7 purposes;

8 (b) Collaborate with the family to identify family strengths,  
9 resources, and service needs, and develop a service plan with the  
10 goal of reducing risk of harm to the child and improving or restoring  
11 family well-being;

12 (c) Complete the family assessment response within forty-five  
13 days of receiving the report; however, upon parental agreement, the  
14 family assessment response period may be extended up to ninety days;

15 (d) Offer services to the family in a manner that makes it clear  
16 that acceptance of the services is voluntary;

17 (e) Implement the family assessment response in a consistent and  
18 cooperative manner;

19 (f) Have the parent or guardian agree to participate in services  
20 before services are initiated. The department shall inform the  
21 parents of their rights under family assessment response, all of  
22 their options, and the options the department has if the parents do  
23 not agree to participate in services.

24 (14)(a) In conducting an investigation or family assessment of  
25 alleged abuse or neglect, the department or law enforcement agency:

26 (i) May interview children. If the department determines that the  
27 response to the allegation will be family assessment response, the  
28 preferred practice is to request a parent's, guardian's, or  
29 custodian's permission to interview the child before conducting the  
30 child interview unless doing so would compromise the safety of the  
31 child or the integrity of the assessment. The interviews may be  
32 conducted on school premises, at day-care facilities, at the child's  
33 home, or at other suitable locations outside of the presence of  
34 parents. If the allegation is investigated, parental notification of  
35 the interview must occur at the earliest possible point in the  
36 investigation that will not jeopardize the safety or protection of  
37 the child or the course of the investigation. Prior to commencing the  
38 interview the department or law enforcement agency shall determine  
39 whether the child wishes a third party to be present for the  
40 interview and, if so, shall make reasonable efforts to accommodate



1 the child's wishes. Unless the child objects, the department or law  
2 enforcement agency shall make reasonable efforts to include a third  
3 party in any interview so long as the presence of the third party  
4 will not jeopardize the course of the investigation; and

5 (ii) Shall have access to all relevant records of the child in  
6 the possession of mandated reporters and their employees.

7 (b) The Washington state school directors' association shall  
8 adopt a model policy addressing protocols when an interview, as  
9 authorized by this subsection, is conducted on school premises. In  
10 formulating its policy, the association shall consult with the  
11 department and the Washington association of sheriffs and police  
12 chiefs.

13 (15) If a report of alleged abuse or neglect is founded and  
14 constitutes the third founded report received by the department  
15 within the last twelve months involving the same child or family, the  
16 department shall promptly notify the office of the family and  
17 children's ombuds of the contents of the report. The department shall  
18 also notify the ombuds of the disposition of the report.

19 (16) In investigating and responding to allegations of child  
20 abuse and neglect, the department may conduct background checks as  
21 authorized by state and federal law.

22 (17)(a) The department shall maintain investigation records and  
23 conduct timely and periodic reviews of all founded cases of abuse and  
24 neglect. The department shall maintain a log of screened-out  
25 nonabusive cases.

26 (b) In the family assessment response, the department shall not  
27 make a finding as to whether child abuse or neglect occurred. No one  
28 shall be named as a perpetrator and no investigative finding shall be  
29 entered in the department's child abuse or neglect database.

30 (18) The department shall use a risk assessment process when  
31 investigating alleged child abuse and neglect referrals. The  
32 department shall present the risk factors at all hearings in which  
33 the placement of a dependent child is an issue. Substance abuse must  
34 be a risk factor.

35 (19) Upon receipt of a report of alleged abuse or neglect the law  
36 enforcement agency may arrange to interview the person making the  
37 report and any collateral sources to determine if any malice is  
38 involved in the reporting.

39 (20) Upon receiving a report of alleged abuse or neglect  
40 involving a child under the court's jurisdiction under chapter 13.34

1 RCW, the department shall promptly notify the child's guardian ad  
2 litem of the report's contents. The department shall also notify the  
3 guardian ad litem of the disposition of the report. For purposes of  
4 this subsection, "guardian ad litem" has the meaning provided in RCW  
5 13.34.030.

6 (21) The department shall make efforts as soon as practicable to  
7 determine the military status of parents whose children are subject  
8 to abuse or neglect allegations. If the department determines that a  
9 parent or guardian is in the military, the department shall notify a  
10 department of defense family advocacy program that there is an  
11 allegation of abuse and neglect that is screened in and open for  
12 investigation that relates to that military parent or guardian.

13 (22) The department shall make available on its public web site a  
14 downloadable and printable poster that includes the reporting  
15 requirements included in this section. The poster must be no smaller  
16 than eight and one-half by eleven inches with all information on one  
17 side. The poster must be made available in both the English and  
18 Spanish languages. Organizations that include employees or volunteers  
19 subject to the reporting requirements of this section must clearly  
20 display this poster in a common area. At a minimum, this poster must  
21 include the following:

- 22 (a) Who is required to report child abuse and neglect;
- 23 (b) The standard of knowledge to justify a report;
- 24 (c) The definition of reportable crimes;
- 25 (d) Where to report suspected child abuse and neglect; and
- 26 (e) What should be included in a report and the appropriate  
27 timing.

28 (23) State contracts with youth-serving organizations shall  
29 include a requirement that youth-serving organizations provide a  
30 signed acknowledgment of the organization's compliance with the  
31 mandatory reporter posting law contained in subsection (22) of this  
32 section.

33 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2018.

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