
HOUSE BILL 2509

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) Every person who is required to make, or to cause to be made,
8 a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly
9 fails to make, or fails to cause to be made, such report, or
10 obstructs the duty of a mandatory reporter to make such report shall
11 be guilty of a gross misdemeanor.

12 (2) Every person who is required to make, or cause to be made, a
13 report pursuant to RCW 26.44.030 and 26.44.040, and fails to make, or
14 fails to cause to be made, such report, due to negligence, shall be
15 guilty of an infraction which shall be served by a notice of
16 infraction in accordance with infraction rules included in chapter
17 7.80 RCW by law enforcement officers or prosecuting attorneys with a
18 monetary penalty of two hundred fifty dollars.

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

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

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

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

29 For the purposes of this subsection, the following definitions
30 apply:

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

37 (ii) "Organization" includes a sole proprietor, partnership,
38 corporation, limited liability company, trust, association, financial
39 institution, governmental entity, other than the federal government,
40 and any other individual or group engaged in a trade, occupation,

1 enterprise, governmental function, charitable function, or similar
2 activity in this state whether or not the entity is operated as a
3 nonprofit or for-profit entity.

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

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

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

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

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

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

36 (f) The reporting requirement in (a) of this subsection also
37 applies to administrative and academic or athletic department
38 employees, including student employees, of institutions of higher
39 education, as defined in RCW 28B.10.016, and of private institutions
40 of higher education.

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

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

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

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

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

1 the law enforcement agency shall notify the department within twenty-
2 four hours. In all other cases, the law enforcement agency shall
3 notify the department within seventy-two hours after a report is
4 received by the law enforcement agency.

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

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

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

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

39 (10) Upon receiving a report of alleged abuse or neglect, the
40 department shall make reasonable efforts to learn the name, address,

1 and telephone number of each person making a report of abuse or
2 neglect under this section. The department shall provide assurances
3 of appropriate confidentiality of the identification of persons
4 reporting under this section. If the department is unable to learn
5 the information required under this subsection, the department shall
6 only investigate cases in which:

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

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

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

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

18 (i) Investigation; or

19 (ii) Family assessment.

20 (b) In making the response in (a) of this subsection the
21 department shall:

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

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

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

33 (iv) Provide a full investigation if a family refuses the initial
34 family assessment;

35 (v) Provide voluntary services to families based on the results
36 of the initial family assessment. If a family refuses voluntary
37 services, and the department cannot identify specific facts related
38 to risk or safety that warrant assignment to investigation under this
39 chapter, and there is not a history of reports of child abuse or
40 neglect related to the family, then the department must close the

1 family assessment response case. However, if at any time the
2 department identifies risk or safety factors that warrant an
3 investigation under this chapter, then the family assessment response
4 case must be reassigned to investigation;

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

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

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

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

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

16 (E) The child is an adjudicated dependent child as defined in RCW
17 13.34.030, or the child is in a facility that is licensed, operated,
18 or certified for care of children by the department under chapter
19 74.15 RCW.

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

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

35 (b) If a court in a civil or criminal proceeding, considering the
36 same facts or circumstances as are contained in the report being
37 investigated by the department, makes a judicial finding by a
38 preponderance of the evidence or higher that the subject of the
39 pending investigation has abused or neglected the child, the
40 department shall adopt the finding in its investigation.

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

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

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

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

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

15 (e) Implement the family assessment response in a consistent and
16 cooperative manner;

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

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

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

1 party in any interview so long as the presence of the third party
2 will not jeopardize the course of the investigation; and

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

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

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

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

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

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

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

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

37 (20) Upon receiving a report of alleged abuse or neglect
38 involving a child under the court's jurisdiction under chapter 13.34
39 RCW, the department shall promptly notify the child's guardian ad
40 litem of the report's contents. The department shall also notify the

1 guardian ad litem of the disposition of the report. For purposes of
2 this subsection, "guardian ad litem" has the meaning provided in RCW
3 13.34.030.

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

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

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

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

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

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