

SB 5749 - H COMM AMD

By Committee on Civil Rights & Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature that
4 the changes proposed in this act neither approve nor disapprove of a
5 particular religious practice, but simply remove a statutory
6 reference that gives rise to constitutional issues by singling out
7 one particular religion. These changes are not intended to express a
8 bias against the practice of religious or spiritual healing, and are
9 intended to clarify that parents and guardians are allowed to rely
10 exclusively on religious healing practices under RCW 26.44.020 unless
11 any such decision poses a clear and present danger to the health,
12 welfare, or safety of the child. The legislature further does not
13 intend: (1) To prevent adults, including dependent and vulnerable
14 adults, from making their own voluntary decisions, including
15 decisions to rely on the practice of religious healing in lieu of
16 medical treatment; or (2) to make it a crime or prevent those charged
17 with their care to honor and carry out those decisions, as recognized
18 in Washington's vulnerable adult abuse law at RCW 74.34.180 and other
19 areas of Washington statutory and case law.

20 **Sec. 2.** RCW 9A.42.005 and 1997 c 392 s 507 are each amended to
21 read as follows:

22 The legislature finds that there is a significant need to protect
23 children and dependent persons, including frail elder and vulnerable
24 adults, from abuse and neglect by their parents, by persons entrusted
25 with their physical custody, or by persons employed to provide them
26 with the basic necessities of life. The legislature further finds
27 that such abuse and neglect often takes the forms of either
28 withholding from them the basic necessities of life, including food,
29 water, shelter, clothing, and health care, or abandoning them, or
30 both. Therefore, it is the intent of the legislature that criminal
31 penalties be imposed on those guilty of such abuse or neglect. (~~¶~~)

1 ~~is the intent of the legislature that a person who, in good faith, is~~
2 ~~furnished Christian Science treatment by a duly accredited Christian~~
3 ~~Science practitioner in lieu of medical care is not considered~~
4 ~~deprived of medically necessary health care or abandoned.))~~
5 Prosecutions under this chapter shall be consistent with the rules of
6 evidence, including hearsay, under law.

7 **Sec. 3.** RCW 26.44.020 and 2019 c 172 s 5 are each amended to
8 read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

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

18 (2) "Child" or "children" means any person under the age of
19 eighteen years of age.

20 (3) "Child forensic interview" means a developmentally sensitive
21 and legally sound method of gathering factual information regarding
22 allegations of child abuse, child neglect, or exposure to violence.
23 This interview is conducted by a competently trained, neutral
24 professional utilizing techniques informed by research and best
25 practice as part of a larger investigative process.

26 (4) "Child protective services" means those services provided by
27 the department designed to protect children from child abuse and
28 neglect and safeguard such children from future abuse and neglect,
29 and conduct investigations of child abuse and neglect reports.
30 Investigations may be conducted regardless of the location of the
31 alleged abuse or neglect. Child protective services includes referral
32 to services to ameliorate conditions that endanger the welfare of
33 children, the coordination of necessary programs and services
34 relevant to the prevention, intervention, and treatment of child
35 abuse and neglect, and services to children to ensure that each child
36 has a permanent home. In determining whether protective services
37 should be provided, the department shall not decline to provide such
38 services solely because of the child's unwillingness or developmental

1 inability to describe the nature and severity of the abuse or
2 neglect.

3 (5) "Child protective services section" means the child
4 protective services section of the department.

5 (6) "Child who is a candidate for foster care" means a child who
6 the department identifies as being at imminent risk of entering
7 foster care but who can remain safely in the child's home or in a
8 kinship placement as long as services or programs that are necessary
9 to prevent entry of the child into foster care are provided, and
10 includes but is not limited to a child whose adoption or guardianship
11 arrangement is at risk of a disruption or dissolution that would
12 result in a foster care placement. The term includes a child for whom
13 there is reasonable cause to believe that any of the following
14 circumstances exist:

15 (a) The child has been abandoned by the parent as defined in RCW
16 13.34.030 and the child's health, safety, and welfare is seriously
17 endangered as a result;

18 (b) The child has been abused or neglected as defined in this
19 chapter (~~(26.44-RCW)~~) and the child's health, safety, and welfare is
20 seriously endangered as a result;

21 (c) There is no parent capable of meeting the child's needs such
22 that the child is in circumstances that constitute a serious danger
23 to the child's development;

24 (d) The child is otherwise at imminent risk of harm.

25 (7) "Children's advocacy center" means a child-focused facility
26 in good standing with the state chapter for children's advocacy
27 centers and that coordinates a multidisciplinary process for the
28 investigation, prosecution, and treatment of sexual and other types
29 of child abuse. Children's advocacy centers provide a location for
30 forensic interviews and coordinate access to services such as, but
31 not limited to, medical evaluations, advocacy, therapy, and case
32 review by multidisciplinary teams within the context of county
33 protocols as defined in RCW 26.44.180 and 26.44.185.

34 (8) "Clergy" means any regularly licensed or ordained minister,
35 priest, or rabbi of any church or religious denomination, whether
36 acting in an individual capacity or as an employee or agent of any
37 public or private organization or institution.

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

1 (10) "Department" means the department of children, youth, and
2 families.

3 (11) "Family assessment" means a comprehensive assessment of
4 child safety, risk of subsequent child abuse or neglect, and family
5 strengths and needs that is applied to a child abuse or neglect
6 report. Family assessment does not include a determination as to
7 whether child abuse or neglect occurred, but does determine the need
8 for services to address the safety of the child and the risk of
9 subsequent maltreatment.

10 (12) "Family assessment response" means a way of responding to
11 certain reports of child abuse or neglect made under this chapter
12 using a differential response approach to child protective services.
13 The family assessment response shall focus on the safety of the
14 child, the integrity and preservation of the family, and shall assess
15 the status of the child and the family in terms of risk of abuse and
16 neglect including the parent's or guardian's or other caretaker's
17 capacity and willingness to protect the child and, if necessary, plan
18 and arrange the provision of services to reduce the risk and
19 otherwise support the family. No one is named as a perpetrator, and
20 no investigative finding is entered in the record as a result of a
21 family assessment.

22 (13) "Founded" means the determination following an investigation
23 by the department that, based on available information, it is more
24 likely than not that child abuse or neglect did occur.

25 (14) "Inconclusive" means the determination following an
26 investigation by the department of social and health services, prior
27 to October 1, 2008, that based on available information a decision
28 cannot be made that more likely than not, child abuse or neglect did
29 or did not occur.

30 (15) "Institution" means a private or public hospital or any
31 other facility providing medical diagnosis, treatment, or care.

32 (16) "Law enforcement agency" means the police department, the
33 prosecuting attorney, the state patrol, the director of public
34 safety, or the office of the sheriff.

35 (17) "Malice" or "maliciously" means an intent, wish, or design
36 to intimidate, annoy, or injure another person. Such malice may be
37 inferred from an act done in willful disregard of the rights of
38 another, or an act wrongfully done without just cause or excuse, or
39 an act or omission of duty betraying a willful disregard of social
40 duty.

1 (18) "Negligent treatment or maltreatment" means an act or a
2 failure to act, or the cumulative effects of a pattern of conduct,
3 behavior, or inaction, that evidences a serious disregard of
4 consequences of such magnitude as to constitute a clear and present
5 danger to a child's health, welfare, or safety, including but not
6 limited to conduct prohibited under RCW 9A.42.100. When considering
7 whether a clear and present danger exists, evidence of a parent's
8 substance abuse as a contributing factor to negligent treatment or
9 maltreatment shall be given great weight. The fact that siblings
10 share a bedroom is not, in and of itself, negligent treatment or
11 maltreatment. Poverty, homelessness, or exposure to domestic violence
12 as defined in RCW 26.50.010 that is perpetrated against someone other
13 than the child does not constitute negligent treatment or
14 maltreatment in and of itself. Under this chapter, health care
15 decisions made in reliance on faith-based practices do not in and of
16 themselves constitute negligent treatment or maltreatment unless any
17 such decision poses a clear and present danger to the health,
18 welfare, or safety of the child.

19 (19) "Pharmacist" means any registered pharmacist under chapter
20 18.64 RCW, whether acting in an individual capacity or as an employee
21 or agent of any public or private organization or institution.

22 (20) "Practitioner of the healing arts" or "practitioner" means a
23 person licensed by this state to practice podiatric medicine and
24 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
25 medicine and surgery, or medicine and surgery or to provide other
26 health services. The term "practitioner" includes a duly accredited
27 Christian Science practitioner. (~~(A person who is being furnished~~
28 ~~Christian Science treatment by a duly accredited Christian Science~~
29 ~~practitioner will not be considered, for that reason alone, a~~
30 ~~neglected person for the purposes of this chapter.))~~

31 (21) "Prevention and family services and programs" means specific
32 mental health prevention and treatment services, substance abuse
33 prevention and treatment services, and in-home parent skill-based
34 programs that qualify for federal funding under the federal family
35 first prevention services act, P.L. 115-123. For purposes of this
36 chapter, prevention and family services and programs are not remedial
37 services or family reunification services as described in RCW
38 13.34.025(2).

1 (22) "Professional school personnel" include, but are not limited
2 to, teachers, counselors, administrators, child care facility
3 personnel, and school nurses.

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

8 (24) "Screened-out report" means a report of alleged child abuse
9 or neglect that the department has determined does not rise to the
10 level of a credible report of abuse or neglect and is not referred
11 for investigation.

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

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

19 (27) "Social service counselor" means anyone engaged in a
20 professional capacity during the regular course of employment in
21 encouraging or promoting the health, welfare, support, or education
22 of children, or providing social services to adults or families,
23 including mental health, drug and alcohol treatment, and domestic
24 violence programs, whether in an individual capacity, or as an
25 employee or agent of any public or private organization or
26 institution.

27 (28) "Unfounded" means the determination following an
28 investigation by the department that available information indicates
29 that, more likely than not, child abuse or neglect did not occur, or
30 that there is insufficient evidence for the department to determine
31 whether the alleged child abuse did or did not occur."

32 Correct the title.

EFFECT: Makes technical correction to reflect changes made to a
statute as a result of 2019 legislation. Adds an intent section
stating that proposed changes remove a reference to a specific

religion that creates constitutional issues and are not intended to pass judgment on a particular religious practice.

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