
SENATE BILL 5392

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By Senators Talmadge, Deccio, Fraser, L. Smith, McCaslin, Moyer, Oke and Winsley

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1 AN ACT Relating to abuse of children and incompetent persons;
2 amending RCW 13.34.110, 13.34.120, 13.34.130, 13.34.145, 13.34.150,
3 13.34.162, 26.44.020, 26.44.030, 26.44.040, 26.44.063, 26.44.067, and
4 26.44.100; adding new sections to chapter 13.34 RCW; adding a new
5 section to chapter 26.44 RCW; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.34 RCW
8 to read as follows:

9 (1) If at any stage of the dependency proceedings there is evidence
10 of alcohol abuse, drug abuse, or mental problems by any party, the
11 court may order the party to undergo a diagnostic investigation and
12 evaluation. The investigation and evaluation shall be conducted by an
13 approved treatment program as designated in chapter 70.96A RCW or at an
14 approved mental health center.

15 (2) The facility to which such person is referred shall conduct a
16 thorough investigation and examination to determine whether:

17 (a) The person suffers from the problem described;

18 (b) The problem is such that if not treated there is a probability
19 that similar abuse or neglect will occur in the future;

- 1 (c) Extensive and long-term treatment is required;
- 2 (d) Effective treatment for the person's problem is available; and
- 3 (e) The person is amenable to treatment.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.34 RCW
5 to read as follows:

6 (1) The facility shall make a written report to the court stating
7 its findings and recommendations after the examination required by
8 section 1 of this act. If its findings and recommendations support
9 treatment, it shall also recommend a treatment plan setting out:

- 10 (a) The type;
- 11 (b) Nature;
- 12 (c) Length;
- 13 (d) A treatment time schedule; and
- 14 (e) Approximate cost of the treatment.

15 The report with the treatment plan shall be filed with the court
16 and a copy given to the person evaluated and the person's counsel. A
17 copy of the treatment plan shall also be given to the department's
18 caseworker. Any program for alcoholism shall meet the program
19 requirements contained in RCW 10.05.150.

20 (2) If the court makes treatment a condition of the dependency
21 proceeding it shall also require the treatment program to provide the
22 court, the department, and the person or person's counsel with status
23 reports every three months regarding: (a) The petitioner's cooperation
24 with the treatment plan proposed; and (b) the petitioners progress in
25 treatment.

26 (3) In addition, if the party fails or neglects to carry out and
27 fulfill any term or condition of the treatment plan, the program or
28 agency administering the treatment shall report such breach to the
29 court, the department, and the person or person's counsel, within
30 twenty-four hours, together with its recommendation. These reports
31 shall be made as a declaration by the person who is personally
32 responsible for providing the treatment.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW
34 to read as follows:

35 (1) The court, upon receiving a report under section 2(3) of this
36 act, shall schedule a show cause hearing to determine whether the
37 person is in violation of the treatment conditions. All parties shall

1 be given notice of the hearing. The court shall hold the hearing
2 within ten days of the date it received the report. At the hearing,
3 evidence shall be taken of the person's alleged failure to comply with
4 the treatment plan and the person shall have the right to present
5 evidence on his or her own behalf.

6 (2) If the court finds that there has been a violation of the
7 treatment conditions it shall modify the dependency order, as
8 necessary, to ensure the safety of the child. The modified order shall
9 remain in effect until the party is in full compliance with the
10 treatment requirements.

11 **Sec. 4.** RCW 13.34.110 and 1991 c 340 s 3 are each amended to read
12 as follows:

13 The court shall hold a fact-finding hearing on the petition and,
14 unless the court dismisses the petition, shall make written findings of
15 fact, stating the reasons therefor, and after it has announced its
16 findings of fact shall hold a hearing to consider disposition of the
17 case immediately following the fact-finding hearing or at a continued
18 hearing within fourteen days or longer for good cause shown. The
19 parties need not appear at the fact-finding or dispositional hearing if
20 ~~((all))~~ the parties, their attorneys, the guardian ad litem, and court-
21 appointed special assistants are all in agreement~~((+but))~~. The court
22 shall receive and review a social study before entering an order based
23 on agreement. No social file or social study may be considered by the
24 court in connection with the fact-finding hearing or prior to factual
25 determination, except as otherwise admissible under the rules of
26 evidence. Notice of the time and place of the continued hearing may be
27 given in open court. If notice in open court is not given to a party,
28 that party shall be notified by mail of the time and place of any
29 continued hearing.

30 All hearings may be conducted at any time or place within the
31 limits of the county, and such cases may not be heard in conjunction
32 with other business of any other division of the superior court. The
33 general public shall be excluded, and only such persons may be admitted
34 who are found by the judge to have a direct interest in the case or in
35 the work of the court. If a child resides in foster care or in the
36 home of a relative pursuant to a disposition order entered under RCW
37 13.34.130, the court may allow the child's foster parent or relative
38 care provider to attend dependency review proceedings pertaining to the

1 child for the sole purpose of providing information about the child to
2 the court.

3 Stenographic notes or any device which accurately records the
4 proceedings may be required as provided in other civil cases pursuant
5 to RCW 2.32.200.

6 **Sec. 5.** RCW 13.34.120 and 1987 c 524 s 5 are each amended to read
7 as follows:

8 (1) To aid the court in its decision on disposition, a social
9 study, consisting of a written evaluation of matters relevant to the
10 disposition of the case, shall be made by the person or agency filing
11 the petition. The study shall include all social records and may also
12 include facts relating to the child's cultural heritage, and shall be
13 made available to the court. The court shall consider the social file
14 ~~((and))~~, social study, guardian ad litem report, and the court-
15 appointed special assistant report at the disposition hearing in
16 addition to evidence produced at the fact-finding hearing. At least
17 ten working days before the disposition hearing, the department shall
18 mail to the parent and his or her attorney a copy of the agency's
19 social study and proposed service plan, which shall be in writing or in
20 a form understandable to the parents or custodians. In addition, the
21 department shall provide an opportunity for parents to review and
22 comment on the plan at the community service office. If the parents
23 disagree with the agency's plan or any part thereof, the parents shall
24 submit to the court at least twenty-four hours before the hearing, in
25 writing, or signed oral statement, an alternative plan to correct the
26 problems which led to the finding of dependency. This section shall
27 not interfere with the right of the parents or custodians to submit
28 oral arguments regarding the disposition plan at the hearing.

29 (2) In addition to the requirements set forth in subsection (1) of
30 this section, a predisposition study to the court in cases of
31 dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) shall
32 contain the following information:

33 (a) A statement of the specific harm or harms to the child that
34 intervention is designed to alleviate;

35 (b) A description of the specific programs, for both the parents
36 and child, that are needed in order to prevent serious harm to the
37 child; the reasons why such programs are likely to be useful; the

1 availability of any proposed services; and the agency's overall plan
2 for ensuring that the services will be delivered;

3 (c) If removal is recommended, a full description of the reasons
4 why the child cannot be protected adequately in the home, including a
5 description of any previous efforts to work with the parents and the
6 child in the home; the in-home treatment programs which have been
7 considered and rejected; and the parents' attitude toward placement of
8 the child;

9 (d) A statement of the likely harms the child will suffer as a
10 result of removal. This section should include an exploration of the
11 nature of the parent-child attachment and the meaning of separation and
12 loss to both the parents and the child;

13 (e) A description of the steps that will be taken to minimize harm
14 to the child that may result if separation occurs; and

15 (f) Behavior that will be expected before determination that
16 supervision of the family or placement is no longer necessary.

17 **Sec. 6.** RCW 13.34.130 and 1992 c 145 s 14 are each amended to read
18 as follows:

19 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
20 or hereafter amended, it has been proven by a preponderance of the
21 evidence that the child is dependent within the meaning of RCW
22 13.34.030(2); after consideration of the predisposition report prepared
23 pursuant to RCW 13.34.110 and after a disposition hearing has been held
24 pursuant to RCW 13.34.110, the court shall enter an order of
25 disposition pursuant to this section.

26 (1) The court shall order one of the following dispositions of the
27 case:

28 (a) Order a disposition other than removal of the child from his or
29 her home, which shall provide a program designed to alleviate the
30 immediate danger to the child, to mitigate or cure any damage the child
31 has already suffered, and to aid the parents so that the child will not
32 be endangered in the future. In selecting a program, the court should
33 choose those services that least interfere with family autonomy,
34 provided that the services are adequate to protect the child.

35 (b) Order that the child be removed from his or her home and
36 ordered into the custody, control, and care of a relative or the
37 department of social and health services or a licensed child placing
38 agency for placement in a foster family home or group care facility

1 licensed pursuant to chapter 74.15 RCW or in a home not required to be
2 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
3 cause to believe that the safety or welfare of the child would be
4 jeopardized or that efforts to reunite the parent and child will be
5 hindered, such child shall be placed with a grandparent, brother,
6 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
7 the child has a relationship and is comfortable, and who is willing and
8 available to care for the child. An order for out-of-home placement
9 may be made only if the court finds that reasonable efforts have been
10 made to prevent or eliminate the need for removal of the child from the
11 child's home and to make it possible for the child to return home,
12 specifying the services that have been provided to the child and the
13 child's parent, guardian, or legal custodian, and that:

14 (i) There is no parent or guardian available to care for such
15 child;

16 (ii) The parent, guardian, or legal custodian is not willing to
17 take custody of the child;

18 (iii) A manifest danger exists that the child will suffer serious
19 abuse or neglect if the child is not removed from the home and an order
20 under RCW 26.44.063 would not protect the child from danger; or

21 (iv) The extent of the child's disability is such that the parent,
22 guardian, or legal custodian is unable to provide the necessary care
23 for the child and the parent, guardian, or legal custodian has
24 determined that the child would benefit from placement outside of the
25 home.

26 (2) If the court has ordered a child removed from his or her home
27 pursuant to subsection (1)(b) of this section, the court may order that
28 a petition seeking termination of the parent and child relationship be
29 filed if the court finds it is recommended by the supervising agency,
30 that it is in the best interests of the child and that it is not
31 reasonable to provide further services to reunify the family because
32 the existence of aggravated circumstances make it unlikely that
33 services will effectuate the return of the child to the child's parents
34 in the near future. In determining whether aggravated circumstances
35 exist, the court shall consider one or more of the following:

36 (a) Conviction of the parent of rape of ((the)) a child in the
37 first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076,
38 and 9A.44.079;

1 (b) Conviction of the parent of criminal mistreatment of ((the)) a
2 child in the first or second degree as defined in RCW 9A.42.020 and
3 9A.42.030;

4 (c) Conviction of the parent of one of the following assault
5 crimes, when ((the)) a child is the victim: Assault in the first or
6 second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of
7 a child in the first or second degree as defined in RCW 9A.36.120 or
8 9A.36.130;

9 (d) Conviction of the parent of murder, manslaughter, or homicide
10 by abuse ((of the child's other parent, sibling, or another child));

11 (e) A finding by a court that a parent is a sexually violent
12 predator as defined in RCW 71.09.020;

13 (f) Failure of the parent to complete, within a reasonable amount
14 of time, available treatment ordered under this chapter or the
15 equivalent laws of another state((, where such failure has resulted in
16 a prior termination of parental rights to another child and the parent
17 has failed to effect significant change in the interim)).

18 (3) Whenever a child is ordered removed from the child's home, the
19 agency charged with his or her care shall provide the court with:

20 (a) A permanent plan of care that may include one of the following:
21 Return of the child to the home of the child's parent, adoption,
22 guardianship, or long-term placement with a relative or in foster care
23 with a written agreement.

24 (b) Unless the court has ordered, pursuant to subsection (2) of
25 this section, that a termination petition be filed, a specific plan as
26 to where the child will be placed, what steps will be taken to return
27 the child home, and what actions the agency will take to maintain
28 parent-child ties. All aspects of the plan shall include the goal of
29 achieving permanence for the child.

30 (i) The agency plan shall specify what services the parents will be
31 offered in order to enable them to resume custody, what requirements
32 the parents must meet in order to resume custody, and a time limit for
33 each service plan and parental requirement.

34 (ii) The agency shall be required to encourage the maximum parent-
35 child contact possible, including regular visitation and participation
36 by the parents in the care of the child while the child is in
37 placement. Visitation may be limited or denied only if the court
38 determines that such limitation or denial is necessary to protect the
39 child's health, safety, or welfare.

1 (iii) A child shall be placed as close to the child's home as
2 possible, preferably in the child's own neighborhood, unless the court
3 finds that placement at a greater distance is necessary to promote the
4 child's or parents' well-being.

5 (iv) The agency charged with supervising a child in placement shall
6 provide all reasonable services that are available within the agency,
7 or within the community, or those services which the department of
8 social and health services has existing contracts to purchase. It
9 shall report to the court if it is unable to provide such services.

10 (c) If the court has ordered, pursuant to subsection (2) of this
11 section, that a termination petition be filed, a specific plan as to
12 where the child will be placed, what steps will be taken to achieve
13 permanency for the child, services to be offered or provided to the
14 child, and, if visitation would be in the best interests of the child,
15 a recommendation to the court regarding visitation between parent and
16 child pending a fact-finding hearing on the termination petition. The
17 agency shall not be required to develop a plan of services for the
18 parents or provide services to the parents.

19 (4) If there is insufficient information at the time of the
20 disposition hearing upon which to base a determination regarding the
21 suitability of a proposed placement with a relative, the child shall
22 remain in foster care and the court shall direct the supervising agency
23 to conduct necessary background investigations as provided in chapter
24 74.15 RCW and report the results of such investigation to the court
25 within thirty days. However, if such relative appears otherwise
26 suitable and competent to provide care and treatment, the criminal
27 history background check need not be completed before placement, but as
28 soon as possible after placement. Any placements with relatives,
29 pursuant to this section, shall be contingent upon cooperation by the
30 relative with the agency case plan and compliance with court orders
31 related to the care and supervision of the child including, but not
32 limited to, court orders regarding parent-child contacts and any other
33 conditions imposed by the court. Noncompliance with the case plan or
34 court order shall be grounds for removal of the child from the
35 relative's home, subject to review by the court.

36 (5) Except for children whose cases are reviewed by a citizen
37 review board under chapter 13.70 RCW, the status of all children found
38 to be dependent shall be reviewed by the court at least every six
39 months from the beginning date of the placement episode or the date

1 dependency is established, whichever is first, at a hearing in which it
2 shall be determined whether court supervision should continue. The
3 review shall include findings regarding the agency and parental
4 completion of disposition plan requirements, and if necessary, revised
5 permanency time limits.

6 (a) A child shall not be returned home at the review hearing unless
7 the court finds that a reason for removal as set forth in this section
8 no longer exists. The parents, guardian, or legal custodian shall
9 report to the court the efforts they have made to correct the
10 conditions which led to removal. If a child is returned, casework
11 supervision shall continue for a period of six months, at which time
12 there shall be a hearing on the need for continued intervention.

13 (b) If the child is not returned home, the court shall establish in
14 writing:

15 (i) Whether reasonable services have been provided to or offered to
16 the parties to facilitate reunion, specifying the services provided or
17 offered;

18 (ii) Whether the child has been placed in the least-restrictive
19 setting appropriate to the child's needs, including whether
20 consideration has been given to placement with the child's relatives;

21 (iii) Whether there is a continuing need for placement and whether
22 the placement is appropriate;

23 (iv) Whether there has been compliance with the case plan by the
24 child, the child's parents, and the agency supervising the placement;

25 (v) Whether progress has been made toward correcting the problems
26 that necessitated the child's placement in out-of-home care;

27 (vi) Whether the parents have visited the child and any reasons why
28 visitation has not occurred or has been infrequent;

29 (vii) Whether additional services are needed to facilitate the
30 return of the child to the child's parents; if so, the court shall
31 order that reasonable services be offered specifying such services; and

32 (viii) The projected date by which the child will be returned home
33 or other permanent plan of care will be implemented.

34 (c) The court at the review hearing may order that a petition
35 seeking termination of the parent and child relationship be filed.

36 **Sec. 7.** RCW 13.34.145 and 1989 1st ex.s. c 17 s 18 are each
37 amended to read as follows:

1 (1) In all cases where a child has been placed in substitute care
2 for at least fifteen months, a permanency planning hearing shall be
3 held before the court no later than eighteen months following
4 commencement of the placement episode.

5 (2) At the permanency planning hearing, the court shall enter
6 findings as required by RCW (~~(13.34.130(4))~~) 13.34.130(5). In addition
7 the court shall: (a) Approve a permanent plan of care which can
8 include one of the following: Adoption, guardianship, or placement of
9 the child in the home of the child's parent; (b) require filing of a
10 petition for termination of parental rights; or (c) dismiss the
11 dependency, unless the court finds, based on clear, cogent, and
12 convincing evidence, that it is in the best interest of the child to
13 continue the dependency beyond eighteen months, based on a permanent
14 plan of care. Extensions may only be granted in increments of twelve
15 months or less.

16 **Sec. 8.** RCW 13.34.150 and 1990 c 246 s 6 are each amended to read
17 as follows:

18 Any order made by the court in the case of a dependent child may be
19 changed, modified, or set aside, only upon a showing of a change in
20 circumstance or as provided in section 3 of this act.

21 **Sec. 9.** RCW 13.34.162 and 1988 c 275 s 15 are each amended to read
22 as follows:

23 A determination of child support shall be based upon the child
24 support schedule and standards (~~(adopted)~~) provided under chapter 26.19
25 RCW (~~(26.19.040)~~).

26 NEW SECTION. **Sec. 10.** A new section is added to chapter 26.44 RCW
27 to read as follows:

28 (1) This chapter shall not be construed to authorize interference
29 with child-raising practices, including reasonable parental discipline,
30 which are not injurious to the child's health, welfare, and safety.

31 (2) Nothing in this chapter may be used to prohibit the reasonable
32 use of corporal punishment as a means of discipline.

33 (3) No parent or guardian may be deemed abusive or neglectful
34 solely by reason of the parent's or child's blindness, deafness,
35 developmental disability, or other handicap.

1 (4) A person reporting injury, abuse, or neglect to an adult
2 dependent person shall not suffer negative consequences if the person
3 reporting believes in good faith that the adult dependent person has
4 been found legally incompetent or disabled.

5 **Sec. 11.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read
6 as follows:

7 For the purpose of and as used in this chapter:

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

10 (2) "Law enforcement agency" means the police department, the
11 prosecuting attorney, the state patrol, the director of public safety,
12 or the office of the sheriff.

13 (3) "Practitioner of the healing arts" or "practitioner" means a
14 person licensed by this state to practice (~~podiatry~~) podiatric
15 medicine and surgery, optometry, chiropractic, nursing, dentistry,
16 osteopathy and surgery, or medicine and surgery or to provide other
17 health services. The term "practitioner" shall include a duly
18 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
19 person who is being furnished Christian Science treatment by a duly
20 accredited Christian Science practitioner shall not be considered, for
21 that reason alone, a neglected person for the purposes of this chapter.

22 (4) "Institution" means a private or public hospital or any other
23 facility providing medical diagnosis, treatment or care.

24 (5) "Department" means the state department of social and health
25 services.

26 (6) "Child" or "children" means any person under the age of
27 eighteen years of age.

28 (7) "Professional school personnel" shall include, but not be
29 limited to, teachers, counselors, administrators, child care facility
30 personnel, and school nurses.

31 (8) "Social service counselor" shall mean anyone engaged in a
32 professional capacity during the regular course of employment in
33 encouraging or promoting the health, welfare, support or education of
34 children, or providing social services to adults or families, including
35 mental health, drug and alcohol treatment, and domestic violence
36 programs, whether in an individual capacity, or as an employee or agent
37 of any public or private organization or institution.

1 (9) "Psychologist" shall mean any person licensed to practice
2 psychology under chapter 18.83 RCW, whether acting in an individual
3 capacity or as an employee or agent of any public or private
4 organization or institution.

5 (10) "Pharmacist" shall mean any registered pharmacist under the
6 provisions of chapter 18.64 RCW, whether acting in an individual
7 capacity or as an employee or agent of any public or private
8 organization or institution.

9 (11) "Clergy" shall mean any regularly licensed or ordained
10 minister, priest or rabbi of any church or religious denomination,
11 whether acting in an individual capacity or as an employee or agent of
12 any public or private organization or institution.

13 (12) "~~((Child)) Abuse or neglect~~" shall mean the injury, sexual
14 abuse, sexual exploitation, ~~((or)) negligent treatment,~~ or maltreatment
15 of a child, adult dependent, or developmentally disabled person by any
16 person under circumstances which indicate that the child's or adult's
17 health, welfare, and safety is harmed ~~((thereby))~~. An abused child is
18 a child who has been subjected to child abuse or neglect as defined
19 herein~~((:— PROVIDED, That this subsection shall not be construed to~~
20 ~~authorize—interference—with—child-raising—practices,—including~~
21 ~~reasonable parental discipline, which are not proved to be injurious to~~
22 ~~the child's health, welfare, and safety:—AND PROVIDED FURTHER, That~~
23 ~~nothing in this section shall be used to prohibit the reasonable use of~~
24 ~~corporal punishment as a means of discipline. No parent or guardian~~
25 ~~shall be deemed abusive or neglectful solely by reason of the parent's~~
26 ~~or child's blindness, deafness, developmental disability, or other~~
27 ~~handicap))~~.

28 (13) "Child protective services section" shall mean the child
29 protective services section of the department.

30 (14) "Adult dependent persons ~~((not able to provide for their own~~
31 ~~protection through the criminal justice system))~~" shall be defined as
32 those persons over the age of eighteen years who have been found to be
33 legally incompetent or disabled pursuant to chapter 11.88 RCW ~~((or~~
34 ~~found disabled to such a degree pursuant to said chapter, that such~~
35 ~~protection is indicated:—PROVIDED, That no persons reporting injury,~~
36 ~~abuse, or neglect to an adult dependent person as defined herein shall~~
37 ~~suffer negative consequences if such a judicial determination of~~
38 ~~incompetency or disability has not taken place and the person reporting~~

1 ~~believes in good faith that the adult dependent person has been found~~
2 ~~legally incompetent pursuant to chapter 11.88 RCW~~)).

3 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
4 encouraging a child to engage in prostitution by any person; or (b)
5 allowing, permitting, encouraging, or engaging in the obscene or
6 pornographic photographing, filming, or depicting of a child (~~for~~
7 ~~commercial purposes as those acts are defined by state law~~) by any
8 person.

9 (16) "Negligent treatment or maltreatment" means an act or omission
10 which evidences a serious disregard of consequences of such magnitude
11 as to constitute a clear and present danger to the child's health,
12 welfare, and safety.

13 (17) "Developmentally disabled person" means a person who has a
14 disability defined in RCW (~~71.20.016~~) 71A.10.020.

15 (18) "Child protective services" means those services provided by
16 the department designed to protect children from child abuse and
17 neglect and safeguard the general welfare of such children and shall
18 include investigations of child abuse and neglect reports, including
19 reports regarding child care centers and family child care homes, and
20 the development, management, and provision of or referral to services
21 to ameliorate conditions which endanger the welfare of children, the
22 coordination of necessary programs and services relevant to the
23 prevention, intervention, and treatment of child abuse and neglect, and
24 services to children to ensure that each child has a permanent home.
25 In determining whether protective services should be provided, the
26 department shall not decline to provide such services solely because of
27 the child's unwillingness or developmental inability to describe the
28 nature and severity of the abuse or neglect.

29 (19) "Malice" or "maliciously" means an evil intent, wish, or
30 design to vex, annoy, or injure another person. Such malice may be
31 inferred from an act done in wilful disregard of the rights of another,
32 or an act wrongfully done without just cause or excuse, or an act or
33 omission of duty betraying a wilful disregard of social duty.

34 **Sec. 12.** RCW 26.44.030 and 1991 c 111 s 1 are each amended to read
35 as follows:

36 (1) When any practitioner, professional school personnel,
37 registered or licensed nurse, social service counselor, psychologist,
38 pharmacist, licensed or certified child care providers or their

1 employees, employee of the department, or juvenile probation officer
2 has reasonable cause to believe that a child or adult dependent or
3 developmentally disabled person, has suffered abuse or neglect, he or
4 she shall report such incident, or cause a report to be made, to the
5 proper law enforcement agency or to the department as provided in RCW
6 26.44.040. The reporting requirement shall also apply to any adult who
7 has reasonable cause to believe that a child or adult dependent or
8 developmentally disabled person, who resides with them, has suffered
9 abuse or neglect. The report shall be made at the first opportunity,
10 but in no case longer than forty-eight hours after there is reasonable
11 cause to believe that the child or adult has suffered abuse or neglect.
12 The report shall include the identity of the accused if known.

13 (2) The reporting requirement of subsection (1) of this section
14 does not apply to the discovery of abuse or neglect that occurred
15 during childhood if it is discovered after the child has become an
16 adult. However, if there is reasonable cause to believe other
17 children, dependent adults, or developmentally disabled persons are or
18 may be at risk of abuse or neglect by the accused, the reporting
19 requirement of subsection (1) of this section shall apply.

20 (3) Any other person who has reasonable cause to believe that a
21 child or adult dependent or developmentally disabled person has
22 suffered abuse or neglect may report such incident to the proper law
23 enforcement agency or to the department of social and health services
24 as provided in RCW 26.44.040.

25 (4) The department, upon receiving a report of an incident of abuse
26 or neglect pursuant to this chapter, involving a child or adult
27 dependent or developmentally disabled person who has died or has had
28 physical injury or injuries inflicted upon him or her other than by
29 accidental means or who has been subjected to sexual abuse, shall
30 report such incident to the proper law enforcement agency. In
31 emergency cases, where the child, adult dependent, or developmentally
32 disabled person's welfare is endangered, the department shall notify
33 the proper law enforcement agency within twenty-four hours after a
34 report is received by the department. In all other cases, the
35 department shall notify the law enforcement agency within seventy-two
36 hours after a report is received by the department. If the department
37 makes an oral report, a written report shall also be made to the proper
38 law enforcement agency within five days thereafter.

1 (5) Any law enforcement agency receiving a report of an incident of
2 abuse or neglect pursuant to this chapter, involving a child or adult
3 dependent or developmentally disabled person who has died or has had
4 physical injury or injuries inflicted upon him or her other than by
5 accidental means, or who has been subjected to sexual abuse, shall
6 report such incident in writing as provided in RCW 26.44.040 to the
7 proper county prosecutor or city attorney for appropriate action
8 whenever the law enforcement agency's investigation reveals that a
9 crime may have been committed. The law enforcement agency shall also
10 notify the department of all reports received and the law enforcement
11 agency's disposition of them. In emergency cases, where the child,
12 adult dependent, or developmentally disabled person's welfare is
13 endangered, the law enforcement agency shall notify the department
14 within twenty-four hours. In all other cases, the law enforcement
15 agency shall notify the department within seventy-two hours after a
16 report is received by the law enforcement agency.

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

22 (7) The department may conduct ongoing case planning and
23 consultation with those persons or agencies required to report under
24 this section, with consultants designated by the department, and with
25 designated representatives of Washington Indian tribes if the client
26 information exchanged is pertinent to cases currently receiving child
27 protective services or department case services for the developmentally
28 disabled. Upon request, the department shall conduct such planning and
29 consultation with those persons required to report under this section
30 if the department determines it is in the best interests of the child
31 or developmentally disabled person. Information considered privileged
32 by statute and not directly related to reports required by this section
33 shall not be divulged without a valid written waiver of the privilege.

34 (8) Any case referred to the department by a physician licensed
35 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
36 opinion that child abuse, neglect, or sexual assault has occurred and
37 that the child's safety will be seriously endangered if returned home,
38 the department shall file a dependency petition unless a second
39 licensed physician of the parents' choice believes that such expert

1 medical opinion is incorrect. If the parents fail to designate a
2 second physician, the department may make the selection. If a
3 physician finds that a child has suffered abuse or neglect but that
4 such abuse or neglect does not constitute imminent danger to the
5 child's health or safety, and the department agrees with the
6 physician's assessment, the child may be left in the parents' home
7 while the department proceeds with reasonable efforts to remedy
8 parenting deficiencies.

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

13 (10) Upon receiving reports of abuse or neglect, the department or
14 law enforcement agency may interview children. The interviews may be
15 conducted on school premises, at day-care facilities, at the child's
16 home, or at other suitable locations outside of the presence of
17 parents. Parental notification of the interview shall occur at the
18 earliest possible point in the investigation that will not jeopardize
19 the safety or protection of the child or the course of the
20 investigation. Prior to commencing the interview the department or law
21 enforcement agency shall determine whether the child wishes a third
22 party to be present for the interview and, if so, shall make reasonable
23 efforts to accommodate the child's wishes. Unless the child objects,
24 the department or law enforcement agency shall make reasonable efforts
25 to include a third party in any interview so long as the presence of
26 the third party will not jeopardize the course of the investigation.

27 (11) Upon receiving a report of incidents, conditions, or
28 circumstances of child abuse and neglect, the department shall have
29 access to all relevant records of the child in the possession of
30 mandated reporters and their employees.

31 (12) The department shall maintain investigation records and
32 conduct timely and periodic reviews of all cases constituting abuse and
33 neglect. The department shall maintain a log of screened-out
34 nonabusive cases.

35 (13) The department ~~((of social and health services))~~ shall~~((~~
36 ~~within funds appropriated for this purpose,))~~ use a risk assessment
37 tool when investigating ~~((child))~~ abuse and neglect referrals. ~~((The~~
38 ~~tool shall be used, on a pilot basis, in three local office service~~
39 ~~areas.))~~ The department shall present the risk factors at all relevant

1 judicial proceedings involving the dependency of a child. The
2 department shall, within funds appropriated for this purpose, offer
3 enhanced community-based services to persons who are determined not to
4 require further state intervention.

5 The department shall provide annual reports to the ~~((ways and~~
6 ~~means))~~ appropriate committees of the senate and house of
7 representatives on the ~~((use))~~ effectiveness of the risk assessment
8 tool ~~((by December 1, 1989. The report shall include recommendations~~
9 ~~on the continued use and possible expanded use of the tool))~~.

10 (14) Upon receipt of ~~((such))~~ a report of abuse or neglect the law
11 enforcement agency may arrange to interview the person making the
12 report and any collateral sources to determine if any malice is
13 involved in the reporting.

14 **Sec. 13.** RCW 26.44.040 and 1987 c 206 s 4 are each amended to read
15 as follows:

16 An immediate oral report shall be made by telephone or otherwise to
17 the proper law enforcement agency or the department of social and
18 health services and, upon request, shall be followed by a report in
19 writing. Such reports shall contain the following information, if
20 known:

21 (1) The name, address, and age of the child or adult dependent or
22 developmentally disabled person;

23 (2) The name and address of the child's parents, stepparents,
24 guardians, or other persons having custody of the child or the
25 residence of the adult dependent or developmentally disabled person;

26 (3) The nature and extent of the injury or injuries;

27 (4) The nature and extent of the neglect;

28 (5) The nature and extent of the sexual abuse;

29 (6) Any evidence of previous injuries, including their nature and
30 extent; and

31 (7) Any other information which may be helpful in establishing the
32 cause of the child's or adult dependent or developmentally disabled
33 person's death, injury, or injuries and the identity of the alleged
34 perpetrator or perpetrators.

35 **Sec. 14.** RCW 26.44.063 and 1988 c 190 s 3 are each amended to read
36 as follows:

1 (1) It is the intent of the legislature to minimize trauma to a
2 child involved in an allegation of sexual or physical abuse. The
3 legislature declares that removing the child from the home often has
4 the effect of further traumatizing the child. It is, therefore, the
5 legislature's intent that the alleged offender, rather than the child,
6 shall be removed from the home and that this should be done at the
7 earliest possible point of intervention in accordance with RCW
8 10.31.100, 13.34.130, this section, and RCW 26.44.130.

9 (2) In any judicial proceeding in which it is alleged that a child
10 has been subjected to sexual or physical abuse, if the court finds
11 reasonable grounds to believe that an incident of sexual or physical
12 abuse has occurred, the court may, on its own motion, or the motion of
13 the guardian ad litem or other parties, issue a temporary restraining
14 order or preliminary injunction restraining or enjoining the person
15 accused of committing the abuse from:

16 (a) Molesting or disturbing the peace of the alleged victim;

17 (b) Entering the family home of the alleged victim except as
18 specifically authorized by the court; or

19 (c) Having any contact with the alleged victim, except as
20 specifically authorized by the court.

21 (3) In issuing a temporary restraining order or preliminary
22 injunction, the court may impose any additional restrictions that the
23 court in its discretion determines are necessary to protect the child
24 from further abuse or emotional trauma pending final resolution of the
25 abuse allegations.

26 (4) The court shall issue a temporary restraining order prohibiting
27 a person from entering the family home if the court finds that the
28 order would eliminate the need for an out-of-home placement to protect
29 the child's right to nurturance, health, and safety and is sufficient
30 to protect the child from further sexual or physical abuse or coercion.

31 (5) The court may issue a temporary restraining order without
32 requiring notice to the party to be restrained or other parties only if
33 it finds on the basis of the moving affidavit or other evidence that
34 irreparable injury could result if an order is not issued until the
35 time for responding has elapsed.

36 (6) A temporary restraining order or preliminary injunction:

37 (a) Does not prejudice the rights of a party or any child which are
38 to be adjudicated at subsequent hearings in the proceeding; and

39 (b) May be revoked or modified.

1 (7) The person having physical custody of the child shall have an
2 affirmative duty to assist in the enforcement of the restraining order
3 including but not limited to a duty to notify the court as soon as
4 practicable of any violation of the order, a duty to request the
5 assistance of law enforcement officers to enforce the order, and a duty
6 to notify the department of social and health services of any violation
7 of the order as soon as practicable if the department is a party to the
8 action. Failure by the custodial party to discharge these affirmative
9 duties shall be subject to contempt proceedings.

10 (8) Willful violation of a court order entered under this section
11 is a misdemeanor. A written order shall contain the court's directive
12 and shall bear the legend: "Violation of this order with actual notice
13 of its terms is a criminal offense under chapter 26.44 RCW, is also
14 subject to contempt proceedings, and will subject a violator to
15 arrest."

16 **Sec. 15.** RCW 26.44.067 and 1989 c 373 s 23 are each amended to
17 read as follows:

18 (1) Any person having had actual notice of the existence of a
19 restraining order issued by a court of competent jurisdiction pursuant
20 to RCW 26.44.063 who refuses to comply with the provisions of such
21 order (~~(when requested by any peace officer of the state)~~) shall be
22 guilty of a misdemeanor.

23 (2) The notice requirements of subsection (1) of this section may
24 be satisfied by the peace officer giving oral or written evidence to
25 the person subject to the order by reading from or handing to that
26 person a copy certified by a notary public or the clerk of the court to
27 be an accurate copy of the original court order which is on file. The
28 copy may be supplied by the court or any party.

29 (3) The remedies provided in this section shall not apply unless
30 restraining orders subject to this section shall bear this legend:
31 VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL
32 OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT
33 PROCEEDINGS.

34 (4) It is a defense to prosecution under subsection (1) of this
35 section that the court order was issued contrary to law or court rule.
36 No right of action shall accrue against any peace officer acting upon
37 a properly certified copy of a court order lawful on its face if such
38 officer employs otherwise lawful means to effect the arrest.

1 **Sec. 16.** RCW 26.44.100 and 1985 c 183 s 1 are each amended to read
2 as follows:

3 The legislature finds parents and children often are not aware of
4 their due process rights when agencies are investigating allegations of
5 child abuse and neglect. The legislature reaffirms that all citizens,
6 including parents, shall be afforded due process, that protection of
7 children remains the priority of the legislature, and that this
8 protection includes protecting the family unit from unnecessary
9 disruption. To facilitate this goal, the legislature wishes to ensure
10 that parents and children be advised in writing and orally, if
11 feasible, of their basic rights and other specific information as set
12 forth in this ((aet)) chapter, provided that nothing contained in this
13 ((aet)) chapter shall cause any delay in protective custody action.

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