
HOUSE BILL 2597

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By Representatives Dickerson, Kagi, Darneille, Pettigrew, Kenney, Ruderman, Kirby and Chase

Read first time 01/16/2004. Referred to Committee on Children & Family Services.

1 AN ACT Relating to the duty of a member of the clergy to report
2 sexual abuse of a child; and amending RCW 26.44.020 and 26.44.030.

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

4 **Sec. 1.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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 podiatric medicine and
15 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
16 medicine and surgery, or medicine and surgery or to provide other
17 health services. The term "practitioner" includes a duly accredited
18 Christian Science practitioner: PROVIDED, HOWEVER, That a person who

1 is being furnished Christian Science treatment by a duly accredited
2 Christian Science practitioner will not be considered, for that reason
3 alone, a neglected person for the purposes of this chapter.

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

6 (5) "Department" means the state department of social and health
7 services.

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

10 (7) "Professional school personnel" include, but are not limited
11 to, teachers, counselors, administrators, child care facility
12 personnel, and school nurses.

13 (8) "Social service counselor" means anyone engaged in a
14 professional capacity during the regular course of employment in
15 encouraging or promoting the health, welfare, support or education of
16 children, or providing social services to adults or families, including
17 mental health, drug and alcohol treatment, and domestic violence
18 programs, whether in an individual capacity, or as an employee or agent
19 of any public or private organization or institution.

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

24 (10) "Pharmacist" means any registered pharmacist under chapter
25 18.64 RCW, whether acting in an individual capacity or as an employee
26 or agent of any public or private organization or institution.

27 (11) "Member of the clergy" means any regularly licensed,
28 accredited, or ordained minister, priest, ((~~or~~)) rabbi, imam, similarly
29 situated religious or spiritual leader of any church ((~~or~~)), religious
30 denomination, religious body, spiritual community, or sect, or person
31 performing official duties that are recognized as the duties of a
32 member of the clergy under the discipline, tenets, doctrine, or custom
33 of the person's church, religious denomination, religious body,
34 spiritual community, or sect, whether acting in an individual capacity
35 or as an employee ((~~or~~)), agent, or official of any public or private
36 organization or institution.

37 (12) "Abuse or neglect" means the injury, sexual abuse, sexual
38 exploitation, negligent treatment, or maltreatment of a child by any

1 person under circumstances which indicate that the child's health,
2 welfare, and safety is harmed, excluding conduct permitted under RCW
3 9A.16.100. An abused child is a child who has been subjected to child
4 abuse or neglect as defined in this section.

5 (13) "Child protective services section" means the child protective
6 services section of the department.

7 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
8 encouraging a child to engage in prostitution by any person; or (b)
9 allowing, permitting, encouraging, or engaging in the obscene or
10 pornographic photographing, filming, or depicting of a child by any
11 person.

12 (15) "Negligent treatment or maltreatment" means an act or omission
13 that evidences a serious disregard of consequences of such magnitude as
14 to constitute a clear and present danger to the child's health,
15 welfare, and safety. The fact that siblings share a bedroom is not, in
16 and of itself, negligent treatment or maltreatment.

17 (16) "Child protective services" means those services provided by
18 the department designed to protect children from child abuse and
19 neglect and safeguard such children from future abuse and neglect, and
20 conduct investigations of child abuse and neglect reports.
21 Investigations may be conducted regardless of the location of the
22 alleged abuse or neglect. Child protective services includes referral
23 to services to ameliorate conditions that endanger the welfare of
24 children, the coordination of necessary programs and services relevant
25 to the prevention, intervention, and treatment of child abuse and
26 neglect, and services to children to ensure that each child has a
27 permanent home. In determining whether protective services should be
28 provided, the department shall not decline to provide such services
29 solely because of the child's unwillingness or developmental inability
30 to describe the nature and severity of the abuse or neglect.

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

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

1 (19) "Unfounded" means available information indicates that, more
2 likely than not, child abuse or neglect did not occur. No unfounded
3 allegation of child abuse or neglect may be disclosed to a child-
4 placing agency, private adoption agency, or any other provider licensed
5 under chapter 74.15 RCW.

6 **Sec. 2.** RCW 26.44.030 and 2003 c 207 s 4 are each amended to read
7 as follows:

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

19 (b) When any member of the clergy has reasonable cause to believe
20 that a child has suffered sexual abuse and the perpetrator is a member
21 of the clergy or an employee of the church or religious organization,
22 he or she shall report such incident, or cause a report to be made, to
23 the proper law enforcement agency or to the department as provided in
24 RCW 26.44.040.

25 (c) The reporting requirement also applies to department of
26 corrections personnel who, in the course of their employment, observe
27 offenders or the children with whom the offenders are in contact. If,
28 as a result of observations or information received in the course of
29 his or her employment, any department of corrections personnel has
30 reasonable cause to believe that a child has suffered abuse or neglect,
31 he or she shall report the incident, or cause a report to be made, to
32 the proper law enforcement agency or to the department as provided in
33 RCW 26.44.040.

34 ((+e+)) (d) The reporting requirement shall also apply to any adult
35 who has reasonable cause to believe that a child who resides with them,
36 has suffered severe abuse, and is able or capable of making a report.
37 For the purposes of this subsection, "severe abuse" means any of the

1 following: Any single act of abuse that causes physical trauma of
2 sufficient severity that, if left untreated, could cause death; any
3 single act of sexual abuse that causes significant bleeding, deep
4 bruising, or significant external or internal swelling; or more than
5 one act of physical abuse, each of which causes bleeding, deep
6 bruising, significant external or internal swelling, bone fracture, or
7 unconsciousness.

8 ~~((d))~~ (e) The report must be made at the first opportunity, but
9 in no case longer than forty-eight hours after there is reasonable
10 cause to believe that the child has suffered abuse or neglect. The
11 report must include the identity of the accused if known.

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

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

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

35 (5) Any law enforcement agency receiving a report of an incident of
36 alleged abuse or neglect pursuant to this chapter, involving a child
37 who has died or has had physical injury or injuries inflicted upon him
38 or her other than by accidental means, or who has been subjected to

1 alleged sexual abuse, shall report such incident in writing as provided
2 in RCW 26.44.040 to the proper county prosecutor or city attorney for
3 appropriate action whenever the law enforcement agency's investigation
4 reveals that a crime may have been committed. The law enforcement
5 agency shall also notify the department of all reports received and the
6 law enforcement agency's disposition of them. In emergency cases,
7 where the child's welfare is endangered, the law enforcement agency
8 shall notify the department within twenty-four hours. In all other
9 cases, the law enforcement agency shall notify the department within
10 seventy-two hours after a report is received by the law enforcement
11 agency.

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

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

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

1 physician's assessment, the child may be left in the parents' home
2 while the department proceeds with reasonable efforts to remedy
3 parenting deficiencies.

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

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

22 (11) Upon receiving a report of alleged child abuse and neglect,
23 the department or investigating law enforcement agency shall have
24 access to all relevant records of the child in the possession of
25 mandated reporters and their employees.

26 (12) The department shall maintain investigation records and
27 conduct timely and periodic reviews of all cases constituting abuse and
28 neglect. The department shall maintain a log of screened-out
29 nonabusive cases.

30 (13) 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 the
33 placement of a dependent child is an issue. Substance abuse must be a
34 risk factor. The department shall, within funds appropriated for this
35 purpose, offer enhanced community-based services to persons who are
36 determined not to require further state intervention.

37 (14) Upon receipt of a report of alleged abuse or neglect the law

1 enforcement agency may arrange to interview the person making the
2 report and any collateral sources to determine if any malice is
3 involved in the reporting.

4 (15) The department shall make reasonable efforts to learn the
5 name, address, and telephone number of each person making a report of
6 abuse or neglect under this section. The department shall provide
7 assurances of appropriate confidentiality of the identification of
8 persons reporting under this section. If the department is unable to
9 learn the information required under this subsection, the department
10 shall only investigate cases in which: (a) The department believes
11 there is a serious threat of substantial harm to the child; (b) the
12 report indicates conduct involving a criminal offense that has, or is
13 about to occur, in which the child is the victim; or (c) the department
14 has, after investigation, a report of abuse or neglect that has been
15 founded with regard to a member of the household within three years of
16 receipt of the referral.

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