
SENATE BILL 5971

State of Washington 62nd Legislature 2011 2nd Special Session

By Senators Carrell, Stevens, and Swecker

Read first time 12/02/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to mandatory reporting of child abuse or neglect by
2 supervised persons; amending RCW 26.44.030; adding a new section to
3 chapter 26.44 RCW; prescribing penalties; and providing an effective
4 date.

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

6 **Sec. 1.** RCW 26.44.030 and 2009 c 480 s 1 are each amended to read
7 as follows:

8 (1) A person is required to make a report of child abuse or neglect
9 to the proper law enforcement agency or to the department as provided
10 in RCW 26.44.040, if:

11 (a) (~~When any~~) The practitioner, county coroner or medical
12 examiner, law enforcement officer, professional school personnel,
13 registered or licensed nurse, social service counselor, psychologist,
14 pharmacist, employee of the department of early learning, licensed or
15 certified child care providers or their employees, employee of the
16 department, juvenile probation officer, placement and liaison
17 specialist, responsible living skills program staff, HOPE center staff,
18 or state family and children's ombudsman or (~~any~~) volunteer in the
19 ombudsman's office has reasonable cause to believe that a child has

1 suffered abuse or neglect(~~(, he or she shall report such incident, or~~
2 ~~cause a report to be made, to the proper law enforcement agency or to~~
3 ~~the department as provided in RCW 26.44.040)~~).

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

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

19 For the purposes of this subsection, the following definitions
20 apply:

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

27 (ii) "Regularly exercises supervisory authority" means to act in
28 his or her official supervisory capacity on an ongoing or continuing
29 basis with regards to a particular person.

30 (c) ~~The reporting requirement also applies to)~~ The person is an
31 employee of the department of corrections (~~(personnel)~~) who, in the
32 course of (~~(their)~~) his or her employment, observes offenders or the
33 children with whom the offenders are in contact(~~(. If)~~) and, as a
34 result of observations or information received in the course of his or
35 her employment, (~~(any department of corrections personnel)~~) has
36 reasonable cause to believe that a child has suffered abuse or
37 neglect(~~(, he or she shall report the incident, or cause a report to be~~

1 made, to the proper law enforcement agency or to the department as
2 provided in RCW 26.44.040)).

3 ~~((d) The reporting requirement shall also apply to any))~~ (c) The
4 person is an adult who has reasonable cause to believe that a child who
5 resides with them, has suffered severe abuse, and is able or capable of
6 making a report. For the purposes of this subsection, "severe abuse"
7 means any of the following: Any single act of abuse that causes
8 physical trauma of sufficient severity that, if left untreated, could
9 cause death; any single act of sexual abuse that causes significant
10 bleeding, deep bruising, or significant external or internal swelling;
11 or more than one act of physical abuse, each of which causes bleeding,
12 deep bruising, significant external or internal swelling, bone
13 fracture, or unconsciousness.

14 ~~((e) The reporting requirement also applies to guardians ad litem,~~
15 ~~including court appointed special advocates, appointed under Titles 11,~~
16 ~~13, and 26 RCW, who in the course of their representation of children~~
17 ~~in these actions have reasonable cause to believe a child has been~~
18 ~~abused or neglected.~~

19 ~~(f) The))~~ (2)(a) A person is required to make a report of child
20 abuse or neglect to the proper law enforcement agency if the person, in
21 his or her official supervisory capacity with an organization or
22 entity, has reasonable cause to believe that a child has suffered abuse
23 or neglect caused by a person over whom he or she regularly exercises
24 supervisory authority, provided that the person alleged to have caused
25 the abuse or neglect is employed by, contracted by, or volunteers with
26 the organization or entity and coaches, trains, educates, or counsels
27 a child or children or regularly has unsupervised access to a child or
28 children as part of the employment, contract, or voluntary service.

29 (b) A person has reasonable cause to believe a child has suffered
30 abuse or neglect under this subsection if he or she witnesses or
31 receives a written or oral report of sexual misconduct by a person over
32 whom he or she regularly exercises supervisory authority which is
33 alleged to have caused the abuse or neglect of a child.

34 (c) No one shall be required to report under this section when he
35 or she obtains the information solely as a result of a privileged
36 communication as provided in RCW 5.60.060.

37 (d) Nothing in this subsection shall limit a person's duty to
38 report under subsection (1) of this section.

1 (e) For the purposes of this subsection, the following definitions
2 apply:

3 (i) "Official supervisory capacity" means a position, status, or
4 role created, recognized, or designated by any organization or entity,
5 either for financial gain or without financial gain, whose scope
6 includes, but is not limited to, overseeing, directing, or managing
7 another person who is employed by, contracted by, or volunteers with
8 the organization or entity.

9 (ii) "Organization or entity" includes a sole proprietor,
10 partnership, corporation, limited liability company, trust,
11 association, financial institution, governmental entity, other than the
12 federal government, and any other individual or group, engaged in a
13 trade, occupation, enterprise, governmental function, or similar
14 activity in this state, however organized and whether organized to
15 operate at a profit.

16 (iii) "Regularly exercises supervisory authority" means to act in
17 his or her official supervisory capacity on an ongoing or continuing
18 basis with regards to a particular person.

19 (iv) "Sexual misconduct" means:

20 (A) Any sexual advance, whether verbal, written, or physical;

21 (B) Sexual intercourse, as defined in RCW 9A.44.010;

22 (C) The intentional touching of the sexual or other intimate parts
23 of a child except to the extent necessary and appropriate to attend to
24 the hygienic or health needs of the child;

25 (D) Any activities determined to be grooming behavior for purposes
26 of establishing a sexual relationship;

27 (E) Indecent exposure, as defined in RCW 9A.88.010; or

28 (F) Commission of a criminal sex offense as defined under chapter
29 9A.44 RCW.

30 (3) A report under this section must be made at the first
31 opportunity, but in no case longer than forty-eight hours after there
32 is reasonable cause to believe that the child has suffered abuse or
33 neglect. The report must include the identity of the accused if known.

34 ((+2)) (4) The reporting requirement ((of subsection (1) of this
35 section)) does not apply to the discovery of abuse or neglect that
36 occurred during childhood if it is discovered after the child has
37 become an adult. However, if there is reasonable cause to believe

1 other children are or may be at risk of abuse or neglect by the
2 accused, (~~the reporting requirement of subsection (1) of this section~~
3 ~~does apply~~) a report must be made.

4 ~~((3))~~ (5) Any other person who has reasonable cause to believe
5 that a child has suffered abuse or neglect may report such incident to
6 the proper law enforcement agency or to the department of social and
7 health services as provided in RCW 26.44.040.

8 ~~((4) The department, upon receiving a report of an incident of~~
9 ~~alleged abuse or neglect pursuant to this chapter, involving a child~~
10 ~~who has died or has had physical injury or injuries inflicted upon him~~
11 ~~or her other than by accidental means or who has been subjected to~~
12 ~~alleged sexual abuse, shall report such incident to the proper law~~
13 ~~enforcement agency. In emergency cases, where the child's welfare is~~
14 ~~endangered, the department shall notify the proper law enforcement~~
15 ~~agency within twenty four hours after a report is received by the~~
16 ~~department. In all other cases, the department shall notify the law~~
17 ~~enforcement agency within seventy two hours after a report is received~~
18 ~~by the department. If the department makes an oral report, a written~~
19 ~~report must also be made to the proper law enforcement agency within~~
20 ~~five days thereafter.~~

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

36 (6) Any county prosecutor or city attorney receiving a report under
37 subsection (5) of this section shall notify the victim, any persons the

1 victim requests, and the local office of the department, of the
2 decision to charge or decline to charge a crime, within five days of
3 making the decision.

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

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

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

33 (10) Upon receiving a report of alleged abuse or neglect, the
34 department shall make reasonable efforts to learn the name, address,
35 and telephone number of each person making a report of abuse or neglect
36 under this section. The department shall provide assurances of
37 appropriate confidentiality of the identification of persons reporting

1 under this section. If the department is unable to learn the
2 information required under this subsection, the department shall only
3 investigate cases in which:

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

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

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

11 (11)(a) For reports of alleged abuse or neglect that are accepted
12 for investigation by the department, the investigation shall be
13 conducted within time frames established by the department in rule. In
14 no case shall the investigation extend longer than ninety days from the
15 date the report is received, unless the investigation is being
16 conducted under a written protocol pursuant to RCW 26.44.180 and a law
17 enforcement agency or prosecuting attorney has determined that a longer
18 investigation period is necessary. At the completion of the
19 investigation, the department shall make a finding that the report of
20 child abuse or neglect is founded or unfounded.

21 (b) If a court in a civil or criminal proceeding, considering the
22 same facts or circumstances as are contained in the report being
23 investigated by the department, makes a judicial finding by a
24 preponderance of the evidence or higher that the subject of the pending
25 investigation has abused or neglected the child, the department shall
26 adopt the finding in its investigation.

27 (12) In conducting an investigation of alleged abuse or neglect,
28 the department or law enforcement agency:

29 (a) May interview children. The interviews may be conducted on
30 school premises, at day care facilities, at the child's home, or at
31 other suitable locations outside of the presence of parents. Parental
32 notification of the interview must occur at the earliest possible point
33 in the investigation that will not jeopardize the safety or protection
34 of the child or the course of the investigation. Prior to commencing
35 the interview the department or law enforcement agency shall determine
36 whether the child wishes a third party to be present for the interview
37 and, if so, shall make reasonable efforts to accommodate the child's
38 wishes. Unless the child objects, the department or law enforcement

1 agency shall make reasonable efforts to include a third party in any
2 interview so long as the presence of the third party will not
3 jeopardize the course of the investigation; and

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

6 (13) If a report of alleged abuse or neglect is founded and
7 constitutes the third founded report received by the department within
8 the last twelve months involving the same child or family, the
9 department shall promptly notify the office of the family and
10 children's ombudsman of the contents of the report. The department
11 shall also notify the ombudsman of the disposition of the report.

12 (14) In investigating and responding to allegations of child abuse
13 and neglect, the department may conduct background checks as authorized
14 by state and federal law.

15 (15) The department shall maintain investigation records and
16 conduct timely and periodic reviews of all founded cases of abuse and
17 neglect. The department shall maintain a log of screened-out
18 nonabusive cases.

19 (16) The department shall use a risk assessment process when
20 investigating alleged child abuse and neglect referrals. The
21 department shall present the risk factors at all hearings in which the
22 placement of a dependent child is an issue. Substance abuse must be a
23 risk factor. The department shall, within funds appropriated for this
24 purpose, offer enhanced community based services to persons who are
25 determined not to require further state intervention.

26 (17) Upon receipt of a report of alleged abuse or neglect the law
27 enforcement agency may arrange to interview the person making the
28 report and any collateral sources to determine if any malice is
29 involved in the reporting.

30 (18) Upon receiving a report of alleged abuse or neglect involving
31 a child under the court's jurisdiction under chapter 13.34 RCW, the
32 department shall promptly notify the child's guardian ad litem of the
33 report's contents. The department shall also notify the guardian ad
34 litem of the disposition of the report. For purposes of this
35 subsection, "guardian ad litem" has the meaning provided in RCW
36 13.34.030.))

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW
2 to read as follows:

3 (1) The department, upon receiving a report of an incident of
4 alleged abuse or neglect pursuant to this chapter, involving a child
5 who has died or has had physical injury or injuries inflicted upon him
6 or her other than by accidental means or who has been subjected to
7 alleged sexual abuse, shall report such incident to the proper law
8 enforcement agency. In emergency cases, where the child's welfare is
9 endangered, the department shall notify the proper law enforcement
10 agency within twenty-four hours after a report is received by the
11 department. In all other cases, the department shall notify the law
12 enforcement agency within seventy-two hours after a report is received
13 by the department. If the department makes an oral report, a written
14 report must also be made to the proper law enforcement agency within
15 five days thereafter.

16 (2) Any law enforcement agency 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 him
19 or her other than by accidental means, or who has been subjected to
20 alleged sexual abuse, shall report such incident in writing as provided
21 in RCW 26.44.040 to the proper county prosecutor or city attorney for
22 appropriate action whenever the law enforcement agency's investigation
23 reveals that a crime may have been committed. The law enforcement
24 agency shall also notify the department of all reports received and the
25 law enforcement agency's disposition of them. In emergency cases,
26 where the child's welfare is endangered, the law enforcement agency
27 shall notify the department within twenty-four hours. In all other
28 cases, the law enforcement agency shall notify the department within
29 seventy-two hours after a report is received by the law enforcement
30 agency.

31 (3) Any county prosecutor or city attorney receiving a report under
32 subsection (2) of this section shall notify the victim, any persons the
33 victim requests, and the local office of the department, of the
34 decision to charge or decline to charge a crime, within five days of
35 making the decision.

36 (4) The department may conduct ongoing case planning and
37 consultation with those persons or agencies required to report under
38 this section, with consultants designated by the department, and with

1 designated representatives of Washington Indian tribes if the client
2 information exchanged is pertinent to cases currently receiving child
3 protective services. Upon request, the department shall conduct such
4 planning and consultation with those persons required to report under
5 this section if the department determines it is in the best interests
6 of the child. Information considered privileged by statute and not
7 directly related to reports required by this section must not be
8 divulged without a valid written waiver of the privilege.

9 (5) Any case referred to the department by a physician licensed
10 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
11 opinion that child abuse, neglect, or sexual assault has occurred and
12 that the child's safety will be seriously endangered if returned home,
13 the department shall file a dependency petition unless a second
14 licensed physician of the parents' choice believes that such expert
15 medical opinion is incorrect. If the parents fail to designate a
16 second physician, the department may make the selection. If a
17 physician finds that a child has suffered abuse or neglect but that
18 such abuse or neglect does not constitute imminent danger to the
19 child's health or safety, and the department agrees with the
20 physician's assessment, the child may be left in the parents' home
21 while the department proceeds with reasonable efforts to remedy
22 parenting deficiencies.

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

27 (7) Upon receiving a report of alleged abuse or neglect, the
28 department shall make reasonable efforts to learn the name, address,
29 and telephone number of each person making a report of abuse or neglect
30 under this section. The department shall provide assurances of
31 appropriate confidentiality of the identification of persons reporting
32 under this section. If the department is unable to learn the
33 information required under this subsection, the department shall only
34 investigate cases in which:

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

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

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

4 (8)(a) For reports of alleged abuse or neglect that are accepted
5 for investigation by the department, the investigation shall be
6 conducted within time frames established by the department in rule. In
7 no case shall the investigation extend longer than ninety days from the
8 date the report is received, unless the investigation is being
9 conducted under a written protocol pursuant to RCW 26.44.180 and a law
10 enforcement agency or prosecuting attorney has determined that a longer
11 investigation period is necessary. At the completion of the
12 investigation, the department shall make a finding that the report of
13 child abuse or neglect is founded or unfounded.

14 (b) If a court in a civil or criminal proceeding, considering the
15 same facts or circumstances as are contained in the report being
16 investigated by the department, makes a judicial finding by a
17 preponderance of the evidence or higher that the subject of the pending
18 investigation has abused or neglected the child, the department shall
19 adopt the finding in its investigation.

20 (9) In conducting an investigation of alleged abuse or neglect, the
21 department or law enforcement agency:

22 (a) May interview children. The interviews may be conducted on
23 school premises, at day care facilities, at the child's home, or at
24 other suitable locations outside of the presence of parents. Parental
25 notification of the interview must occur at the earliest possible point
26 in the investigation that will not jeopardize the safety or protection
27 of the child or the course of the investigation. Prior to commencing
28 the interview, the department or law enforcement agency shall determine
29 whether the child wishes a third party to be present for the interview
30 and, if so, shall make reasonable efforts to accommodate the child's
31 wishes. Unless the child objects, the department or law enforcement
32 agency shall make reasonable efforts to include a third party in any
33 interview so long as the presence of the third party will not
34 jeopardize the course of the investigation; and

35 (b) Shall have access to all relevant records of the child in the
36 possession of mandated reporters and their employees.

37 (10) In investigating and responding to allegations of child abuse

1 and neglect, the department may conduct background checks as authorized
2 by state and federal law.

3 (11) The department shall maintain investigation records and
4 conduct timely and periodic reviews of all founded cases of abuse and
5 neglect. The department shall maintain a log of screened-out
6 nonabusive cases.

7 (12) The department shall use a risk assessment process when
8 investigating alleged child abuse and neglect referrals. The
9 department shall present the risk factors at all hearings in which the
10 placement of a dependent child is an issue. Substance abuse must be a
11 risk factor. The department shall, within funds appropriated for this
12 purpose, offer enhanced community-based services to persons who are
13 determined not to require further state intervention.

14 (13) Upon receipt of a report of alleged abuse or neglect, the law
15 enforcement agency may arrange to interview the person making the
16 report and any collateral sources to determine if any malice is
17 involved in the reporting.

18 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2012.

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