SENATE BILL 5991

State of Washington  62nd Legislature  2011 2nd Special Session

By Senators Kohl-Welles, Carrell, Tom, Hill, Hargrove, Conway, Haugen, Fraser, Litzow, Kline, Fain, Roach, and Frockt

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

1 AN ACT Relating to reporting child abuse or neglect; amending RCW 26.44.030; and adding a new section to chapter 28B.10 RCW.

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

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

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

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to
believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060. Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

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

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

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

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

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

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

(f) The reporting requirement in (a) of this subsection also 
applies to administrative and academic or athletic department 
employees, including student employees, of institutions of higher 
education, as defined in RCW 28B.10.016, and of private institutions of 
higher education, who, through observations made or information 
received during the course of their employment, have reasonable cause 
to believe that a child has suffered abuse or neglect.

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

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

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

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

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

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

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.
Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

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

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

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

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

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

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

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

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

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

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

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

(14) In investigating and responding to allegations of child abuse
and neglect, the department may conduct background checks as authorized
by state and federal law.
The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

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

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

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

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1)(a) All employees of institutions of higher education, not considered academic or athletic department employees, who, through observations made or information received during the course of their employment, have reasonable cause to believe a child has suffered abuse or neglect, must report such abuse or neglect immediately to the appropriate administrator or supervisor, as designated by the institution. The administrator or supervisor to whom the report was made, if not already a mandatory reporter under RCW 26.44.030, must report the abuse or neglect within forty-eight hours to a mandatory reporter designated by the institution for this purpose.

(b) For purposes of this section, "child" has the same meaning as in RCW 26.44.020(2).
(c) For purposes of this section, "abuse or neglect" has the same meaning as in RCW 26.44.020(1).

(2) Institutions of higher education must ensure that the employees covered by the provisions of RCW 26.44.030 and subsection (1)(a) of this section have knowledge of their reporting responsibilities through whatever means are most likely to succeed in providing this information to affected employees.

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