
SENATE BILL 6236

State of Washington

60th Legislature

2008 Regular Session

By Senator Carrell

Read first time 01/14/08. Referred to Committee on Human Services & Corrections.

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

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

6 **Sec. 1.** RCW 26.44.030 and 2007 c 387 s 3 and 2007 c 220 s 2 are
7 each reenacted and amended to read 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 and 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))~~ (2)(a) A person is required to make a report of child
15 abuse or neglect to the proper law enforcement agency if the person, in
16 his or her official supervisory capacity with an organization or
17 entity, has reasonable cause to believe that a child has suffered abuse
18 or neglect caused by a person over whom he or she regularly exercises
19 supervisory authority, provided that the person alleged to have caused
20 the abuse or neglect is employed by, contracted by, or volunteers with
21 the organization or entity and coaches, trains, educates, or counsels
22 a child or children or regularly has unsupervised access to a child or
23 children as part of the employment, contract, or voluntary service.

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

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

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

34 (e) For the purposes of this subsection, the following definitions
35 apply:

36 (i) "Official supervisory capacity" means a position, status, or
37 role created, recognized, or designated by any organization or entity,
38 either for financial gain or without financial gain, whose scope

1 includes, but is not limited to, overseeing, directing, or managing
2 another person who is employed by, contracted by, or volunteers with
3 the organization or entity.

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

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

14 (iv) "Sexual misconduct" means:

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

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

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

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

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

23 (F) Commission of a criminal sex offense as defined under chapter
24 9A.44 RCW.

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

29 ~~((+2))~~ (4) The reporting requirement ~~((of subsection (1) of this~~
30 ~~section))~~ does not apply to the discovery of abuse or neglect that
31 occurred during childhood if it is discovered after the child has
32 become an adult. However, if there is reasonable cause to believe
33 other children are or may be at risk of abuse or neglect by the
34 accused, ((the reporting requirement of subsection (1) of this section
35 does apply)) a report must be made.

36 ~~((+3))~~ (5) Any other person who has reasonable cause to believe
37 that a child has suffered abuse or neglect may report such incident to

1 the proper law enforcement agency or to the department of social and
2 health services as provided in RCW 26.44.040.

3 ~~((4) 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 ~~(5) 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 ~~(6) Any county prosecutor or city attorney receiving a report under
32 subsection (5) 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 ~~(7) 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 ~~(8) 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 ~~(9) Persons or agencies exchanging information under subsection (7)~~
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 ~~(10) 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 ~~(11)(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 ~~(12) In conducting an investigation of alleged abuse or neglect,~~
21 ~~the 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 ~~(13) 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 ~~(14) 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 ~~(15) 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 ~~(16) 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. 2.** A new section is added to chapter 26.44 RCW
19 to read as follows:

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

33 (2) Any law enforcement agency receiving a report of an incident of
34 alleged abuse or neglect pursuant to this chapter, involving a child
35 who has died or has had physical injury or injuries inflicted upon him
36 or her other than by accidental means, or who has been subjected to
37 alleged sexual abuse, shall report such incident in writing as provided

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

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

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

27 (5) Any case referred to the department by a physician licensed
28 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
29 opinion that child abuse, neglect, or sexual assault has occurred and
30 that the child's safety will be seriously endangered if returned home,
31 the department shall file a dependency petition unless a second
32 licensed physician of the parents' choice believes that such expert
33 medical opinion is incorrect. If the parents fail to designate a
34 second physician, the department may make the selection. If a
35 physician finds that a child has suffered abuse or neglect but that
36 such abuse or neglect does not constitute imminent danger to the
37 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 (6) Persons or agencies exchanging information under subsection (4)
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 (7) Upon receiving a report of alleged abuse or neglect, the
9 department shall make reasonable efforts to learn the name, address,
10 and telephone number of each person making a report of abuse or neglect
11 under this section. The department shall provide assurances of
12 appropriate confidentiality of the identification of persons reporting
13 under this section. If the department is unable to learn the
14 information required under this subsection, the department shall only
15 investigate cases in which:

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

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

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

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

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

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

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

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

18 (10) In investigating and responding to allegations of child abuse
19 and neglect, the department may conduct background checks as authorized
20 by state and federal law.

21 (11) The department shall maintain investigation records and
22 conduct timely and periodic reviews of all founded cases of abuse and
23 neglect. The department shall maintain a log of screened-out
24 nonabusive cases.

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

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

1 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2008.

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