
SENATE BILL 5173

State of Washington

66th Legislature

2019 Regular Session

By Senators O'Ban, Honeyford, and Wagoner

1 AN ACT Relating to mandatory reporting of child abuse and
2 neglect; amending RCW 26.44.080 and 26.44.030; prescribing penalties;
3 providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 26.44.080 and 1982 c 129 s 10 are each amended to
6 read as follows:

7 (1)(a) Every person who is required to make, or to cause to be
8 made, a report pursuant to RCW 26.44.030 and 26.44.040, and who
9 knowingly fails to make, or knowingly fails to cause to be made, such
10 report, shall be guilty of a ((gross)) misdemeanor.

11 (b) Any person who knowingly obstructs the duty of a mandatory
12 reporter to make a report pursuant to RCW 26.44.030 and 26.44.040
13 shall be guilty of a gross misdemeanor. It is not obstruction for an
14 advisor, supervisor, or legal counsel to provide guidance to a
15 mandatory reporter in a good faith effort to help the mandatory
16 reporter ascertain his or her duties under the law.

17 (2) A class 1 civil infraction may be issued pursuant to chapter
18 7.80 RCW to any person who is required to make, or to cause to be
19 made, a report pursuant to RCW 26.44.030 and 26.44.040, and fails to
20 make, or fails to cause to be made, such report, due to negligence,

1 which shall be served by a notice of infraction in accordance with
2 infraction rules included in chapter 7.80 RCW.

3 **Sec. 2.** RCW 26.44.030 and 2018 c 77 s 1 are each amended to read
4 as follows:

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

18 (b) When any person, in his or her official supervisory capacity
19 with a nonprofit or for-profit organization, has reasonable cause to
20 believe that a child has suffered abuse or neglect caused by a person
21 over whom he or she regularly exercises supervisory authority, he or
22 she shall report such incident, or cause a report to be made, to the
23 proper law enforcement agency, provided that the person alleged to
24 have caused the abuse or neglect is employed by, contracted by, or
25 volunteers with the organization and coaches, trains, educates, or
26 counsels a child or children or regularly has unsupervised access to
27 a child or children as part of the employment, contract, or voluntary
28 service. No one shall be required to report under this section when
29 he or she obtains the information solely as a result of a privileged
30 communication as provided in RCW 5.60.060.

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

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

35 (i) "Official supervisory capacity" means a position, status, or
36 role created, recognized, or designated by any nonprofit or for-
37 profit organization, either for financial gain or without financial
38 gain, whose scope includes, but is not limited to, overseeing,

1 directing, or managing another person who is employed by, contracted
2 by, or volunteers with the nonprofit or for-profit organization.

3 (ii) "Organization" includes a sole proprietor, partnership,
4 corporation, limited liability company, trust, association, financial
5 institution, governmental entity, other than the federal government,
6 and any other individual or group engaged in a trade, occupation,
7 enterprise, governmental function, charitable function, or similar
8 activity in this state whether or not the entity is operated as a
9 nonprofit or for-profit entity.

10 (iii) "Reasonable cause" means a person witnesses or receives a
11 credible written or oral report alleging abuse, including sexual
12 contact, or neglect of a child.

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

16 (v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

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

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

37 (e) The reporting requirement also applies to guardians ad litem,
38 including court-appointed special advocates, appointed under Titles
39 11 and 13 RCW and this title, who in the course of their

1 representation of children in these actions have reasonable cause to
2 believe a child has been abused or neglected.

3 (f) The reporting requirement in (a) of this subsection also
4 applies to administrative and academic or athletic department
5 employees, including student employees, of institutions of higher
6 education, as defined in RCW 28B.10.016, and of private institutions
7 of higher education.

8 (g) The report must be made at the first opportunity, but in no
9 case longer than forty-eight hours after there is reasonable cause to
10 believe that the child has suffered abuse or neglect. The report must
11 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
16 children are or may be at risk of abuse or neglect by the accused,
17 the reporting requirement of subsection (1) of this section does
18 apply.

19 (3) Any other person who has reasonable cause to believe that a
20 child has suffered abuse or neglect may report such incident to the
21 proper law enforcement agency or to the department as provided in RCW
22 26.44.040.

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

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

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

12 (6) Any county prosecutor or city attorney receiving a report
13 under subsection (5) of this section shall notify the victim, any
14 persons the victim requests, and the local office of the department,
15 of the decision to charge or decline to charge a crime, within five
16 days of 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
32 home, 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
39 physician's assessment, the child may be left in the parents' home

1 while the department proceeds with reasonable efforts to remedy
2 parenting deficiencies.

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

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

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

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

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

22 (11)(a) Upon receiving a report of alleged abuse or neglect, the
23 department shall use one of the following discrete responses to
24 reports of child abuse or neglect that are screened in and accepted
25 for departmental response:

26 (i) Investigation; or

27 (ii) Family assessment.

28 (b) In making the response in (a) of this subsection the
29 department shall:

30 (i) Use a method by which to assign cases to investigation or
31 family assessment which are based on an array of factors that may
32 include the presence of: Imminent danger, level of risk, number of
33 previous child abuse or neglect reports, or other presenting case
34 characteristics, such as the type of alleged maltreatment and the age
35 of the alleged victim. Age of the alleged victim shall not be used as
36 the sole criterion for determining case assignment;

37 (ii) Allow for a change in response assignment based on new
38 information that alters risk or safety level;

39 (iii) Allow families assigned to family assessment to choose to
40 receive an investigation rather than a family assessment;

1 (iv) Provide a full investigation if a family refuses the initial
2 family assessment;

3 (v) Provide voluntary services to families based on the results
4 of the initial family assessment. If a family refuses voluntary
5 services, and the department cannot identify specific facts related
6 to risk or safety that warrant assignment to investigation under this
7 chapter, and there is not a history of reports of child abuse or
8 neglect related to the family, then the department must close the
9 family assessment response case. However, if at any time the
10 department identifies risk or safety factors that warrant an
11 investigation under this chapter, then the family assessment response
12 case must be reassigned to investigation;

13 (vi) Conduct an investigation, and not a family assessment, in
14 response to an allegation that, the department determines based on
15 the intake assessment:

16 (A) Poses a risk of "imminent harm" consistent with the
17 definition provided in RCW 13.34.050, which includes, but is not
18 limited to, sexual abuse and sexual exploitation as defined in this
19 chapter;

20 (B) Poses a serious threat of substantial harm to a child;

21 (C) Constitutes conduct involving a criminal offense that has, or
22 is about to occur, in which the child is the victim;

23 (D) The child is an abandoned child as defined in RCW 13.34.030;

24 (E) The child is an adjudicated dependent child as defined in RCW
25 13.34.030, or the child is in a facility that is licensed, operated,
26 or certified for care of children by the department under chapter
27 74.15 RCW.

28 (c) The department may not be held civilly liable for the
29 decision to respond to an allegation of child abuse or neglect by
30 using the family assessment response under this section unless the
31 state or its officers, agents, or employees acted with reckless
32 disregard.

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

1 the investigation, the department shall make a finding that the
2 report of child abuse or neglect is founded or unfounded.

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

9 (13) For reports of alleged abuse or neglect that are responded
10 to through family assessment response, the department shall:

11 (a) Provide the family with a written explanation of the
12 procedure for assessment of the child and the family and its
13 purposes;

14 (b) Collaborate with the family to identify family strengths,
15 resources, and service needs, and develop a service plan with the
16 goal of reducing risk of harm to the child and improving or restoring
17 family well-being;

18 (c) Complete the family assessment response within forty-five
19 days of receiving the report; however, upon parental agreement, the
20 family assessment response period may be extended up to one hundred
21 twenty days. The department's extension of the family assessment
22 response period must be operated within the department's
23 appropriations;

24 (d) Offer services to the family in a manner that makes it clear
25 that acceptance of the services is voluntary;

26 (e) Implement the family assessment response in a consistent and
27 cooperative manner;

28 (f) Have the parent or guardian agree to participate in services
29 before services are initiated. The department shall inform the
30 parents of their rights under family assessment response, all of
31 their options, and the options the department has if the parents do
32 not agree to participate in services.

33 (14)(a) In conducting an investigation or family assessment of
34 alleged abuse or neglect, the department or law enforcement agency:

35 (i) May interview children. If the department determines that the
36 response to the allegation will be family assessment response, the
37 preferred practice is to request a parent's, guardian's, or
38 custodian's permission to interview the child before conducting the
39 child interview unless doing so would compromise the safety of the
40 child or the integrity of the assessment. The interviews may be

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

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

16 (b) The Washington state school directors' association shall
17 adopt a model policy addressing protocols when an interview, as
18 authorized by this subsection, is conducted on school premises. In
19 formulating its policy, the association shall consult with the
20 department and the Washington association of sheriffs and police
21 chiefs.

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

28 (16) In investigating and responding to allegations of child
29 abuse and neglect, the department may conduct background checks as
30 authorized by state and federal law.

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

35 (b) In the family assessment response, the department shall not
36 make a finding as to whether child abuse or neglect occurred. No one
37 shall be named as a perpetrator and no investigative finding shall be
38 entered in the department's child abuse or neglect database.

39 (18) The department shall use a risk assessment process when
40 investigating alleged child abuse and neglect referrals. The

1 department shall present the risk factors at all hearings in which
2 the placement of a dependent child is an issue. Substance abuse must
3 be a risk factor.

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

8 (20) Upon receiving a report of alleged abuse or neglect
9 involving a child under the court's jurisdiction under chapter 13.34
10 RCW, the department shall promptly notify the child's guardian ad
11 litem of the report's contents. The department shall also notify the
12 guardian ad litem of the disposition of the report. For purposes of
13 this subsection, "guardian ad litem" has the meaning provided in RCW
14 13.34.030.

15 (21) The department shall make efforts as soon as practicable to
16 determine the military status of parents whose children are subject
17 to abuse or neglect allegations. If the department determines that a
18 parent or guardian is in the military, the department shall notify a
19 department of defense family advocacy program that there is an
20 allegation of abuse and neglect that is screened in and open for
21 investigation that relates to that military parent or guardian.

22 (22) The department shall make available on its public web site a
23 downloadable and printable poster that includes the reporting
24 requirements included in this section. The poster must be no smaller
25 than eight and one-half by eleven inches with all information on one
26 side. The poster must be made available in both the English and
27 Spanish languages. Organizations that include employees or volunteers
28 subject to the reporting requirements of this section must clearly
29 display this poster in a common area. At a minimum, this poster must
30 include the following:

- 31 (a) Who is required to report child abuse and neglect;
- 32 (b) The standard of knowledge to justify a report;
- 33 (c) The definition of reportable crimes;
- 34 (d) Where to report suspected child abuse and neglect; and
- 35 (e) What should be included in a report and the appropriate
36 timing.

37 (23) State contracts with youth-serving organizations shall
38 include a requirement that youth-serving organizations provide a
39 signed acknowledgment of the organization's compliance with the

1 mandatory reporter posting law contained in subsection (22) of this
2 section.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect July 1, 2019.

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