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HOUSE BILL 1376

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State of Washington

66th Legislature

2019 Regular Session

By Representatives Sells, Klippert, Senn, and Kilduff

1 AN ACT Relating to faith-based exemptions regarding criminal  
2 mistreatment of children and vulnerable adults; amending RCW  
3 9A.42.005; and reenacting and amending RCW 26.44.020.

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

5 **Sec. 1.** RCW 9A.42.005 and 1997 c 392 s 507 are each amended to  
6 read as follows:

7 The legislature finds that there is a significant need to protect  
8 children and dependent persons, including frail elder and vulnerable  
9 adults, from abuse and neglect by their parents, by persons entrusted  
10 with their physical custody, or by persons employed to provide them  
11 with the basic necessities of life. The legislature further finds  
12 that such abuse and neglect often takes the forms of either  
13 withholding from them the basic necessities of life, including food,  
14 water, shelter, clothing, and health care, or abandoning them, or  
15 both. Therefore, it is the intent of the legislature that criminal  
16 penalties be imposed on those guilty of such abuse or neglect. ((~~It~~  
17 ~~is the intent of the legislature that a person who, in good faith, is~~  
18 ~~furnished Christian Science treatment by a duly accredited Christian~~  
19 ~~Science practitioner in lieu of medical care is not considered~~  
20 ~~deprived of medically necessary health care or abandoned.~~))

1 Prosecutions under this chapter shall be consistent with the rules of  
2 evidence, including hearsay, under law.

3 **Sec. 2.** RCW 26.44.020 and 2018 c 284 s 33 and 2018 c 171 s 3 are  
4 each reenacted and amended to read as follows:

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

7 (1) "Abuse or neglect" means sexual abuse, sexual exploitation,  
8 or injury of a child by any person under circumstances which cause  
9 harm to the child's health, welfare, or safety, excluding conduct  
10 permitted under RCW 9A.16.100; or the negligent treatment or  
11 maltreatment of a child by a person responsible for or providing care  
12 to the child. An abused child is a child who has been subjected to  
13 child abuse or neglect as defined in this section.

14 (2) "Child" or "children" means any person under the age of  
15 eighteen years of age.

16 (3) "Child forensic interview" means a developmentally sensitive  
17 and legally sound method of gathering factual information regarding  
18 allegations of child abuse, child neglect, or exposure to violence.  
19 This interview is conducted by a competently trained, neutral  
20 professional utilizing techniques informed by research and best  
21 practice as part of a larger investigative process.

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

37 (5) "Child protective services section" means the child  
38 protective services section of the department.

1 (6) "Children's advocacy center" means a child-focused facility  
2 in good standing with the state chapter for children's advocacy  
3 centers and that coordinates a multidisciplinary process for the  
4 investigation, prosecution, and treatment of sexual and other types  
5 of child abuse. Children's advocacy centers provide a location for  
6 forensic interviews and coordinate access to services such as, but  
7 not limited to, medical evaluations, advocacy, therapy, and case  
8 review by multidisciplinary teams within the context of county  
9 protocols as defined in RCW 26.44.180 and 26.44.185.

10 (7) "Clergy" means any regularly licensed or ordained minister,  
11 priest, or rabbi of any church or religious denomination, whether  
12 acting in an individual capacity or as an employee or agent of any  
13 public or private organization or institution.

14 (8) "Court" means the superior court of the state of Washington,  
15 juvenile department.

16 (9) "Department" means the department of children, youth, and  
17 families.

18 (10) "Family assessment" means a comprehensive assessment of  
19 child safety, risk of subsequent child abuse or neglect, and family  
20 strengths and needs that is applied to a child abuse or neglect  
21 report. Family assessment does not include a determination as to  
22 whether child abuse or neglect occurred, but does determine the need  
23 for services to address the safety of the child and the risk of  
24 subsequent maltreatment.

25 (11) "Family assessment response" means a way of responding to  
26 certain reports of child abuse or neglect made under this chapter  
27 using a differential response approach to child protective services.  
28 The family assessment response shall focus on the safety of the  
29 child, the integrity and preservation of the family, and shall assess  
30 the status of the child and the family in terms of risk of abuse and  
31 neglect including the parent's or guardian's or other caretaker's  
32 capacity and willingness to protect the child and, if necessary, plan  
33 and arrange the provision of services to reduce the risk and  
34 otherwise support the family. No one is named as a perpetrator, and  
35 no investigative finding is entered in the record as a result of a  
36 family assessment.

37 (12) "Founded" means the determination following an investigation  
38 by the department that, based on available information, it is more  
39 likely than not that child abuse or neglect did occur.

1 (13) "Inconclusive" means the determination following an  
2 investigation by the department of social and health services, prior  
3 to October 1, 2008, that based on available information a decision  
4 cannot be made that more likely than not, child abuse or neglect did  
5 or did not occur.

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

8 (15) "Law enforcement agency" means the police department, the  
9 prosecuting attorney, the state patrol, the director of public  
10 safety, or the office of the sheriff.

11 (16) "Malice" or "maliciously" means an intent, wish, or design  
12 to intimidate, annoy, or injure another person. Such malice may be  
13 inferred from an act done in willful disregard of the rights of  
14 another, or an act wrongfully done without just cause or excuse, or  
15 an act or omission of duty betraying a willful disregard of social  
16 duty.

17 (17) "Negligent treatment or maltreatment" means an act or a  
18 failure to act, or the cumulative effects of a pattern of conduct,  
19 behavior, or inaction, that evidences a serious disregard of  
20 consequences of such magnitude as to constitute a clear and present  
21 danger to a child's health, welfare, or safety, including but not  
22 limited to conduct prohibited under RCW 9A.42.100. When considering  
23 whether a clear and present danger exists, evidence of a parent's  
24 substance abuse as a contributing factor to negligent treatment or  
25 maltreatment shall be given great weight. The fact that siblings  
26 share a bedroom is not, in and of itself, negligent treatment or  
27 maltreatment. Poverty, homelessness, or exposure to domestic violence  
28 as defined in RCW 26.50.010 that is perpetrated against someone other  
29 than the child does not constitute negligent treatment or  
30 maltreatment in and of itself. Under this chapter, health care  
31 decisions made in reliance on faith-based practices do not in and of  
32 themselves constitute negligent treatment or maltreatment unless any  
33 such decision poses a clear and present danger to the health,  
34 welfare, or safety of the child.

35 (18) "Pharmacist" means any registered pharmacist under chapter  
36 18.64 RCW, whether acting in an individual capacity or as an employee  
37 or agent of any public or private organization or institution.

38 (19) "Practitioner of the healing arts" or "practitioner" means a  
39 person licensed by this state to practice podiatric medicine and  
40 surgery, optometry, chiropractic, nursing, dentistry, osteopathic

1 medicine and surgery, or medicine and surgery or to provide other  
2 health services. The term "practitioner" includes a duly accredited  
3 Christian Science practitioner. (~~(A person who is being furnished  
4 Christian Science treatment by a duly accredited Christian Science  
5 practitioner will not be considered, for that reason alone, a  
6 neglected person for the purposes of this chapter.)~~)

7 (20) "Professional school personnel" include, but are not limited  
8 to, teachers, counselors, administrators, child care facility  
9 personnel, and school nurses.

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

14 (22) "Screened-out report" means a report of alleged child abuse  
15 or neglect that the department has determined does not rise to the  
16 level of a credible report of abuse or neglect and is not referred  
17 for investigation.

18 (23) "Sexual exploitation" includes: (a) Allowing, permitting, or  
19 encouraging a child to engage in prostitution by any person; or (b)  
20 allowing, permitting, encouraging, or engaging in the obscene or  
21 pornographic photographing, filming, or depicting of a child by any  
22 person.

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

25 (25) "Social service counselor" means anyone engaged in a  
26 professional capacity during the regular course of employment in  
27 encouraging or promoting the health, welfare, support, or education  
28 of children, or providing social services to adults or families,  
29 including mental health, drug and alcohol treatment, and domestic  
30 violence programs, whether in an individual capacity, or as an  
31 employee or agent of any public or private organization or  
32 institution.

33 (26) "Unfounded" means the determination following an  
34 investigation by the department that available information indicates  
35 that, more likely than not, child abuse or neglect did not occur, or  
36 that there is insufficient evidence for the department to determine  
37 whether the alleged child abuse did or did not occur.

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