
HOUSE BILL 1759

State of Washington

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2009 Regular Session

By Representatives Quall and Kagi

Read first time 01/28/09. Referred to Committee on Early Learning & Children's Services.

1 AN ACT Relating to minors in need of lifesaving medical treatment;
2 and amending RCW 26.44.030, 26.44.053, and 26.44.056.

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

4 **Sec. 1.** RCW 26.44.030 and 2008 c 211 s 5 are each amended to read
5 as follows:

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

1 believe that a child has suffered abuse or neglect caused by a person
2 over whom he or she regularly exercises supervisory authority, he or
3 she shall report such incident, or cause a report to be made, to the
4 proper law enforcement agency, provided that the person alleged to have
5 caused the abuse or neglect is employed by, contracted by, or
6 volunteers with the organization and coaches, trains, educates, or
7 counsels a child or children or regularly has unsupervised access to a
8 child or children as part of the employment, contract, or voluntary
9 service. No one shall be required to report under this section when he
10 or she obtains the information solely as a result of a privileged
11 communication as provided in RCW 5.60.060.

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

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

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

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

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

34 (d) The reporting requirement shall also apply to any adult who has
35 reasonable cause to believe that a child who resides with them, has
36 suffered severe abuse, and is able or capable of making a report. For
37 the purposes of this subsection, "severe abuse" means any of the
38 following: Any single act of abuse that causes physical trauma of

1 sufficient severity that, if left untreated, could cause death; any
2 single act of sexual abuse that causes significant bleeding, deep
3 bruising, or significant external or internal swelling; or more than
4 one act of physical abuse, each of which causes bleeding, deep
5 bruising, significant external or internal swelling, bone fracture, or
6 unconsciousness.

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

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

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

21 (4) The department, upon 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 to the proper law
26 enforcement agency. In emergency cases, where the child's welfare is
27 endangered, the department shall notify the proper law enforcement
28 agency within twenty-four hours after a report is received by the
29 department. In all other cases, the department shall notify the law
30 enforcement agency within seventy-two hours after a report is received
31 by the department. If the department makes an oral report, a written
32 report must also be made to the proper law enforcement agency within
33 five days thereafter.

34 (5) Any law enforcement agency receiving a report of an incident of
35 alleged abuse or neglect pursuant to this chapter, involving a child
36 who has died or has had physical injury or injuries inflicted upon him
37 or her other than by accidental means, or who has been subjected to
38 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 (6) Any county prosecutor or city attorney receiving a report under
12 subsection (5) 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 (7) 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 (8)(a) 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 (b) If the department is notified by a hospital administrator or
5 physician regarding a parent or guardian's refusal to consent to
6 available lifesaving medical treatment for a minor pursuant to RCW
7 26.44.056(4), the department must investigate the referral according to
8 the policies and timelines for urgent cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (16) The department shall use a risk assessment process when
38 investigating alleged child abuse and neglect referrals. The

1 department shall present the risk factors at all hearings in which the
2 placement of a dependent child is an issue. Substance abuse must be a
3 risk factor. The department shall, within funds appropriated for this
4 purpose, offer enhanced community-based services to persons who are
5 determined not to require further state intervention.

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

10 (18) Upon receiving a report of alleged abuse or neglect involving
11 a child under the court's jurisdiction under chapter 13.34 RCW, the
12 department shall promptly notify the child's guardian ad litem of the
13 report's contents. The department shall also notify the guardian ad
14 litem of the disposition of the report. For purposes of this
15 subsection, "guardian ad litem" has the meaning provided in RCW
16 13.34.030.

17 **Sec. 2.** RCW 26.44.053 and 1997 c 386 s 28 are each amended to read
18 as follows:

19 (1) In any judicial proceeding under this chapter or chapter 13.34
20 RCW in which it is alleged that a child has been subjected to child
21 abuse or neglect or is at substantial risk of death because of a parent
22 or guardian's refusal to consent to available lifesaving medical
23 treatment for the child, the court shall appoint a guardian ad litem
24 for the child as provided in chapter 13.34 RCW. The requirement of a
25 guardian ad litem may be deemed satisfied if the child is represented
26 by counsel in the proceedings.

27 (2) At any time prior to or during a hearing in such a case, the
28 court may, on its own motion, or the motion of the guardian ad litem,
29 or other parties, order the examination by a physician, psychologist,
30 or psychiatrist, of any parent or child or other person having custody
31 of the child at the time of the alleged child abuse or neglect, if the
32 court finds such an examination is necessary to the proper
33 determination of the case. The hearing may be continued pending the
34 completion of such examination. The physician, psychologist, or
35 psychiatrist conducting such an examination may be required to testify
36 concerning the results of such examination and may be asked to give his
37 or her opinion as to whether the protection of the child requires that

1 he or she not be returned to the custody of his or her parents or other
2 persons having custody of him or her at the time of the alleged child
3 abuse or neglect. Persons so testifying shall be subject to cross-
4 examination as are other witnesses. No information given at any such
5 examination of the parent or any other person having custody of the
6 child may be used against such person in any subsequent criminal
7 proceedings against such person or custodian concerning the alleged
8 abuse or neglect of the child.

9 (3) A parent or other person having legal custody of a child
10 alleged to be abused or neglected shall be a party to any proceeding
11 that may impair or impede such person's interest in and custody or
12 control of the child.

13 **Sec. 3.** RCW 26.44.056 and 1983 c 246 s 3 are each amended to read
14 as follows:

15 (1) An administrator of a hospital or similar institution or any
16 physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain
17 a child without consent of a person legally responsible for the child
18 whether or not medical treatment is required, if the circumstances or
19 conditions of the child are such that the detaining individual has
20 reasonable cause to believe that permitting the child to continue in
21 his or her place of residence or in the care and custody of the parent,
22 guardian, custodian or other person legally responsible for the child's
23 care would present an imminent danger to that child's safety:
24 PROVIDED, That such administrator or physician shall notify or cause to
25 be notified the appropriate law enforcement agency or child protective
26 services pursuant to RCW 26.44.040. Such notification shall be made as
27 soon as possible and in no case longer than seventy-two hours. Such
28 temporary protective custody by an administrator or doctor shall not be
29 deemed an arrest. Child protective services may detain the child until
30 the court assumes custody, but in no case longer than seventy-two
31 hours, excluding Saturdays, Sundays, and holidays.

32 (2) Whenever an administrator or physician has reasonable cause to
33 believe that a child would be in imminent danger if released to a
34 parent, guardian, custodian, or other person or is in imminent danger
35 if left in the custody of a parent, guardian, custodian, or other
36 person, the administrator or physician may notify a law enforcement
37 agency and the law enforcement agency shall take the child into custody

1 or cause the child to be taken into custody. The law enforcement
2 agency shall release the child to the custody of child protective
3 services. Child protective services shall detain the child until the
4 court assumes custody or upon a documented and substantiated record
5 that in the professional judgment of the child protective services the
6 child's safety will not be endangered if the child is returned. If the
7 child is returned, the department shall establish a six-month plan to
8 monitor and assure the continued safety of the child's life or health.
9 The monitoring period may be extended for good cause.

10 (3) A child protective services employee, an administrator, doctor,
11 or law enforcement officer shall not be held liable in any civil action
12 for the decision for taking the child into custody, if done in good
13 faith under this section.

14 (4) An administrator of a hospital or similar institution or any
15 physician, licensed pursuant to chapter 18.71 or 18.57 RCW who has
16 knowledge of a parent or guardian's refusal to consent to available
17 lifesaving medical treatment for a minor and such refusal creates a
18 substantial risk of death to the minor, the administrator or physician
19 must notify the department of social and health services, child
20 protective services staff at the earliest opportunity.

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