NO. 48393-9

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

TANYA JAMES-BUHL, RESPONDENT

Appeal from the Superior Court of Pierce County
The Honorable Brian Tollefson

No. 15-1-03708-2

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR.

Were defendant's charges for failing to fulfill her obligation to report the sexual abuse of her own daughters wrongly dismissed based on a misreading of RCW 26.44.030(1)(a) that permitted a mandatory reporter—a teacher entrusted to protect children—to keep quiet about child-sex abuse occurring in her own home?

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Did the trial court undermine the omnipresent duty to report imposed by RCW 26.44.030(1)(a)'s plain language when it read an implied "course of employment" exception into the text that confounds the statute's purpose of protecting children?

2. Was subpart (1)(d)'s more general reporting duty wrongly read as superseding the specific duty (1)(a) places on professionals most likely to discover child abuse and best equipped to protect abused children through timely intervention?

3. Is the trial court's restrictive reading of (1)(a) at odds with the legislative intent for a statute that has expanded the duty to report rather than exempt from its reach professionals who would prefer not to protect children though timely reporting?

C. STATEMENT OF THE CASE.

1. Procedure

Defendant was charged with three counts of failure to comply with the mandatory reporting law for being a teacher who failed to report what she knew about sexual abuse her three daughters suffered at the hands of her husband. CP 1-6. The trial court granted defendant's motion to dismiss for "all the reasons" she stated, but predominantly on a theory her mandatory reporter status under RCW 26.44.030(1)(a) did not extend to information about child sex abuse that came to her outside the scope of her employment. According to the trial court, only the less onerous reporting requirement RCW 26.44.030(1)(d) imposes on adult caregivers of severely abused children applied. RP (12/2/15) 21-22; CP 39-41. Undisputed findings of fact were entered without conclusions of law. CP 42-46.

2. Facts

On or about the period between January 1, 2015, and May 20, 2015, defendant was a middle school teacher, mother of three girls, and the wife of a man she had reason to believe was sexually abusing them. CP 1-3, 42-43. Despite defendant's status as a mandatory reporter under RCW 26.44.030(1)(a), police first learned of the abuse through a pastor's CPS report. CP1. According to the pastor, defendant's daughter M.E.B. disclosed being molested by her stepfather, defendant's husband Joshua Hodges. CP 1. M.E.B. told defendant Hodges had been touching her. CP 1. Instead of reporting the abuse, defendant decided to handle the issue in house through a strategy that included keeping quiet about abuse she admittedly would have "probably" reported if it had been disclosed to her by a student. CP 1-2. M.E.B.'s forensic interview revealed Hodges had been touching her vaginal, anal, and chest area. CP 1, 43. The touching began when she was thirteen. CP1, 43. Most of it occurred in Hodges' room. CP1. That abuse went on in roughly five month intervals. CP 1-2. Nothing changed in the home after she told defendant about the abuse; rather than intervene, defendant allowed Hodges to be alone with her. CP 2, 43.

Tragically, M.E.B. was not the only child in the home experiencing sexual abuse that defendant failed to report. CP 2. Hodges first snuck into

the room of defendant's eldest daughter, B.J-K., when she was sixteen. CP 2, 44. B.J-K. told defendant what was happening, told defendant she did not feel safe, but aside from confronting Hodges, defendant made no real changes in the home. CP 2, 44. Forensic interviews of her daughters M.M.B. and K.B. revealed even more preventable abuse and even more inaction on defendant's part. CP 2, 44. When M.M.B. was eleven, she awoke to Hodges rubbing her buttocks under her clothing. CP 2, 44-45. Defendant refused to install the bedroom-door lock M.M.B said she needed to feel safer. CP 2, 44-45. Meanwhile, K.B. disclosed Hodges was touching her, to include her vaginal area, once every two or three weeks. CP 3, 45. She told defendant about the touching, but again, defendant failed to report the abuse or otherwise protect her daughter and continued to facilitate Hodges' access to her. CP 3, 45. Because of a report made by a third party more protective of defendant's daughters than she was, Hodges is being held accountable for his crimes. CP 1, 43.

D. ARGUMENT.

1. DEFENDANT'S CHARGES FOR FAILING TO FULFILL HER OBLIGATION TO REPORT THE SEXUAL ABUSE OF HER DAUGHTERS WERE WRONGLY DISMISSED BASED ON A MISREADING OF RCW 26.44.030(1)(a), WHICH, IF ADOPTED, WILL PERMIT MANDATORY REPORTERS LIKE HER TO KEEP QUIET ABOUT THE CHILD-SEX ABUSE THEY DISCOVER OUTSIDE OFFICE HOURS AND IN THEIR OWN HOMES.

Teachers perform a task "that goes to the heart of representative government." ***Ambach v. Nowick***, 441 U.S. 68, 75-76, 99 S. Ct. 1589 (1979). They "serv[e] as a role model[s] for ... students, exerting ... subtle but important influence over their perceptions and values." *Id.* at 78-79. Their status affords them unique opportunities to interact with children in their communities. ***State v. Clinkenbeard***, 130 Wn. App. 522, 567, 123 P.3d 872 (2005). They are carefully vetted state certified professionals in frequent contact with at-risk-youth. ***Beggs v. State, Dept. Social & Health Services***, 171 Wn.2d 69, 80, 247 P.3d 421 (2011); RCW 28A.410.010; WAC 181-79A-150. To earn certification, teachers complete a course on "identif[ying] ... physical [and] sexual abuse.... RCW 28A.410.035. In those respects, teachers are similar to the small cadre of professionals also bound by an omnipresent duty to report reasonably believed child abuse:

> (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 ombuds or any volunteer in the ombuds'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**.

Id. (emphasis added); RCW 26.44.020(19). "Reasonable Cause" means a person witnesses or receives a credible written or oral report alleging abuse ...." RCW 26.44.020(1)(b)(iii). Professionals named in subpart (1)(a) are set apart from other service providers whose duty to report is limited to information obtained in an "official supervisory capacity" or "course of employment." *E.g.*, RCW 26.44.030(1)(b), (1)(c).

Despite those striking differences in the statute's design, dismissal of defendant's charges was predicated on the trial court reading an implied "course of employment" exception, like the one provided in subpart (1)(c), into subpart (1)(a). This appeal calls upon the Court to interpret the scope of subpart (1)(a)'s reporting requirement. Appellate courts review a trial court's reading of a statute *de novo*. ***Doe v. Corporation of President of Church of Jesus Christ of Latter-Day Saints***, 141 Wn. App. 407, 424,

167 P.3d 1193 (2007). "When statutory language is clear, [it is] assume[d] ... the Legislature meant ... what it said," so the plain language is applied. *Id.* "If [the] language is ambiguous, the statute [is] construed ... to effectuate legislative intent." *Id.*; ***Wingert v. Yellow Freight Sys.***, 146 Wn.2d 841, 852, 50 P.3d 256 (2002)). Ambiguity exists when language is susceptible to more than one reasonable interpretation. *Id.* "A possible but strained interpretation is not reasonable and will not render a statute ambiguous." ***State v. Johnson***, 159 Wn. App. 766, 770, 247 P.3d 11 (2011).

a. RCW 26.44.030(1)(a)'s plain language imposes an omnipresent duty to report.

"[Courts] cannot add ... clauses to an unambiguous statute ...." ***State v. Delgado***, 148 Wn.2d 723, 730, 63 P.3d 792 (2003). Adhering to "*expressio unius est exclusio alterius*," courts presume the Legislature deliberately excluded absent language given its presumed awareness of the legal framework into which new law is enacted. *Id.* at 729; ***Maziar v. Washington State Dep't of Corr.***, 183 Wn.2d 84, 89, 349 P.3d 826 (2015). A statute's plain meaning is given effect as the expression of legislative intent. ***State v. Jacobs***, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). Plain meaning is discerned from language's ordinary usage, the statute's context, and the statutory scheme's related provisions. *Id.* In ascertaining legislative

purpose, provisions which stand *in pari materia* are to be read together as a unified whole, so a harmonious statutory scheme evolves that maintains the integrity of the respective provisions. ***State v. Wright***, 84 Wn.2d 645, 650, 529 P.2d 453, 457 (1974). Interpretations leading to constitutional deficiencies or absurd results should be avoided. ***State v. Eaton***, 168 Wn.2d 476, 480, 229 P.3d 704 (2010); ***State v. J.P.***, 149 Wn.2d 444, 450, 69 P.3d 318 (2003); ***Delgado***, 148 Wn.2d at 733. When interpreting statutes explicit in scope, "court[s] act within ... well-defined constraints." ***United States v. Rutherford***, 442 U.S. 544, 552, 99 S. Ct. 2470 (1979).

By design, RCW 26.44.030 creates different duties to report along a clearly defined continuum. Mandatory reporting is at its zenith in subpart (1)(a), which provides for an omnipresent duty to report triggered by the lowest level of detectable abuse provided for in the statute. Nothing in subpart (1)(a)'s language limits the duty once a designated professional has reasonable cause to believe a child is being abused. Its language is simple. It designates fifteen professions. It creates an evidentiary standard. It designates a triggering quantum of abuse. And it imposes a mandatory duty with the imperative "shall." *See* ***Lietz v. Hansen Law Offices***, P.S.C., 166 Wn. App. 571, 594, 271 P.3d 899 (2012) (citing ***State v. Krall***, 125 Wn.2d 513, 518, 852 P.2d 1040 (1994)).

Subpart (1)(a)'s structure is incapable of supporting a "course of employment" exception. The structure is that of a conditional sentence. It creates an if-then relationship between a conditional clause with three conjunctive terms that trigger the main clause's duty. Abstractly stated: When A and B and C, then D; where "A" represents the main-clause triggering status of membership in the designated professional class; "B" is the standard of proof; C is the triggering quantum of abuse; and "D" is the main clause's duty to report.

There is no "course of employment" exception in subpart (1)(a), which distinguishes (1)(a) from its neighbors. Subpart (1)(b) limits its duty to abuse learned of "in [an] official supervisory capacity," *unless* a (1)(b) supervisor is a (1)(a) professional; in which case, (1)(a)'s omnipresent duty controls. A similar "course of ... employment" exception in (1)(c) limits the reporting required of DOC personnel. The presence of these exceptions shows the Legislature knew how to limit (1)(a) reporting to a (1)(a) professionals' "course of employment," but deliberately did not. This reading accords with the interpretive rule that inclusion of express exceptions typically prevents unmentioned ones from being read into the text. ***United States v. Brockamp***, 519 U.S. 347, 352, 117 S. Ct. 849 (1997); ***Stephens v. Clash***, 796 F.3d 281, 292 (3rd Cir. 2015); ***Doe v. Salvation Army***, 685 F.3d 564, 573 (6th Cir. 2012).

"Exceptions to clearly delineated statutes will be implied *only* where essential to prevent absurd results or consequences obviously at variance with the policy of the enactment as a whole." ***Rutherford***, 442 U.S. at 552. (emphasis added). The trial court's reading of (1)(a) deviated from this rule without legitimate cause. There is nothing absurd about protecting all children by imposing a heightened duty to report on a narrow class of professionals equipped to protect them. At the same time imposing (1)(a) reporting on (1)(a) professionals outside the scope of their professional services only advances the statutory purpose of protecting children by "prevent[ing] further abuse." RCW 26.44.010. Conversely, excusing (1)(a) professionals from their reporting requirement in off duty hours will only result in some children failing to receive the abuse ending intervention (1)(a) was so clearly designed to ensure.

Still, the trial court read a "course of employment" exception into (1)(a), stating the Legislature must be "real clear" to create an omnipresent duty to report for (1)(a) professionals. RP(12/2/15) 21. But (1)(a) is in many ways a model of clarity. It imposes a mandatory duty through a conditional sentence without the course of service limitations carved out for (1)(b)-(1)(c) occupations. The only way (1)(a) could be clearer is through recitation of inapplicable exceptions. But the point of unqualified language is to produce unqualified coverage. *See* A. Scalia & B. Garner,

Reading Law: *The Interpretation of Legal Texts* 101 (2012). Such language is useful precisely because it can succinctly express a duty resistant to the imposition of unintended *ad hoc* exceptions.

The challenged reading of RCW 26.44.030 is also problematic in its deviation from the interpretive rule that specific provisions control over general ones. ***Anderson v. Dussault***, 181 Wn.2d 360, 371, 333 P.3d 395 (2014); ***Diaz v. State***, 175 Wn.2d 457, 470, 285 P.3d 873 (2012); ***Miller v. Sybouts***, 97 Wn.2d 445, 448, 645 P.2d 1082 (1982). According to the trial court, the general reporting duty (1)(d) imposes on any adult residing with a severely abused child controls over the specific (1)(a) duty imposed on professionals equipped to recognize and respond to less obvious abuse. RP (12/2/15) 21; CP 40. Instead of serving (1)(a)'s protective purpose, the preeminence given to (1)(d) by the trial court permits professionals who hold special positions of public trust with respect to all children to remain silent about off-the-clock discoveries of their own children's abuse.

What statutory purpose is served by permitting professionals charged with protecting children to keep quiet about any child's abuse? There is no obvious reason to extend to (1)(a) professionals the tolerance for reporting failures (1)(d) extends to adults incapable of reporting. That safe harbor makes sense when applied to isolated adults that might be held captive by the very person abusing the child. Although (1)(a) professionals

are not immune to domestic violence, they can be rightly called upon to rise above personal concerns to protect their own children, or the children of others, on account of special training, experience and position within the fabric of the state's social safety net. The law can and should expect more of professionals regularly called upon to mobilize resources that may understandably seem beyond the reach of an average adult.

Courts should "resist ... temptation[s] to rewrite ... unambiguous statute[s] to suit ... notions of ... good public policy...." ***State v. Jackson***, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999). Comments made by the trial court implied discomfort extending (1)(a)'s reporting duty to "a doctor, or a county corner, or a law enforcement officer ...." RP (12/2/15) 21. The perception (1)(a) would be overly broad if literally applied cannot serve as the basis to fashion a narrower construction; such a defect—if defect it is—must be legislatively corrected, even where unduly harsh. ***Sedima v. Imrex Co., Inc.***, 473 U.S. 479, 496-500, 105 S. Ct. 3275 (1985); ***Stroh Brewery Co. v. State Dep't of Revenue***, 104 Wn. App. 235, 239-40, 15 P.3d 692 (2001); ***Duke v. Boyd***, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)). Subpart (1)(a) professionals who find it uncomfortable to abide by an omnipresent duty to protect every child through timely reporting remain free to transition into occupations governed by less onerous provisions.

Only good will come from leaving (1)(a) professions to people committed to protecting children regardless of the circumstances.

b. The challenged reading of (1)(a) is also at odds with the statute's history.

Legislative intent can be revealed through the legislative history of prior enactments. ***Hallauer v. Spectrum Properties., Inc.***, 143 Wn.2d 126, 146, 18 P.3d 540 (2001); ***Tunstall v. Bergeson***, 141 Wn.2d 201, 211, 5 P.3d 691 (2001); ***Ropo v. City of Seattle***, 67 Wn.2d 574, 577, 409 P.2d 148 (1965). This is because a legislature is presumed to enact new legislation with prior legislation in mind. ***State v. Robertson***, 88 Wn. App. 836, 848-49, 947 P.2d 765 (1997). Interpreting the purpose of a previous mandatory reporting statute, our Supreme Court explained: "The [L]egislature ... made clear ... prevention of child abuse is of the highest priority, and all instances of [it] must be reported to the proper authorities who should ... expeditiously take appropriate action." ***C.J.C. v. Corp. of Catholic Bishop***, 138 Wn.2d 699, 727, 985 P.2d 262 (1999); LAWS of 1985, ch.259 (legis. findings appended to RCW 26.44.030)). The Court recognized: "The reporting statute is designed to secure prompt protection ... of the victims of child abuse. The class of persons it is designed to protect is the victims, not the abusers." ***Beggs***, 171 Wn.2d at 77; ***State v. Warner***, 125 Wn.2d 876, 891, 889 P.2d 479 (1995).

A survey of RCW 26.44.030 shows the Legislature increased the reporting obligations on (1)(a) professionals to expand the reach of the protection promised by the statute. As enacted, the section only applied to practitioners and created a right to report. LAWS of 1965 c 13 § 3.[1] Under subpart (1), the right was triggered when the minor was "brought before" "or ... found" by the practitioner "or c[a]m[e] to him for examination, care or treatment." *Id.* Subpart (2) triggered a second right to report when the minor was attended to "as part of ... regular duties." *Id.* At enactment, the provision comprehensively extended the right to all contact through the unqualified conditions: "brought before" or "found" and captured "course of employment" contacts through the limited condition: "coming to ... for examination, care, or treatment" in subpart (1) and "regular duties" in subpart (2). *Id.* The manifest intent was to free the professional to report child abuse irrespective of the means of discovery. This first version of the

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[1] **LAWS of 1965 c 13 § 3**: (1) When any practitioner has cause to believe that a child under the age of eighteen years **brought before him or coming to him for examination, care, or treatment** has had physical injury or injuries inflicted upon him, other than by accidental means, **or who is found to be** suffering from physical neglect, or sexual abuse, he may report such incident or cause a report to be made to the proper law enforcement agency as provided in RCW 26.44.040. (emphasis added)
(2) When a practitioner **is attending a child under the age of eighteen years as part of his regular duties as a staff member of an institution** and has cause to believe that such child has had physical injury or injuries inflicted upon him other than by accidental means or who is found to be suffering from physical neglect, or sexual abuse, he may notify the person in charge of the institution or his designated representative, who may report the incident or cause such reporting to be made as provided in RCW 26.44.040. (emphasis added)

statute showed "course of employment" or "regular duties" exceptions were included or excluded as needed to accomplish legislative intent.

LAWS of 1969 ex.s. c. 35 § 3 rewrote the section.[2] The revision expanded the statute's reach to other professionals, including teachers. *Id.* Subpart (1) replaced the dichotomy created by the unqualified "brought before"/"found" conditions and qualified "coming to for [service]" condition with one sentence capturing the breadth of the predecessor's "brought before"/"found" conditions. A logical interpretation is the Legislature recognized the universal coverage of the "brought before"/"found" language made the "coming to [for service]" language redundant and preferred universal coverage, so rewrote the provision to ensure the right to report would not be confined by the circumstances under which abuse became known. Subpart (2) provided a qualified right

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[2] **LAWS of 1969 ex.s. c. 35 § 3**: (1) **When any** practitioner, professional school personnel, registered nurse, social worker, psychologist, pharmacist, clergyman or employee of the department of public assistance **has reasonable cause to believe** that **a child** has died or has had physical injury or injuries inflicted upon him, other than by accidental means, or **is found to be suffering from physical neglect, or sexual abuse, he may repo**rt such incident or cause a report to be made to the proper law enforcement agency or to the department of public assistance as provided in RCW 26.44.040.

(2) **When a** practitioner, professional school personnel, registered nurse, social worker, psychologist, pharmacist, clergyman or employee of the department of public assistance **is attending a child as part of his regular duties and has cause to believe that such child** has died or has had physical injury or injuries inflicted upon him other than by accidental means or who **is found to be suffering from physical neglect, or sexual abuse, he may** notify the person in charge of the institution, organization, school or the department or his designated representative, **who may report** the incident or cause such reporting to be made as provided in RCW 26.44.040. (Emphasis added).

to report abuse encountered "as part of ... regular duties," which empowered the professional to delegate reporting to someone in charge of an entity for which the professional worked. *Id.*

The right to report created by RCW 26.44.030 transformed into a duty in 1971 when "shall" replaced "may." LAWS of 1971, Ex.s. c 167 § 1. The "regular duties" qualification in subpart (2) of the 1971 version was eliminated by 1988, leaving only the omnipresent duty to report. LAWS of 1988 c 142 § 2; 1988 c 39 § 1. In 2003, subpart (1)(a) retained the omnipresent duty to report; (1)(b) extended the duty to DOC personnel, but explicitly limited it to "course of ... employment," and (1)(c) imposed the least onerous mandatory duty by restricting it to children residing in an adult's home and raising the degree of triggering abuse to "severe." LAWS of 2003 c 207 § 4.[3] The current form of subparts (1)(a) through (1)(d) first

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[3] **LAWS of 2003 c 207 § 4**: (1)(a) **When any** practitioner, county coroner or medical examiner, law enforcement officer, **professional school personnel**, ... **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**....
(b) 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 ..., he or she shall report the incident, or cause a report to be made....
(c) 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. .... (emphasis added).

appeared in 2005. LAWS 2005 c 417 § 1.[4] As with prior versions, there is a continuum for mandatory reporting that descends from (1)(a) with its omnipresent duty triggered by the lowest level of detectable abuse identified by the statute to (1)(b) and (1)(c), which limited mandatory reporting to course of duty discoveries, and bottomed out with (1)(d), where a narrow duty only extends to children in one's home and is only triggered at the statute's highest threshold of detectable abuse.

In *dictum*, Division I of this Court concluded that "[a] survey of definitions" RCW 26.44.020 assigned to (1)(a) professionals "suggests ... one is not a mandated reporter unless one is acting as a professional...." ***Doe***, 141 Wn. App. at 427. From that perceived suggestion, the (1)(a) duty was characterized as being confined to a (1)(a) professional's course of

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[4] **LAWS 2005 c 417 § 1**: (1)(a) **When any** ... professional school personnel ... **has reasonable cause to believe** that a child has suffered abuse ... 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, ... Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection....
(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 ..., he or she shall report the incident, or cause a report to be made ....
(c) (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 .... (emphasis added).

employment. *Id.* at 428. Support for that characterization was found in the exception specifically carved out for DOC personnel, when the discrepant treatment should have been interpreted as an indication of divergent intent. Comparison informed by a more relevant survey of (1)(a)'s evolution would have revealed the Legislature's intent to transform the omnipresent privilege to report it initially extended to designated professionals into an omnipresent duty to report child abuse wherever it is found.

Different from the DOC-reporting rule's limited purpose, (1)(a) was designed and refined to maximize the protection afforded to children. It began by empowering doctors to report abuse.[5] Amendments extended the right to others, then transformed it into a duty.[6] Reviewing courts have found in the statute's purpose to protect children an implied civil remedy against (1)(a) professionals who fail to report. ***Beggs***, 171 Wn.2d at 78-79. The burden attending that liability is consistent with the statute, which was not designed to protect professionals who permit preventable abuse to go unaddressed. Liability for reporting failures has been extended to contacts outside the scope of services (1)(a) professionals are sought out to provide. *Id.* at 80 ("doctor's duty ... does not necessarily arise while ... providing health care").

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[5] LAWS of 1965 c 13 § 3.
[6] LAWS of 1969 ex.s. c. 35 § 3; LAWS of 1971, Ex.s. c 167 § 1.

Other cases showcase the trend of sacrificing countervailing policy interests to reporting because the prevention of child abuse is of the "highest priority." ***C.J.C.***, 138 Wn.2d at 727. A priority consistently advanced through forced disclosures of otherwise privileged information. ***State v. Fagalde***, 85 Wn.2d 730, 736, 539 P.2d 86 (1975); ***In re Welfare of Dodge***, 29 Wn. App. 486, 628 P.2d 1343 (1981); ***State v. Ackerman***, 90 Wn. App. 477, 486, 953 P.2d 816 (1998). These developments go lockstep with enactments where "the [L]egislature ... attached greater importance to the reporting of incidents of child abuse and the prosecution of perpetrators than to ... treatment of persons whose ... problems cause them to inflict such abuse." ***In re J.F.***, 109 Wn. App. 718, 731-32, 37 P.3d 1227 (2001). Focused on the legislative purpose advanced by reporting, the Court extended liability to principals who turn a "blind eye" to child abuse perpetrated by agents:

> Where a protective special relationship exists, a principal is not free to ignore the risk posed by its agents, place such agents into association with vulnerable persons it would otherwise be required to protect, and then escape liability simply because the harm was accomplished off premises or after-hours.

C.J.C., at 138 Wn.2d at 724-27. Despite these trends, RCW 26.44.030(1)(a) was essentially read by the trial court to mean:

> Despite the special protective relationship existing between (1)(a) professionals and their children, (1)(a) professionals

> can turn a blind eye to sexual abuse inflicted by people (1)(a) professionals bring into contact with them provided the risk of sexual abuse becomes known to the (1)(a) professionals outside office hours.

This reading leaves the sexually abused children of (1)(a) professionals to fend for themselves with the peculiar disadvantage of having to convince other people the abuse is real and known to a (1)(a) professional who has made a conscious decision not to protect them.

Relieving (1)(a) professionals of their omnipresent duty to report child abuse encountered in their private lives is also likely to confound the statute's purpose by leaving the children of third parties more vulnerable to preventable abuse. Subpart (1)(d) is not a catchall. Its duty is limited to adults with severely abused children in their homes. Everyone else may but need not report the abuse they know is being endured by the children of others. RCW 26.44.030(3). If a course of employment exception is read into (1)(a), the provision's designated professionals could simply ignore or purposely withhold any report of child abuse they informally receive.

This outcome is problematic because the identities of (1)(a) professionals can rarely be neatly parsed in terms of office hours. Police are charged with enforcing the law 24 hours a day—on and off duty. ***State v. Graham***, 130 Wn.2d 711, 718-19, 722, 927 P.2d 227 (1996). They share the work of law enforcement with prosecutors. RCW 26.44.020(14);

Pembaur v. City of Cincinnati, 475 U.S. 469, 495, 106 S. Ct. 1292 (1986). Doctors similarly carry their titles everywhere they go as stewards of people's health. *See* ***Toogood v. Owen J. Rogal, D.D.S., P.C.***, 573 Pa. 245, 264, 824 A.2d 1140 (2003). Just as teachers cannot avoid being thought of in terms of their role as stewards of the community's youth. ***Norwick***, 411 U.S. at 75-77. For example, what time of day, or day of the week, do teachers cease to be recognizable authority figures to children in the community who go to them for help?

People admitted to (1)(a) professions are rightly held to higher standards of personal conduct than the general public. *E.g.*, ***Watson v. Maryland***, 218 U.S. 173, 176, 30 S. Ct. 644 (1910). Meanwhile, the trust and prominence often attending their positions makes it likely they will receive informal disclosures of abuse by those who recognize or have a relationship with them. *See* ***Beggs***, 171 Wn.2d at 80. Such disclosures might be made at a park, coffee shop or community event by someone uncomfortable disclosing the abuse through formal channels and confident the chosen recipient will respond in accordance with his or her professional judgment. As tragically demonstrated in defendant's case, relieving (1)(a) professionals of their duty to report child abuse informally disclosed to them outside their scope of employment will result in children left to suffer abuse subpart (1)(a) is intended to prevent.

Reviewing courts may derive plain meaning from related statutes. ***Dep't of Ecology v. Campbell & Gwinn***, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Subpart (1)(a) is not alone in holding teachers to a higher standard of personal conduct with respect to children. Under RCW 9A.44.093, it is a felony for teachers to have sex with students enrolled at their schools. The crime is committed even when the sex occurs after school on private property with a student who has reached the age of consent and never attended the teacher's class. ***State v. Hirschfelder***, 170 Wn.2d 536, 549, 242 P.3d 876 (2010). Like RCW 26.44.030(1)(a), RCW 9A.44.093 protects children from abuse in the context of "the special position of trust and authority" attending a teacher's profession. *Id.* Together, the statutes create the safeguard of interlocking protection by deterring people from misusing the profession to exploit children for sex and requiring a violator's colleagues to report any discovered abuses.

A contrary rule would permit a violating teacher's colleagues to conceal the relationship if they stumbled upon it after school or during a personal interaction with the violator or student. Nothing good can come of protecting that type secrecy. *E.g.*, ***State v. Letourneau***, 100 Wn. App. 424, 429, 997 P.2d 436, 440 (2000). And doing so would necessarily defy the legislative intent of the mandatory reporting statute by valuing the

privacy interests of (1)(a) professionals over the protection of vulnerable children who need their help.

E. CONCLUSION.

Because RCW 26.44.030(1)(a)'s language, history and related provisions prove its purpose is to maximize protections afforded to abused children, it cannot be faithfully construed to permit (1)(a)'s reporting duty to turn on arbitrary variables attending the discovery that a child is being abused or neglected. The trial court consequently erred when it dismissed defendant's charges for failing to report the sexual abuse of her three children because she did not become aware of it in the course of her employment as a teacher and the abuse did not cause injuries severe enough to trigger the lesser duty created by subpart (1)(d). That ruling should be reversed and the case remanded for prosecution to resume.

RESPECTFULLY SUBMITTED: APRIL 29, 2016

MARK LINDQUIST
Pierce County
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WSB # 38725

Certificate of Service:
efile
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/29/16 _____
Date Signature

PIERCE COUNTY PROSECUTOR

April 29, 2016 - 3:43 PM

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