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IN THE SUPREME COURT OF THE STATE OF WASHINGTON RECEIVED ELECTRONICALLY

TANYA JAMES-BUHL,
PETITIONER,

v.

STATE OF WASHINGTON,
RESPONDENT.

From the Court of Appeals, State of Washington No 48393-9-II

PETITION FOR DISCRETIONARY REVIEW

By
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 ORIGINAL

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1 Identity of Petitioner.

Tanya James-Buhl, respondent below, seeks the relief designated in Part 2.

2 Citation to Court of Appeals Decision.

Ms. James-Buhl asks this Court to accept Petition of Discretionary Review of the decision of the Court of Appeals – Division 2 in *State of Washington v. Tanya Desiree James-Buhl*, No. 48393-9-II, opinion filed March 21, 2017.

ATTACHMENT B.

3 Issues Presented for Review.

This appeal presents an issue of first impression for this Court. That is, whether Ms. James-Buhl, who is both a mother and a licensed teacher, had any duty to make a mandatory report under RCW 26.44.030(1)(a) when her children had not reported to her information that gave her reasonable cause to believe that any child had suffered abuse or neglect and she had no mandatory requirement to report as an adult residing with children because she had no reasonable cause to believe that any child had suffered “severe abuse” as defined in RCW 26.44.030(1)(d).

Both mandatory reporting requirements apply to Ms. James-Buhl and the State failed to establish that Ms. James-Buhl had

4 Statement of the Case.

Tanya James-Buhl is a working mother who teaches at a public school. FOF 1. She lives with her daughters. FOF 2,5,7 ATTACHMENT C. In 2015, James-Buhl learned from MEB, one of petitioner's daughters, who told her in January 2015 that her stepfather had abused her. Petitioner talked to the stepfather who denied it. *Id.* FOF4

However, MEB told Petitioner that her Step-Father only touched her one time, while they "cuddled" on the couch. MEB said that he touched her vagina but made a motion toward her upper body, away from her vagina. FOF 5

Petitioner did not report these "disclosures" under RCW 26.44.032(1)(a) and she later told a detective that she would probably, but not necessarily, report similar incidents if a kid in her class reported it. FOF 4.

Petitioner's daughters MMB and KB subsequently made disclosures that petitioner did report to police on August 6, 2015. FPF 7.

As is common in sexual assault cases, all of the girls reported additional detailed touching in forensic interviews. FOF 8, 9, 10, 11.

Although petitioner's daughter's youth pastor reported this matter to CPS and stated that petitioner had not reported the matter to CPS and was "handling it in house," the youth pastor did not relate whether the petitioner knew any specifics of the alleged abuse beyond allegations of general touching and cuddling prior to making the August 6, 2015. FPF 9.

There is no issue but that the alleged abuse occurred in petitioner's residence and not outside her residence. Thus the trial court considered whether her mandatory reporting obligation imposed upon her a duty to report information learned inside her own home, assuming *arguendo*, that it rose to "reasonable cause to believe that a child has suffered abuse or neglect" as required by RCW 26.44.030(1)(a). The trial court concluded that at least within her own home, petitioner's

mandatory reporting requirement was limited to RCW

26.44.020(1)(d).

5 Law and Argument.

THIS COURT SHOULD ACCEPT DISCRETIONARY REVIEW BECAUSE THIS CASE PRESENTS AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THE SUPREME COURT.

Rule of Appellate Procedure [RAP] 13.4[b] sets forth the considerations governing acceptance of review. Of the four criteria, RAP 13.4[b][4] applies in this case:

A petition for review will be accepted by the Supreme Court only:

[4] If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This criterion for discretionary issue, unlike the other three criteria, has been applied more expansively. Thus, the court has held, for example that even an issue that is moot may be reviewed where the issue is a matter of continuing and substantial interest, if it presents a question of a public nature which is likely to recur, and it is desirable to provide an authoritative determination for the future guidance of public

officials. *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 208, 634 P.2d 853 (1981) citing *In re Patterson*, 90 Wash.2d 144, 579 P.2d 1335 (1978); *Sorenson v. Bellingham*, 80 Wash.2d 547, 496 P.2d 512 (1972).

The instant case has ramifications far beyond the parties and circumstances of this case. This case presents a matter of first impression to this court.

RCW 26.44, Washington's Mandatory Reporting Law, sets forth a comprehensive and well-structured mechanism for the reporting of abuse and neglect of children and other dependent persons.

The Legislature emphasized the importance of the family unit and permitted intrusion into that unit in limited circumstances:

The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in

emergency intervention based upon *verified information*.
(emphasis added)

RCW 26.44.010, Declaration of Purpose.

To accomplish the purpose of the mandatory reporting act, the Legislature imposed different obligations on institutions and individuals by occupations and status.

RCW 26.44.030(1)(a) imposes a mandatory reporting requirement on any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed school 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 or any volunteer in the ombud's office has *reasonable cause to believe that a child has suffered abuse or neglect*, he or she shall report such incident, or cause such incident, or cause such a report to be made, to the proper law enforcement agency or to the proper law enforcement agency or department as provided in RCW 26.44.040. (emphasis added)

The statute obviously identifies mandatory reporters by occupations, most of which involve direct contact with children. Of course, the occupation of pharmacist curiously does not since it involves mainly filing script received from physicians. However, the Legislature's identification of

mandatory reporters based on their occupations makes manifest its belief that these individuals would have contact with children and thereby acquire the information that the law mandated reporting in the course of their employment.

The Legislature therefore did not include other occupations such as county highway construction workers, superior court judges, roofers in the category of mandatory reporters most likely because these individuals do not have the type of regular or frequent contact with children that makes them likely to receive information to support a reasonable cause to believe that a child has suffered abuse or neglect. Thus there was no need to expand the category of mandatory reporters.

Moreover, the Legislature's definition of the content of required mandatory report strongly suggests that parents are not included in the same category of mandatory reporters as those individuals identified in RCW 26.44.030(1)(a).

26.44.040. Reports — Oral, written — Contents.

An immediate oral report must be made by telephone or otherwise to the proper law enforcement

agency or the department of social and health services and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators.

Further, the Legislature could have, but did not, include parents residing in homes with their children in same the category of mandatory reporters as those in section [1][a].

Instead, the Legislature imposed a different standard for mandatory on adults/parents residing in homes with children.

In subsection [1][d], the statute provides in pertinent part:

- (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)

The Legislature has the right to assign mandatory reporting duties and to assign different mandatory reporting duties to individuals based on their occupations/professional degrees and/or other non-work status.

In this case, there is no doubt that petitioner was not working at the time that she first learned received disclosure from MEB. MEB told petitioner that her husband touched MEB one time while they “cuddled” on the couch and indicated that MEB made a motion toward her upper body [inconsistent with her oral statement]. FOF 5. MEB stated that petitioner talked to her husband who denied touching MEB. FOF 4. Petitioner later told a detective that she knew the mandatory law because she is a teacher and that she “probably” [but not necessarily] would report a similar incident if a student in her class reported it. FOF 5. As her pastor said in mid-May 2015, petitioner at first tried to handle the situation in her family. FOF 12. Given what she knew, petitioner acted appropriately as a mother as she did not have “verified” information that gave her “reasonable cause” to believe that MEB had been sexually assaulted.

It is significant that when petitioner's other daughters made disclosures to her that she deemed verifiable and that gave her reasonable cause, she contacted the detective although she was not required to do so. FOF 7.

RCW 26.44.030[3] provides,

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

The rules of statutory construction require the logical and sensible result reached by the trial court.

Statutory interpretation questions are questions of law this court reviews de novo. *Dot Foods, Inc. v. Dept. of Revenue*, 166 Wn.2d 912, 919, 215 P.3d 185 (2009). When construing a statute, the court's objective is to ascertain and carry out the legislature's intent. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243P.3d 1283 (2013). Statutory interpretation begins with the statute's plain meaning. *Id.* The court endeavors to discern the plain meaning from the ordinary meaning of the language at issue, the statute's context, related provisions, and the statutory scheme

as a whole. *Id.* Although the court looks to the broader statutory context, the court does not add words where the legislature has not included them, and must construe statutes “such that all of the language is given effect.” *Id.* (quoting *Rest. Dev., Inc. v. Cananvill, Inc.*, 150 Wn.2d 674, 682, 8- P.3d 598 (2003)).

Courts also avoid interpreting a statute in a way that leads to an absurd result because it is presumed that the legislature did not intend an absurd result. *SEIU Healthcare NW v. Gregoire*, 168 Wn.2d 593, 620, 229 P.3d 774 (2010).

Application of these rules to the statutory provisions at issues compels the conclusion that the Legislature could not have intended to set forth different parenting rules for households in this state depending on the parental employment. Is it really the law in Washington that teachers, pharmacists, etc., must protect their biological children or other children whom they parent to a higher standard than other parents or face prosecution while judges, road construction workers, toll-takers, etc., may be less responsible toward their offspring without consequence? Or do parents who are not employed in

one of the occupations listed in RCW 26.44.030(1)(a) enjoy the freedom to parent or raise children in their residences, that is, to discuss with them concerns about being touched and to attempt first to handle generalized nonspecific complaints about such things as cuddling within the family? There is nothing in RCW 26.44 suggesting that the Legislature intended to prohibit and/or criminalize such family dialogue. The Legislature is presumed not to intend absurd consequences from its enactments.

RCW 26.44 is a comprehensive statute designed to protect families and the children of the State of Washington. Teachers who fail to make mandatory reports may be prosecuted in accordance with the law and with the training that they receive from their individual school districts. Some districts do not even allow districts to make direct reports to authorities.¹ Petitioner had been so trained by the Bethel School District in Spanaway, Washington.

ATTACHMENT D

¹ **ATTACHMENT A** - Materials from the PowerPoint Presentation from the Washington Superintendent of Public Instruction on the Mandatory Reporting Act attended by petitioner as part of her annual training at the Bethel School District.

6 Conclusion.

RCW 26.44, Washington's Mandatory Reporting Act, is a lengthy and complex enactment. As child sexual and abuse prosecutions grow in number, law enforcement agencies, prosecutors, and courts increasingly confront issues concerning the application of the law defining such basic questions as who is a mandatory, whether mandatory reporters are mandatory reporters 24/7 or when people are mandatory reporters under two different provisions, which provision applies when. Further, this court should clarify how the use of the term "verifiable information" in the declaration of purpose, RCW 26.44.020, modifies or further defines the term "reasonable cause" used in RCW 26.44.030.

This case raised substantial issues of public interest that may only be resolved by this Court.

Therefore, petitioner respectfully asks this Court to grant this petition for discretionary review.

Dated this 21st of April 2017.

/s/ BARBARA COREY
BARBARACOREY,
ATTORNEY AT LAW
WSBA#11778

I declare under penalty of perjury under the laws of the State of Washington that the following is a true and correct: That on this date, I delivered via ABC- Legal Messenger a copy of this Document to: Appellate Division Pierce County Prosecutor's Office, 930 Tacoma Ave So, Room 946 Tacoma, Washington 98402 and via USPS to Tanya James-Buhl

4/21/17
Date

/s/ William Dummitt
Signature

ATTACHMENT A

RESPONSIBILITIES AND RULES - VIEW I

Child Abuse Reporting: RCW 26.44.030

Protecting students is one of our greatest responsibilities in public education. **All school district employees - classified and certificated - are required by law to report suspected child abuse, regardless of the perceived source of abuse.** Suspected means you have reasonable cause to believe abuse has occurred. You don't have to be positive. Employees are reporters, not investigators.



RESPONSIBILITIES AND RULES - VIEW 2.

Child Abuse Reporting: RCW 26.44.030

Depending on the policy in your district, employees may report suspected abuse directly to designated authorities, or may contact a supervisor or administrator and jointly make the report to CPS or law enforcement.



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RESPONSIBILITIES AND RULES - view 3

Child Abuse Reporting: RCW 26.44.030

If the alleged abuser is an employee, reports are to be made to a supervisor or administrator, who will cause a report to be made to law enforcement if reasonable cause exists to believe that abuse has occurred. An **employee who fails to make such a report** violates state statute and is subject to discipline up to and including dismissal. Employees must **protect student confidentiality** and must not discuss situations with other employees, students, or individuals.



ATTACHMENT B

March 21, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

TANYA DESIREE JAMES-BUHL,

Respondent.

No. 48393-9-II

PUBLISHED OPINION

MAXA, A.C.J. – The issue in this case is whether a teacher’s mandatory duty under RCW 26.44.030(1)(a) to report to authorities when he or she has reasonable cause to believe that a child has suffered abuse or neglect applies to information obtained outside the course of his or her employment as a teacher.

The State charged Tanya James-Buhl, a junior high school teacher, with three counts of failure to comply with the mandatory reporting law for not reporting to law enforcement that her daughters had disclosed that their stepfather had touched them inappropriately. The trial court dismissed the charges, ruling that RCW 26.44.030(1)(a) requires teachers to report suspected child abuse only when they obtain information regarding child abuse in the course of their employment. The trial court ruled that RCW 26.44.030(1)(d), which requires adults residing with children to report only when they have reasonable cause to believe that a child has suffered “severe abuse” as defined in that subsection, determined James-Buhl’s obligation to report information she obtained about her own children outside of her course of employment.

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We hold that the plain language of RCW 26.44.030(1)(a), considered in the context of other subsections in the statute that contain explicit course of employment limitations, does not limit a teacher's mandatory reporting duty to information about child abuse obtained in the course of employment. We also decline to consider James-Buhl's argument that she did not have reasonable cause to believe her daughters had been abused, which is the prerequisite for a mandatory reporting duty. Accordingly, we reverse the trial court's dismissal of the charges against James-Buhl and remand for further proceedings.

FACTS

James-Buhl is a junior high school teacher. She was married to Joshua Hodges, who was the stepfather of James-Buhl's daughters, MEB, MMB, and KB.¹

In late May 2015, MEB's youth pastor made a report to Child Protective Services that MEB had told James-Buhl that Hodges had been touching her inappropriately. The youth pastor stated that James-Buhl had not reported the abuse, but that she was "handling things in the house." Clerk's Papers at 1.

Law enforcement investigated and interviewed the three girls. MEB described how Hodges had touched her inappropriately. She also said she had told James-Buhl about the abuse in early January, but nothing had changed. MMB said that Hodges had touched her and that she had told James-Buhl about it. And KB said that Hodges had touched her once every two to three weeks and that she had told James-Buhl about it four or five months before the August 2015 forensic interview.

¹ James-Buhl also has an older daughter, BJ-K. Although BJ-K was interviewed and made statements about Hodges having touched her when she was teenager, that information was not the basis of any charge against James-Buhl.

The State charged James-Buhl with three counts of failure to comply with the mandatory reporting law, RCW 26.44.030(1)(a), for not reporting suspected child abuse to law enforcement or the Department of Social and Health Services when her daughters disclosed that Hodges had touched them inappropriately. The State did not allege that MEB, MMB, and KB were James-Buhl's students or enrolled in the school where James-Buhl taught.

James-Buhl moved to dismiss the charges with prejudice, arguing that RCW 26.44.030(1)(a) did not apply because her daughters were not her students and that she learned about the alleged abuse in her capacity as their mother and not as a teacher. James-Buhl argued that she was subject to the different standards of reporting provided in RCW 26.44.030(1)(d), which applies to adults who live with children. James-Buhl did not argue in the trial court that even if RCW 26.44.030(1)(a) applied, dismissal was appropriate because she did not have reasonable cause to believe that the children had been abused.

The trial court agreed with James-Buhl that RCW 26.44.030(1)(d) applied instead of RCW 26.44.030(1)(a) because James-Buhl did not have a teacher relationship with MEB, MMB, and KB. Accordingly, the trial court dismissed the charges against James-Buhl with prejudice.

The State appeals.

ANALYSIS

A. COURSE OF EMPLOYMENT LIMITATION FOR MANDATORY REPORTING

The State argues that the trial court erred by interpreting RCW 26.44.030(1)(a) to include an implied course of employment limitation. The State asserts that the plain statutory language

requires mandatory reporters to report suspected child abuse in all circumstances when there is reasonable cause.² We agree.

1. Principles of Statutory Interpretation

Statutory interpretation is a matter of law that we review de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013). The primary goal of statutory interpretation is to determine and give effect to the legislature's intent. *State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740 (2015). To determine legislative intent, we first look to the plain language of the statute. *Id.* We consider the language of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *Id.*

If the plain meaning of a statute is unambiguous, we must apply that plain meaning as an expression of legislative intent. *Id.* We will not add language to an unambiguous statute even if we believe that the legislature intended something else but failed to express it adequately. *State v. Chester*, 133 Wn.2d 15, 21, 940 P.2d 1374 (1997).

A statute is ambiguous when it is subject to more than one reasonable interpretation. *Evans*, 177 Wn.2d at 192-93. When a statute is ambiguous, we first attempt to resolve any ambiguity and determine the legislature's intent by considering principles of statutory construction, legislative history, and relevant case law. *State v. Reeves*, 184 Wn. App. 154, 158, 336 P.3d 105 (2014). If these indications of legislative intent are insufficient to resolve the

² James-Buhl initially argues that the State did not properly assign error to the trial court's order of dismissal. We disagree. The State indicates in both its assignment of error and its issues pertaining to the assignment of error that the issue for us to decide is whether the trial court properly interpreted RCW 26.44.030(1)(a) in its order of dismissal.

ambiguity, we must apply the rule of lenity and construe the statute in favor of the defendant. *Id.* at 158-59.

2. Language of RCW 26.44.030(1)

RCW 26.44.030(1) identifies certain people who have a mandatory duty to report suspected child abuse and defines the scope of that duty.³ The statute contains several subsections that address different groups of people who have reporting responsibilities. RCW 26.44.080 provides that anyone who is required by RCW 26.44.030 to report abuse, “and who knowingly fails to make, or fails to cause to be made, such report, shall be guilty of a gross misdemeanor.”

a. RCW 26.44.030(1)(a)

RCW 26.44.030(1)(a) imposes a duty to report on numerous types of people who regularly have contact with children. It states:

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, state family and children’s ombuds or any volunteer in the ombuds’s office, or host home program *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.

³ RCW 26.44.030 has been amended since the events in this case transpired, but the amendments only made minor changes. A 2016 amendment added “host home program” to the list of mandatory reporters under subsection (1)(a), and a 2015 amendment added language related to reporting to military law enforcement. LAWS OF 2016, ch. 166, § 4; LAWS OF 2015, 1st Spec. Sess., ch. 6, § 1. Because these changes are minor and do not impact the language relied on by the parties, we cite to the current version of the statute.

RCW 26.44.030(1)(a) (emphasis added).⁴ RCW 26.44.020(19) defines “professional school personnel” to include teachers. Significantly, RCW 26.44.030(1)(a) does not expressly limit the mandatory reporting duty to information obtained in the course of the professional’s employment.

Under RCW 26.44.030(1)(b)(iii), “reasonable cause” means “a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact.” RCW 26.44.030(1)(b)(v) states that “sexual contact” has the same meaning as in RCW 9A.44.010: “any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.” RCW 9A.44.010(2).

b. RCW 26.44.030(1)(b), (c) and (e)

Additional subsections of RCW 26.44.030(1) impose mandatory reporting duties on other people and contain express course of employment limitations. RCW 26.44.030(1)(b) provides:

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.

(Emphasis added.) Subsection (1)(b) also states, “Nothing in this subsection (1)(b) shall limit a person’s duty to report under (a) of this subsection.” RCW 26.44.030(1)(b).

RCW 26.44.030(1)(c) provides:

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

⁴ RCW 26.44.030(1)(f) adds that the same reporting requirement in subsection (1)(a) “also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.”

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reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident.

(Emphasis added.) The legislation that added subsection (1)(c)⁵ included a finding of intent regarding the course of employment limitation:

The legislature intends . . . to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. *This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect*, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a).

LAWS OF 1996, ch. 278, § 1 (emphasis added).

RCW 26.44.030(1)(e) provides:

The reporting requirement also applies to guardians ad litem, including court-appointed special advocates . . . *who in the course of their representation of children in these actions* have reasonable cause to believe a child has been abused or neglected.

(Emphasis added.)

c. RCW 26.44.030(1)(d)

RCW 26.44.030(1)(d) imposes a mandatory duty to report suspected child abuse on adults who reside with children. But when an adult residing with children must report is different than when people identified in the other subsections of RCW 26.44.030(1) must report. The duty to report applies only if the child has suffered "severe abuse," which is given a narrow definition. RCW 26.44.030(1)(d) provides:

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

⁵ What currently is subsection (1)(c) was subsection (1)(b) when first enacted in LAWS OF 1996, ch. 278, § 2.

or capable of making a report. For the purposes of this subsection, “severe abuse” means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(Emphasis added.)

3. Statutory Analysis

a. Plain Language of RCW 26.44.030(1)(a)

The plain language of RCW 26.44.030(1)(a) does not include any course of employment limitation. That subsection simply states “[w]hen any . . . professional school personnel . . . has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident.” RCW 26.44.030(1)(a). However, James-Buhl suggests that RCW 26.44.030(1)(a)’s silence on the scope of the duty creates an ambiguity.

If RCW 26.44.030(1)(a) is read in isolation from the other subsections, it might be reasonable to interpret that subsection as providing a course of employment limitation. Identifying the mandatory reporters by profession/occupation could suggest that their duty to report would arise within the scope of that profession or occupation.

But when determining the plain meaning of a provision, we consider not only the text of the particular provision but also the context of the provision, related provisions, and the statutory scheme as a whole. *Larson*, 184 Wn.2d at 848. Here, three other subsections of RCW 26.44.030(1) contain language that explicitly limits the duty to report to the course of employment. Subsection (1)(b) applies to an individual who “in his or her official supervisory capacity with a nonprofit or for-profit organization” has reasonable cause to suspect child abuse.

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RCW 26.44.030(1)(b). Subsection (1)(c) applies to department of corrections (DOC) personnel who “in the course of their employment” and “as a result of observations or information received in the course of his or her employment” have reasonable cause to suspect child abuse. RCW 26.44.030(1)(c). And subsection (1)(e) applies to guardians ad litem “who in the course of their representation of children” have reasonable cause to suspect child abuse. RCW 26.44.030(1)(e).

Including an express course of employment limitation for subsections (1)(b), (1)(c) and (1)(e) and not for subsection (1)(a) clearly shows that the legislature did not intend to include such a limitation for subsection (1)(a). Otherwise, the legislature would have included a course of employment limitation in subsection (1)(a) as in the other subsections.

Similarly, implying a course of employment limitation for subsection (1)(a) would render the limiting language in subsections (1)(b), (1)(c), and (1)(e) superfluous. If the legislature intended that the general language in subsection (1)(a) would include an implied course of employment limitation, similar general language in the other subsections would imply the same limitation without out the need for express course of employment language. We avoid interpretations of statutory language that would render any portion of the statute superfluous or meaningless. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005).

Further, when the legislature amended RCW 26.44.030(1) in 1996 to add subsection (1)(c), it enacted a statement of intent indicating that its adoption of an express course of employment limitation for DOC personnel was “not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect.” LAWS OF

1996, ch. 278, § 1.⁶ This statement of intent clearly shows that the course of employment limitation for DOC personnel was an exception to the general rule and that mandatory reporting duty for other occupations did not have the same limitation.

Finally, subsection (1)(b) states that “[n]othing in this subsection (1)(b) shall limit a person’s duty to report under (a) of this subsection.” RCW 26.44.030(1)(b). This qualification shows that while a mandatory reporter’s duty under subsection (1)(b) is limited to his or her official supervisory capacity, subsection (1)(a) is broader and contains no similar limitation.

b. Effect of RCW 26.44.030(1)(d)

James-Buhl argues that subsection (1)(a) must be interpreted in the context of subsection (1)(d), which provides a different reporting standard for adults residing with children. She claims that her status as both a teacher and an adult residing with children puts subsection (1)(a) in conflict with subsection (1)(d), and that a course of employment limitation must be implied in subsection (1)(a) to harmonize the two subsections.

However, there is no conflict between the two subsections. When a person identified in subsection (1)(a) must report is different than when an adult residing with children must report under subsection (1)(d), but the obligations are not inconsistent. A person can comply with subsection (1)(a) without violating subsection (1)(d). And nothing in RCW 26.44.030(1) indicates that a person cannot be subject to both subsections. Further, failing to imply a course of employment limitation in subsection (1)(a) does not render subsection (1)(d) meaningless. Subsection (1)(d) still applies to adults who reside with children and are not mandatory reporters

⁶ A statement of purpose of the statute at issue or a related statute can be considered in determining the plain meaning of the statutory language. See *Protect the Peninsula’s Future v. Growth Mgmt. Hr’g Bd.*, 185 Wn. App. 959, 969-70, 344 P.3d 705 (2015).

No. 48393-9-II

under subsection (1)(a). And when an individual covered by subsection (1)(a) who resides with a child has reasonable cause to believe that the child has suffered severe abuse, there is a duty to report under both subsection (1)(a) and subsection (1)(d).

c. No Absurd Result

James-Buhl relies on the rule of construction that we avoid an interpretation of a statute that would lead to an absurd or unreasonable result. *State v. Shirts*, 195 Wn. App. 849, 858, 381 P.3d 1223 (2016). She argues that the State's interpretation leads to an absurd result because teachers who live with children would be held to a higher standard of reporting than other adults who live with children.

However, holding teachers and other subsection (1)(a) mandatory reporters to a higher standard is not absurd because those people are trained in identifying and reporting child abuse. Further, because of the status of teachers or other mandatory reporters in the community, a child might go to them outside of their work to report abuse. And the obvious goal of the mandatory reporting statute is to prevent child abuse. Holding teachers to a higher standard would help stop instances of child abuse that otherwise might not be reported.⁷

d. Conclusion

We hold that when subsection (1)(a) is considered in the context of the other subsections of RCW 26.44.030(1), the plain language of subsection (1)(a) unambiguously provides that the mandatory reporting duty for the professionals identified applies in all circumstances and not only when information about child abuse is obtained in the course of employment.

⁷ James-Buhl also argues that she complied with her training on the mandatory reporting duty. However, whether or not James-Buhl complied with her training or what she believed were her reporting duties does not impact how we interpret the statute.

No. 48393-9-II

Requiring the professionals identified in RCW 26.44.030(1)(a) to report suspected child abuse in all circumstances is a harsh requirement. Not implying a course of employment limitation means that a teacher can be subject to prosecution for failing to report suspected child abuse based on information obtained at home, on vacation, or anywhere else. Further, a teacher may be subject to civil liability for violating RCW 26.44.030(1)(a). *Beggs v. Dep't of Social & Health Servs.*, 171 Wn.2d 69, 75-78, 247 P.3d 421 (2011). Nevertheless, the plain statutory language dictates this result. We have no authority to rewrite statutes, even if the statute seems unduly harsh. *State v. Groom*, 133 Wn.2d 679, 689, 947 P.2d 240 (1997). And we will not second-guess the legislature's policy decisions. *See State v. Peeler*, 183 Wn.2d 169, 185, 349 P.3d 842 (2015).

B. REASONABLE CAUSE REQUIREMENT

James-Buhl argues that even if RCW 26.44.030(1)(a) applies in this case, the trial court's dismissal was still proper because she did not have reasonable cause to believe her daughters were being abused. We decline to consider this argument.

Whether James-Buhl had reasonable cause to believe that her children had suffered abuse clearly is a factual question. Under CrR 8.3(c), the defendant may bring a motion for dismissal based on "insufficient evidence establishing a prima facie case of the crime charged." The motion must be supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts. CrR 8.3(c)(1). The trial court "shall grant the motion if [1] there are no material disputed facts and [2] the undisputed facts do not establish a prima facie case of guilt." CrR 8.3(c)(3).

No. 48393-9-II

But James-Buhl did not file a CrR 8.3 motion or otherwise argue in the trial court that the State had insufficient evidence to show reasonable cause. Further, she did not submit an affidavit or declaration alleging that there are no material disputed facts and setting out agreed facts as required under CrR 8.3(c)(1). As a result, the record is inadequate for us to address James-Buhl's sufficiency of the evidence argument.

Because there may or may not be disputed facts regarding what James-Buhl knew about the abuse, we have no way of determining whether dismissal is appropriate under CrR 8.3(c) on this record. Therefore, we decline to consider this argument.

CONCLUSION

We reverse the trial court's order of dismissal and remand for further proceedings consistent with this opinion.

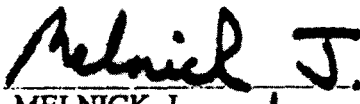


MAXA, A.C.J.

We concur:



LEE, J.



MELNICK, J.

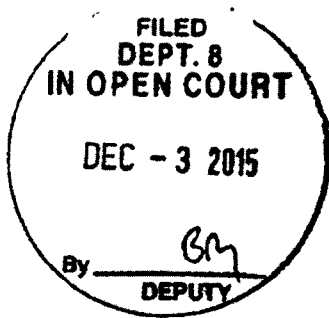
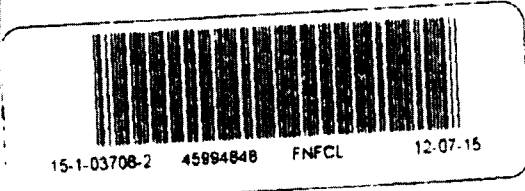
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ATTACHMENT C



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 15-1-03708-2

vs.

TANYA JAMES-BUHL,

FINDINGS OF FACT RE:
DEFENDANT'S MOTION TO DISMISS

Defendant.

This matter having come before the Honorable Brian Tollefson, Judge of the above entitled court, for defendant's motion to dismiss, upon a complaint charging the defendant with three counts of Failure to Comply with Mandated Reporting Requirements under RCW 26.44.032(1)(a) on the 2nd day of December, 2015. The evidence consisted of the factual statements of the parties.

The defendant was present, and represented by Barbara Corey. The State was represented by Deputy Prosecuting Attorney John Cummings. The Court reviewed all submitted documents and briefing, and considered the arguments of counsel before making the following Findings of Fact and Conclusions of Law.

THE UNDISPUTED FACTS

- 1. At all times relevant to the charges in this case, the defendant, Tanya James-Buhl, was a teacher at Frontier Junior High School.

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2. At all times relevant to the charges in this case, the defendant was married to Joshua Hodges, who has been charged with child molestation in the first and second degree for allegations of sexual abuse made by the defendant's two daughters, M.E.B. and M.M.B.
3. During a forensic interview on May 22, 2015, M.E.B. described Hodges touching her "number one" place which she said is on the front of her body and it's used when she goes to the bathroom. She described Hodges touching her on her "number two" part which she said is also used when going to the bathroom and it's in the back of the body. She also said Hodges touched her chest. M.E.B. said the first time Hodges touched her he only touched her number two place but the last time he touched her he touched all three places. M.E.B. said the first time happened after Christmas in the middle of her seventh grade year when she was 13. M.E.B. said most of the incidents happened in Hodges's room. She said the touching happened every four or five months.
4. M.E.B. said she told the defendant about the abuse in early January 2015. M.E.B. said the defendant told Hodges to leave the room and she spoke with M.E.B. further. M.E.B. said Hodges denied it but later told her he was sorry and that he was a good guy. M.E.B. said nothing changed in their house and she and Hodges were frequently left alone together.
5. On May 28, 2015, the defendant told Detective Tate that M.E.B. told her Hodges touched her one time while they cuddled on the couch. The defendant claimed M.E.B. denied Hodges touched her vagina and indicated M.E.B. made a motion towards her upper body. The defendant told Detective Tate she was familiar with the laws of mandatory reporting and said she would probably report a similar incident if a kid in her class reported it.
6. Detective Tate subsequently interviewed the defendant's eldest daughter B.J.-K. who said that when she was 16, Hodges began entering her room late at night and would sleep in

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2 bed with her. B.J.-K. said Hodges would get very close and would cuddle her. She said
3 she told the defendant what was happening. B.J.-K. said she did not feel safe with the
4 defendant so she called her father Tim who then called the defendant. B.J.-K. said the
5 defendant then confronted Hodges in front of B.J.-K. Hodges denied doing anything and
6 B.J.-K. said no real changes were made at home.

7
8 7. On August 6, 2015, the defendant left a voicemail for Detective Tate that her other two
9 daughters, M.M.B. and K.B., had also made disclosures. Detective Tate interviewed the
10 defendant on August 7. During this interview the defendant said M.M.B. had told a
11 family friend on August 6, 2015 Hodges had touched M.M.B.'s butt. The defendant said
12 the family friend then provided the information to her.

13
14 8. During a forensic interview on August 12, 2015, M.M.B. described two incidents that
15 occurred during her seventh grade year when she was 11 years old. M.M.B. said she
16 woke to Hodges rubbing with his hand inside her clothes on the skin of her butt cheeks.
17 She said Hodges quickly pretended to be sleeping on her floor and then he left the room.
18 M.M.B. said the other incident happened during the first semester of seventh grade. She
19 said Hodges rubbed her butt cheeks inside her clothes on her skin.

20
21 9. When asked if she told anybody M.M.B. said she told the defendant about the touching
22 after Hodges left the home. After school, the defendant picked her up and they got into
23 Hodges's car to talk about it. Hodges said something about M.M.B. taking Nyquil that
24 night and something about it being a dream. M.M.B. said it wasn't a dream. M.M.B. said
25 she recalls Hodges not being at home for a period of time and then he came back. She
26 said the defendant asked her if there was anything that would make her feel safer and

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M.M.B. told her a lock on the door. Per M.M.B., the defendant told her that was not going to happen.

10. During a forensic interview on August 12, 2015, K.B. said incidents happened once every two to three weeks and there were two types of things Hodges did and it happened to one part of her part. K.B. said it was the part on the front of her body that's used for pee. K.B. then said she did not want to talk about it and provided no further details about what Hodges did. The State is not filing any charges against Hodges with respect to K.B. but reserves the right to do so in the future should additional evidence be provided.

11. K.B. said she told the defendant about the touching four to five months prior. She said the defendant was talking to them about getting divorced and she asked K.B. if anything had happened between her and Hodges and K.B. told her yes. K.B. indicated she provided the defendant some information but no other details. K.B. said that between when she was taken from school and about three weeks ago Hodges continued to be around, but not often.

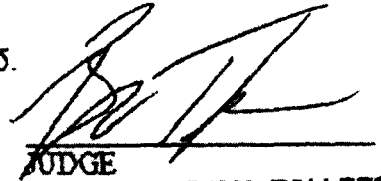
12. On or about May 19, 2015, M.E.B.'s youth pastor reported this matter to CPS, indicating that no report had been made and the defendant was "handling things in house."

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THE DISPUTED FACTS

There are no disputed facts


DONE IN OPEN COURT this 3rd day of December, 2015.



JUDGE


BRIAN TOLLEFSON

Presented by:




John Cummings
Deputy Prosecuting Attorney
WSHA # 40585

Approved as to Form:



Barbara Corey
Attorney for Defendant
WSB #11778

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By 
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ATTACHMENT D

RCW 26.44.020**Definitions.**

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

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

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

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

(4) "Child protective services section" means the child protective services section of the department.

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

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

(7) "Court" means the superior court of the state of Washington, juvenile department.

(8) "Department" means the state department of social and health services.

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

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

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

(12) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

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

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

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

(16) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

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

(18) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

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

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

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

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

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

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

(25) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

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

[2012 c 259 § 1. Prior: 2010 c 176 § 1; 2009 c 520 § 17; 2007 c 220 § 1; 2006 c 339 § 108; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7; prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 §

12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

NOTES:

Effective date—2012 c 259 §§ 1 and 3-10: "Sections 1 and 3 through 10 of this act take effect December 1, 2013." [2012 c 259 § 15.]

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Effective date—2007 c 220 §§ 1-3: "Sections 1 through 3 of this act take effect October 1, 2008." [2007 c 220 § 10.]

Implementation—2007 c 220 §§ 1-3: "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [2007 c 220 § 11.]

Effective date—2006 c 339 § 108: "Section 108 of this act takes effect January 1, 2007." [2006 c 339 § 404.]

Expiration date—2006 c 339 § 107: "Section 107 of this act expires January 1, 2007." [2006 c 339 § 403.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.030

Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process.

(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, state family and children's ombuds or any volunteer in the ombuds's office, or host home program 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.

(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, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

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

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

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

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

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

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

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

(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 or neglect, he or she shall report the 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.

(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. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11 and 13 RCW and this title, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

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

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

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

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

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

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

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

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a

physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

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

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

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

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

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

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

(i) Investigation; or

(ii) Family assessment.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its

officers, agents, or employees acted with reckless disregard.

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

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

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

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

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

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

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

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

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

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

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

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

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

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

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

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

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

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

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

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

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

[2016 c 166 § 4; 2015 1st sp.s. c 6 § 1. Prior: 2013 c 273 § 2; (2013 c 273 § 1 expired December 1, 2013); 2013 c 48 § 2; (2013 c 48 § 1 expired December 1, 2013); 2013 c 23 § 43; (2013 c 23 § 42 expired December 1, 2013); prior: 2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008); prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

NOTES:

Report to legislature—2016 c 166: See note following RCW 74.15.020.

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 273 § 4.]

Expiration date—2013 c 273 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 273 § 3.]

Effective date—2013 c 48 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 48 § 4.]

Expiration date—2013 c 48 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 48 § 3.]

Effective date—2013 c 23 § 43: "Section 43 of this act takes effect December 1, 2013." [2013 c 23 § 639.]

Expiration date—2013 c 23 § 42: "Section 42 of this act expires December 1, 2013." [2013 c 23 § 638.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.040**Reports—Oral, written—Contents.**

An immediate oral report must be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators.

[1999 c 176 § 32; 1997 c 386 § 27; 1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

NOTES:

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.