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NO. 94409-1

**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

TANYA DESIREE JAMES-BUHL, PETITIONER

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

No. 15-1-03708-2

Supplemental Brief of Respondent

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A. ISSUES PERTAINING TO PETITIONER'S ASSIGNMENTS OF ERROR.

1. Did Division II rightly read RCW 26.44.030 (1)(a)'s unambiguous text to impose an ever-present duty to report on a select cadre of professionals most likely to discover child abuse and best equipped to protect abused children through rapid reporting when the statute's language, structure, purpose and history cannot support the implied course of duty exception defendant would have this Court create to protect (1)(a) professionals like her who prefer not to report child-sex abuse they encounter off-the-clock?
2. Should Division II's refusal to review factual support for charges the trial court dismissed on an issue of law be affirmed since the sufficiency of the evidence was not litigated in the trial court?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Defendant was charged with three counts of failing in her duty as a mandatory reporter under RCW 26.44.030(1)(a). She chose to refrain from reporting sexual abuse she knew her three daughters were suffering at the hands of her husband. CP 1-6. The trial court dismissed her charges with prejudice after reading an implied course of duty exception into the statute. CP 39-41. That order reasoned it was lawful for her to remain silent about the abuse until it became "severe" enough to trigger the (1)(d) reporting rule applicable to any adult who resides with children. *Id.* This meant she could allow the abuse to go on unreported until it caused "bleeding, deep bruising, or significant external or internal swelling." Facts proving her charges were

not litigated. *Id.*; CP 42-46. Undisputed findings were entered. CP 42. The State timely appealed.

The Court of Appeals reversed the trial court by correctly holding:

[T]he 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.

State v. James-Buhl, 198 Wn.App. 288, 290, 393 P.3d 817 (2017). This result followed from the court's sound reasoning that:

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.

Id. The Court of Appeals declined to consider defendant's claim she did not have reasonable cause to believe her daughters had been abused as (1)(a) requires, for her failure to litigate that issue in the trial court resulted in an inadequate record for review. *Id.* at 302. Her untimely-filed petition for discretionary review was granted over the State's objection.

2. FACTS

Defendant was a teacher, mother of three girls and wife to a man she had reason to believe was sexually abusing them. CP 1-3, 42-43. Those girls told her their stepfather was abusing them. CP 1-3, 43-45. Yet she would

not protect them even though, depending on the child, the disclosed abuse consisted of her husband sneaking into a bedroom, touching vaginal areas, touching chest areas and anal areas, in varying intervals when the girls' ages ranged from eleven to sixteen. *Id.*

Rather than report those crimes to stop the abuse, defendant handled the situation in-house through a strategy that consisted of remaining silent about abuse she "probably" would have reported if it had been disclosed by a student. *Id.* But since it was happening to her own kids, she responded by refusing to install a bedroom-door lock one daughter sought to feel safer. CP 2, 44-45. At one point defendant confronted her husband, but then made no changes in the home. CP 2, 44. She continued to leave her husband alone with her thirteen year old daughter. CP 2, 43. Because of a report made by a third party more protective of defendant's daughters than she was, their stepfather was held accountable for his crimes. CP 1, 43.

C. ARGUMENT.

1. THE COURT OF APPEALS CORRECTLY READ (1)(A)'S UNAMBIGUOUS TEXT TO IMPOSE AN EVER-PRESENT DUTY TO REPORT UPON A SELECT CADRE OF PROFESSIONALS MOST LIKELY TO DISCOVER CHILD ABUSE AND BEST EQUIPPED TO PROTECT THE ABUSED CHILDREN THROUGH RAPID REPORTING.

"The State's interest in the protection of children is unquestionably of the utmost importance." *State v. Motherwell*, 144 Wn.2d 353, 365-66,

788 P.2d 1066 (1990). "Because the State cannot combat the evils of child abuse without some means of bringing [it] to light, [this Court] conclude[d] the mandatory reporting requirement of ... RCW 26.44.030(1) is justified by a compelling State interest [and] uses the least restrictive means with which to satisfy its interest in protecting children from abuse." *Id.* "[A]ny restriction on the scope of reporting duties beyond that determined to be necessary by the Legislature constitutes an undue interference when the ... goal is as important as the protection of children from physical and sexual abuse." *Id.* "The class of persons [the statute] is designed to protect is ... victims, not the[ir] abusers." *Beggs v. State, Dept. of Social & Health Services*, 171 Wn.2d 69, 77, 247 P.3d 421 (2011).

This Court is called upon to interpret the scope of subpart (1)(a)'s mandatory reporting requirement to decide if the Legislature that created *explicit* course of employment exceptions for other reporters intended (1)(a) to include an *implied* course of duty exception to release professionals most likely to encounter abused children and best equipped to intervene from having to report abuse they discover off-the-clock. Statutory interpretation is reviewed *de novo*. *Beggs*, 171 Wn.2d at 75. Subsection (1)(a) provides:

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 ombudsman or any volunteer in the ombudsman'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. "Reasonable cause" means a listed professional either witnesses abuse or receives a credible report of the abuse. *Id.* at (1)(b)(iii). These few (1)(a) professionals have a broader duty than other career-based reporters whose duties are *explicitly* limited to their course of employment. *Id.* at (1)(b), (1)(c), (1)(e). Adults who reside with children and have not chosen (1)(a) professions need only report abuse severe enough to cause bleeding, deep bruising, or significant swelling. *Id.* at (1)(d).

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

A statute's plain meaning is to be given effect as the Legislature's expressed intent. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2015). Clear statutory language is applied as the assumed expression of legislative intent. Ambiguous language is construed to effectuate legislative intent. *Wingert v. Yellow Frieght Sys.*, 146 Wn.2d 841, 852, 50 P.3d 256 (2002). Ambiguity exists when language is susceptible to more than one reasonable interpretation. *Id.* "[C]ourts should refrain from using possible but strained

interpretations." *State v. Garcia*, 179 Wn.2d 828, 837, 318 P.3d 266 (2014). "[Courts] cannot add ... clauses to an unambiguous statute" *State v. Delgado*, 148 Wn.2d 723, 730, 63 P.3d 792 (2003).

RCW 26.44.030(1)(a) is an unambiguous provision. It combines commonly understood language with internally defined terms to impose a mandatory duty to report through the imperative "shall." *E.g.*, *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). Its duty applies to members of the designated professions through a conditional sentence creating an if-then relationship between those professionals and their duty to report. The text does not confine the reporting requirement to abuse the reporter learns of while practicing her profession; instead, the duty is triggered whenever a (1)(a) reporter receives credible information that a child is being abused. Unqualified language produces unqualified coverage.

Courts should resist temptations to rewrite unambiguous statutes to suit their notions of good policy. *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999). The trial judge improperly read an implied course of employment exception into (1)(a) to avoid the result required by a literal reading of (1)(a). RP(12/2) 21. Defendant invites this Court to do the same. The Court of Appeals, *to its credit*, reached the result the statute's plain language dictates despite expressing discomfort with (1)(a)'s scope:

Requiring ... professionals identified in ... (1)(a) to report suspected child abuse in all circumstances is a harsh requirement.... Nevertheless, the plain statutory language dictates this result. We have no authority to rewrite statutes, even if the statute seems unduly harsh.

James-Buhl, 198 Wn.App. at 301. Many people who choose professions covered by (1)(a) might disagree with the court's description of the duty as "harsh," for many may perceive it to be a common-sense accompaniment of their calling. People less committed to protecting children can, *and should*, pursue jobs governed by less onerous reporting rules. The Court of Appeals interpretation of (1)(a)'s scope should be affirmed.

- b. Explicit inclusion of a course of employment exception in (1)(b), (1)(c) and (1)(e) evinces its intentional exclusion from (1)(a).

A statute's plain meaning is discerned from its language's ordinary usage in context and the scheme's related provisions. *Id.* Provisions *in pari materia*¹ are read together, so a harmonious scheme that maintains each provision's integrity evolves. *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974). A statute's inclusion of express exceptions typically prevents unmentioned ones from being construed. *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).

¹ Upon the same subject.

Our Legislature is presumed to deliberately exclude absent provisions based on its presumptive awareness of the scheme into which new law is enacted. *Id.* at 729; *Maziar v. Washington State Dep't of Corr.*, 183 Wn2d 84, 89, 349 P.3d 826 (2015). Exceptions are only implied to avoid absurdities or unconstitutional results. *United States v. Rutherford*, 442 U.S. 544, 552, 99 S.Ct. 2470 (1979).

The Court of Appeals accurately concluded the statute's inclusion of course of employment exceptions in the three other subsections creating career-based reporters confirms that a similar exception was intentionally excluded from (1)(a). *James-Buhl*, 198 Wn.App at 298-99 (citing RCW 26.44.030(1)(b), (1)(c), and (1)(e)). Subpart (1)(b) limits its duty to report abuse learned of "in [an] official supervisory capacity," *unless* a (1)(b) supervisor is also a (1)(a) professional; in which case; (1)(a)'s duty applies. The Court of Appeals rightly held this qualification confirms that while a (1)(b) reporter's duty is generally confined to work, membership in a (1)(a) profession triggers the broader-unlimited (1)(a) duty to report. *Id.* at 298. Reading an implied course of duty exception into (1)(a) would wrongly reduce (1)(b)'s expressed qualification to surplusage. *Id.* (citing *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005)).

The same is true of the course of employment exception granted to DOC personnel by (1)(c). Our Legislature stated that exception "was not to

be construed to alter the circumstances under which other professionals are mandated to report. *Id.* at 298. As (1)(a) professionals are the only service providers covered by the statute without a course of duty exception, this qualification ensures (1)(c) did extend the exception to (1)(a) professionals employed by DOC. Only in *dicta* based on a survey of statutory definitions, has a lower court suggested (1)(a) professionals are not obligated to report unless acting within their professions. *Doe v. Corp. of President of Church of Jesus Christ of Latter Day Saints*, 141 Wn.App. 407, 427, 167 P.3d 1193 (2007) (church Bishop is not a professional counselor obligated to report).²

The Court of Appeals correctly perceived (1)(a) professionals' duty to report does not conflict with (1)(d). *James-Buhl*, *supra* at 299. Under (1)(d) "any adult" residing with a child must report if there is reasonable cause to believe the child was *severely* abused. An adult can be governed by both subsections. As (1)(a) professionals can comply with their greater obligation to report abuse regardless of severity without violating RCW 26.44.030(1)(d)'s duty to report severe abuse. The training or experience or

² RCW 26.44.030(1)'s inclusion of express course of duty exceptions for all career-based reporters other than (1)(a) professionals differentiates it from foreign statutes that do not make similar distinctions. *E.g. Del.Bd. of Nursing v. Gillespie*, 41 A.3d 423 (citing 16 Del.c. § 903). And absence of any related provision limiting (1)(a) to the practice of (1)(a) professions distinguishes it from foreign statutes with provisions that connect the reporting to children attended to through the practice of the reporter's profession. *E.g. May v. State*, 295 Ga. 388, 389, 761 S.E.2d 38 (2014) (removal of "brought to ... for examination, care or treatment" language would support concluding an intent to lift that limit if it had not been restored through later versions that again limit the duty to circumstances where a mandatory report is professionally attending to someone with information about abuse.).

ready access to state resources common to (1)(a) professions would foreseeably increase the capacity of their members to detect abuse and intervene through rapid reporting. Because (1)(a) professions are in many ways defined by superior access to crisis-intervention resources, there is sound reason to exempt them from (1)(d)'s safe harbor for capacity-based reporting failures.

Defendant oddly describes (1)(d) as designed to enable parents to make familial decisions to withhold reports about less than severe abuse in the home. There is no support for that position in the statute. Subsection (1)(d) classifies reporters according to age of majority and residential status irrespective of their reason for cohabitating with abused children. The trait common to all mandatory reporters is the foreseeability of their contact with abused children. It is the superior ability of adults in (1)(a) professions to recognize or report child abuse that sets them apart from the average adults addressed by (1)(d).

Nothing in the statute enables (1)(a) reporters to turn a blind eye to child abuse whenever those often salaried professionals choose to be off-the-clock. Statutes like RCW 26.44.030 can create special relationships that cannot be escaped because harm the statute was intended to prevent "was accomplished off premises or after hours." See *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 724, 985 P.2d 262 (1999). It follows a

(1)(a) professional like defendant is not free to ignore child abuse that is discovered after business hours or away from the office.

- c. (1)(a)'s ever-present duty to report accords with the statute's purpose of protecting children, so it cannot be logically characterized as absurd.

From its inception, the child abuse reporting statute has conveyed our Legislature's understandably unwavering position that preventing child abuse is its preeminent concern. *State v. Waleczek*, 90 Wn.2d 746, 799, 585 P.2d 797 (1978) (citing Laws of 1965). The statute has since been amended to more strongly state that purpose. *Id.* Defendant asks this Court to read the statute as giving (1)(a) professionals who happen to be the parents of abused children greater deference to decide when less than severe abuse committed by another should go unreported. But that lamentable position cannot be squared with the statute's declaration of purpose:

When the ... safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail.

RCW 26.44.010 (2012). This Court reads the declaration to imply a clear legislative concern for all incidents of child abuse. *Waleczek*, 90 Wn.2d at 750. "[T]he child's health and welfare [are] of primary concern..., not the parents' interest." *Tyner v. State Dept. of Soc. & Health Serv.*, 141 Wn.2d 68, 93 P.3d 1148 (2000). A parent's failure to come to the aid of his or her children is a crime if the omission falls within the reach of a criminal statute.

State v. Jackson, 137 Wn.2d 712, 721, 724, 976 P.2d 1229 (1999); *e.g.*, RCW 9A.42.037(1)(a); 26.44.030.

Interests of fundamental societal importance have been consistently subordinated to Washington's preeminent concern for protecting children from preventable harm. The sacred bond between parents and their children that defendant invokes to avoid accountability is among them. *Id.* People like her are not permitted to protect their marital relationships at the expense of their children. *Id.* (RCW 5.60.060(1)'s marital privilege inoperative in child-abuse cases); *Tyner*, 141 Wn.2d at 78 (child safety is to prevail over parental interests in RCW 13.34.020, counterpart to 26 RCW). Reviewing courts may derive plain meaning from related statutes. *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.1, 11, 43 P.3d 4 (2002).³

The preeminent interest in protecting children trumps their parents' right to privacy, association and religious practice. *Motherwell*, 144 Wn.2d at 365; *Prince v. Massachusetts*, 321 U.S. 158, 167, 64 S.Ct. 438 (1944); RCW 9A.42.100 (cannot leave children with sex offender). Other statutes regulate the private lives of teachers differently than other adults because of the special relationship teachers have with children as stewards of society's

³ Similar obligations appear under the companion Abuse of Vulnerable Adults Act. RCW 74.34.005; .020 (14); .030. 035 (no explicit course of duty exception); *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 542-549, 374 P.3d 121 (2016) (Abuse of Vulnerable Adults Act contains implied cause of action like companion Abuse of Children Act).

youth. *E.g. State v. Hirshfelder*, 170 Wn.2d 536, 551, 242 P.3d 876 (2010) (RCW 9A.44.093 bars school employees from sex with students despite right to consent). Relieving (1)(a) professionals of their duty to report child abuse encountered in what they could too conveniently characterize as private time confounds statutory intent by leaving vulnerable children to suffer abuse (1)(a) professionals could prevent.

Course of employment exceptions would enable them to ignore or withhold credible reports of child abuse they informally receive. But their professions can rarely be parsed according to business hours. The public trust and prominence adhering to their professions make them people likely to receive informal yet credible reports of child abuse.⁴ Although the (1)(a) professional at issue was a teacher, an ever-present duty to report extends equally to all (1)(a) professionals alike, to include deputy prosecutors.

Teachers are nonetheless among the most important to a reporting-based scheme of child-abuse intervention. They are carefully vetted state-certified professionals trained to identify child abuse.⁵ Their work entails recurring interactions with at-risk youth. Contacts common to other (1)(a)

⁴ *E.g., State v. Graham*, 130 Wn.2d 711, 718-19, 722, 927 P.2d 227 (1996); RCW 26.44.020(14); 46.04.040; *See Toogood v. Owen, J. Rogal*, D.D.S., P.C., 573 Pa. 245, 264, 824 A.2d 1140 (2003); *Watson v. Maryland*, 218 U.S. 173, 176, 30 S.Ct. 644 (1910).

⁵ *See Beggs*, 171 Wn.2d at 80; *State v. Clinkenbread*, 130 Wn.App. 522, 567, 123 P.3d 872 (2005); *Ambach v. Nowick*, 441 U.S. 68, 75-76, 99 S.Ct. 1589 (1979); RCW 28A.410.010, .035. WAC 181-79A-150.

professions can be limited to isolated interactions for a specific purpose like responding to an unrelated incident. It is difficult to envision children or parents of a community a teacher serves perceiving the teacher to be less of an authority figure obliged to report child abuse when the teacher is credibly informed of abuse off campus or after school. People who make informal disclosures may be unable to repeat them or fail to appreciate a need. The Court of Appeals recognized these special attributes of (1)(a) professionals defeat the claim it is absurd to read (1)(a) as demanding more from them. *James-Buhl*, 198 Wn.App. at 301. That soundly-reasoned decision should be affirmed.⁶

d. Legislative intent for (1)(a)'s ever-present duty to report is manifest in the statute's evolution.

Legislative intent may be discerned through a statute's history of amendments. *Ropo, Inc. v. City of Seattle*, 67 Wn.2d 574, 577, 409 P.2d 148 (1965). A survey of RCW 26.44.030 reveals a consistent expansion of the protection it provides abused children. The statute first gave doctors a

⁶ Professions under (1)(a) consist of licensed or state certified professionals, professionals who provide social services to adults or families or serve as agents of state agencies like DSHS or our Ombuds' Office, which protect children from harm. *E.g.*, RCW 43.185C.315 (DSHS HOPE centers education and licensure requirements for "staff trained" in needs of street youth; "placement and liaison specialists" must be "[a] professional with a master's degree in counseling, social work, or related field"); RCW 24.03.550 (Host home programs must meet statutory requirements provided in RCW 74.15.020); RCW 43.06A.030 (duties of ombuds); 122 WAC (Family & Children's Ombudsman); WAC 112-10-060—duty to report; WAC 112-10-070—duties (e.g., investigation, intervention); 18.19 RCW—counselors (regulation); 246-810 WAC (counselor regulations and exemptions).

privilege to report child abuse without liability. Laws of 1965 c 13 § 3. It was amended to expand the privilege to any circumstance where a child is found suffering from abuse. Laws of 1969 ex.s. c. 35 § 3. The privilege to report became a duty to report in 1971 when "may report" was replaced by "shall report." Laws of 1971, ex.s. c 167 § 1. The "regular duties" language in subpart (2) of the 1971 version was eliminated by 1988, leaving only an ever-present duty to report. Laws of 1988 c 142 § 2; 1988 c 39 § 1.

In 2003, (1)(a) retained an ever-present duty to report, (1)(b) made DOC staff mandatory reporters subject to a course of employment exception and (1)(c) imposed the least onerous duty on average adults by restricting it to children residing in the adult's home and raising the triggering abuse to "severe." Laws of 2003 c 207 § 4. The applicable form of subparts (1)(a) through (1)(d) were enacted in 2005. Laws of 2005 c 417 § 1. Each version left the ever-present duty attending (1)(a) reporters unchanged despite the course of duty exceptions created for the other career-based reporters. That feature remained constant through the nine amendments that followed.⁷

⁷ 2017 3rd sp.s. c 20 § 24; 2017 c 118 § 1; 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.

2. THE EVIDENTIARY SUPPORT FOR CHARGES DISMISSED BASED ON A MISREADING OF THE STATUTE SHOULD NOT BE REVIEWED AS THE ADEQUACY OF THE STATE'S PROOF WAS NOT LITIGATED IN THE TRIAL COURT.

This Court regularly declines to review questions of fact that are not adequately covered by the appellate record. *In re Detention of Halgren*, 156 Wn.2d 795, 804, 132 P.3d 714 (2006). This Court also declines to address issues which were not adequately briefed by the parties. *Koenig v. Thurston County*, 175 Wn.2d 837, 857, 287 P.3d 523 (2012). To avoid invading a prosecutor's executive authority to file a charge, dismissal for a claimed inability of the prosecutor to meet proof required by the applicable statute must be decided according to the *Knapstad*-compliant procedures of CrR 8.3(c). See *State v. Rice*, 174 Wn.2d 902-05, 279 P.3d 849 (2012) (Wash.Const. art. XI, § 5); *State v. Knapstad*, 107 Wn.2d 346, 356-57, 729 P.2d 48 (1986); *State v. Lee*, 87 Wn.2d 932, 934, 558 P.2d 236 (1976).

The Court of Appeals accurately declined to consider defendant's unpreserved attack upon proof supporting the "reasonable cause to believe" element of her reporting violations under (1)(a). *James-Buhl*, 198 Wn.App. at 301-02. That ruling was appropriately predicated on her failure to abide by CrR 8.3(c)'s procedures in the trial court. *Id.* Defendant's motion to

dismiss was based on her contention (1)(d)'s reporting rule applied to her at home and the sexual touching was not severe enough to trigger that duty to report. CP 7-23. She supported it with a copy of the Information and PowerPoint slides she references as part of an illegitimate ignorance of the law defense. *E.g., Lescherner v. Dep't of Labor & Indus.*, 27 Wn.2d 911, 926, 185 P.2d 113 (1947) ("[i]gnorance of the law excuses no one."). She did not submit a CrR 8.3(1) affidavit attesting to the absence of material-disputed facts. Her mischaracterization of the child-sex abuse reported by her daughters as "mere cuddling" makes it clear that a fundamental dispute about a fact material to her charges remains.

The trial court's dismissal order addressed the legal issue before it:

There is nothing in RCW 26.44.030(1)(a) that supports an interpretation that the individuals named therein by reason of their professions/occupations have a duty to make mandatory reports when they are not performing or practicing the professions and/or occupations name[d] therein... [Defendant] was not required to make a mandatory report in this case because she did not have a teacher/professional school personnel relationship with [her daughters]. Her relationship is that of an adult residing with child[ren] and thus her reporting duty falls under RCW 26.44.030(1)(d).

CP 39-41. This Court should affirm the Court of Appeals accurate decision that the record is inadequate to review defendant's unpreserved sufficiency of the evidence claim. *James-Buhl*, 198 Wn.App. at 302.

D. CONCLUSION.

The Court of Appeals correctly held the trial court wrongly read an implied course of duty exception into a statute that cannot bear it due to the unequivocal ever-present duty to report created by (1)(a)'s plain language. It was proper for it to decline review of defendant's unperfected challenge to the State's evidence. So, the Court of Appeals should be affirmed.

Dated this 2nd day of November, 2017.

RESPECTFULLY SUBMITTED:

MARK LINDQUIST
Pierce County
Prosecuting Attorney



JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~48~~ 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.

11.2.17 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

November 02, 2017 - 3:54 PM

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