

CHAPTER 128

[Substitute Senate Bill No. 4605]

DEPARTMENT OF REVENUE—OUT-OF-STATE AUDITS

AN ACT Relating to the department of revenue; amending section 4, chapter 26, Laws of 1967 ex. sess. and RCW 82.01.070; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 4, chapter 26, Laws of 1967 ex. sess. and RCW 82.01.070 are each amended to read as follows:

The director shall have charge and general supervision of the department of revenue. He shall appoint an assistant director for administration, hereinafter in this 1967 amendatory act referred to as the assistant director, and subject to the provisions of chapter 41.06 RCW may appoint and employ such clerical, technical and other personnel as may be necessary to carry out the powers and duties of the department. The director may also enter into personal service contracts with out-of-state individuals or business entities for the performance of auditing services outside the state of Washington when normal efforts to recruit classified employees are unsuccessful. The director may agree to pay to the department's employees or contractors who reside out of state such amounts in addition to their ordinary rate of compensation as are necessary to defray the extra costs of facilities, living, and other costs reasonably related to the out-of-state services, subject to legislative appropriation for those purposes. The special allowances shall be in such amounts or at such rates as are approved by the office of financial management. This section does not apply to audit functions performed in states contiguous to the state of Washington.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1982.

Passed the Senate February 24, 1982.

Passed the House March 11, 1982.

Approved by the Governor March 31, 1982.

Filed in Office of Secretary of State March 31, 1982.

CHAPTER 129

[Substitute Senate Bill No. 4461]

CHILD ABUSE—ADMISSIBILITY OF CHILD'S STATEMENT—INCEST—
ABUSE REPORTS—TEMPORARY PROTECTIVE CUSTODY

AN ACT Relating to sexual abuse of children; amending section 9A.04.080, chapter 260, Laws of 1975 1st ex. sess. as amended by section 1, chapter 203, Laws of 1981 and RCW

9A.04.080; amending section 9A.64.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.64.020; amending section 31, chapter 291, Laws of 1977 ex. sess. as amended by section 37, chapter 155, Laws of 1979 and RCW 13.34.030; amending section 34, chapter 291, Laws of 1977 ex. sess. as amended by section 39, chapter 155, Laws of 1979 and RCW 13.34.060; amending section 2, chapter 13, Laws of 1965 as last amended by section 1, chapter 164, Laws of 1981 and RCW 26.44.020; amending section 3, chapter 13, Laws of 1965 as last amended by section 2, chapter 164, Laws of 1981 and RCW 26.44.030; amending section 9, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.056; amending section 6, chapter 13, Laws of 1965 as amended by section 6, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.060; amending section 3, chapter 167, Laws of 1971 ex. sess. and RCW 26.44.080; adding a new section to chapter 9A.44 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 9A.04.080, chapter 260, Laws of 1975 1st ex. sess. as amended by section 1, chapter 203, Laws of 1981 and RCW 9A.04.080 are each amended to read as follows:

Prosecutions for the offenses of murder, and arson where death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in a state correctional institution, committed by any public officer in connection with the duties of his office or constituting a breach of his public duty or a violation of his oath of office, and arson where death does not ensue, within ten years after their commission; for violations of RCW 9A.44.070, 9A.44.080, and 9A.44.100(1)(b), within five years after their commission; for all other offenses the punishment of which may be imprisonment in a state correctional institution, within three years after their commission; two years for gross misdemeanors; and for all other offenses, within one year after their commission: PROVIDED, That any length of time during which the party charged was not usually and publicly resident within this state shall not be reckoned within the one, two, three, five, and ten years respectively: AND FURTHER PROVIDED, That where an indictment has been found, or complaint or an information filed, within the time limited for the commencement of a criminal action, if the indictment, complaint or information be set aside, the time of limitation shall be extended by the length of time from the time of filing of such indictment, complaint, or information, to the time such indictment, complaint, or information was set aside.

NEW SECTION. Sec. 2. There is added to chapter 9A.44 RCW a new section to read as follows:

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of the state of Washington if:

- (1) The court finds, in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- (2) The child either:
 - (a) Testifies at the proceedings; or

(b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

Sec. 3. Section 9A.64.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.64.020 are each amended to read as follows:

(1) A person is guilty of incest in the first degree if he engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(2) A person is guilty of incest in the second degree if he engages in sexual contact with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either the whole or the half blood.

(3) As used in this section, "descendant" includes stepchildren and adopted children under eighteen years of age.

~~((3))~~ (4) As used in this section, "sexual contact" has the same meaning as in RCW 9A.44.100(2).

(5) Incest in the first degree is a class ~~((E))~~ B felony.

(6) Incest in the second degree is a class C felony.

Sec. 4. Section 31, chapter 291, Laws of 1977 ex. sess. as amended by section 37, chapter 155, Laws of 1979 and RCW 13.34.030 are each amended to read as follows:

For purposes of this chapter:

(1) "Child" and "juvenile" means any individual under the age of eighteen years;

(2) "Dependent child" means any child:

(a) Who has been abandoned; that is, where the child's parent, guardian, or other custodian has evidenced either by statement or conduct, a settled intent to forego, for an extended period, all parental rights or all parental responsibilities despite an ability to do so; or

(b) Who is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Who has no parent, guardian, or custodian willing and capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

Sec. 5. Section 34, chapter 291, Laws of 1977 ex. sess. as amended by section 39, chapter 155, Laws of 1979 and RCW 13.34.060 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize routine medical and dental examination and care and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.050 or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing if one is requested.

(2) The juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(3) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived.

(4) The court shall ~~((take testimony concerning the circumstances for taking the child into custody and the need for shelter care. The court shall give the child and the child's parent or guardian and the parent's or guardian's counsel an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses))~~ examine the need for shelter care. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(5) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(6) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(b) The release of such child would present a serious threat of substantial harm to such child.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order.

(7) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(8) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

Sec. 6. Section 2, chapter 13, Laws of 1965 as last amended by section 1, chapter 164, Laws of 1981 and RCW 26.44.020 are each amended to read as follows:

For the purpose of and as used in this chapter:

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

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

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a ((child)) person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected ((child)) person for the purposes of this chapter.

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

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

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

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

(8) "Social worker" shall mean 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, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean 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.

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

(11) "~~((Clergyman))~~ Clergy" shall mean any regularly licensed or ordained minister (~~((or any))~~), 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.

(12) "Child abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by ~~((a))~~ any person (~~(who is legally responsible for the child's welfare))~~ under circumstances which indicate that the child's health, welfare, and safety is harmed thereby. An abused child is a child who has been subjected to child abuse or neglect as defined herein: PROVIDED, That this subsection shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare, and safety.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult developmentally disabled persons not able to provide for their own protection through the criminal justice system" shall be defined as those persons over the age of eighteen years with developmental disabilities who have been found legally incompetent pursuant to chapter 11.88 RCW or found disabled to such a degree pursuant to said chapter, that such protection is indicated: PROVIDED, That no persons reporting injury, abuse, or neglect to an adult developmentally disabled person as defined herein shall suffer negative consequences if such a judicial determination of incompetency or disability has not taken place and the person reporting believes in good faith that the adult developmentally disabled person needs the protection offered by this chapter.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by ~~((a))~~ any person (~~((responsible for the child's welfare))~~); or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes as those acts are defined by state law by ~~((a))~~ any person (~~((responsible for the child's welfare))~~).

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to

constitute a clear and present danger to the child's health, welfare, and safety.

Sec. 7. Section 3, chapter 13, Laws of 1965 as last amended by section 2, chapter 164, Laws of 1981 and RCW 26.44.030 are each amended to read as follows:

(1) When any practitioner, professional school personnel, registered or licensed nurse, social worker, psychologist, pharmacist, or employee of the department (~~(of social and health services)~~) has reasonable cause to believe that a child or adult developmentally disabled person has suffered abuse or neglect, he shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department (~~(of social and health services)~~) as provided in RCW 26.44.040. The report shall be made at the first opportunity, but in no case longer than seven days after there is reasonable cause to believe that the child or adult has suffered abuse or neglect.

(2) Any other person who has reasonable cause to believe that a child or adult developmentally disabled person 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 as now or hereafter amended.

(3) The department upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult developmentally disabled person who has died or has had physical injury or injuries inflicted upon him other than by accidental means or who has been subjected to sexual abuse shall report such incident to the proper law enforcement agency.

(4) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult developmentally disabled person who has died or has had physical injury or injuries inflicted upon him other than by accidental means, or who has been subjected to sexual abuse, shall report such incident to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime has been committed.

Sec. 8. Section 9, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.056 are each amended to read as follows:

An administrator of a hospital or similar institution or any physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if the circumstances or conditions of the child are such that the detaining individual has reasonable cause to believe that permitting the child to continue in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person legally responsible for the child's care would present an imminent danger to that child's safety: PROVIDED, That such administrator or physician shall

~~((immediately))~~ notify or cause to be notified the appropriate law enforcement agency or ~~((juvenile court officer))~~ child protective services pursuant to RCW 26.44.040 ~~((and request immediate transfer of custody))~~. Such notification shall be made as soon as possible and in no case longer than seventy-two hours. Such temporary protective custody by an administrator or doctor shall not be deemed an arrest ~~((and shall continue only until supervisory custody is assumed by the appropriate law enforcement agency or juvenile court))~~. Child protective services may detain the child until the court assumes custody, but in no case longer than seventy-two hours, excluding Saturdays, Sundays, and holidays.

Sec. 9. Section 6, chapter 13, Laws of 1965 as amended by section 6, chapter 217, Laws of 1975 1st ex. sess. and RCW 26.44.060 are each amended to read as follows:

(1) Any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

Sec. 10. Section 3, chapter 167, Laws of 1971 ex. sess. and RCW 26.44.080 are each amended to read as follows:

Every person who is required to make, or to cause to be made, a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly fails to make, or fails to cause to be made, such report, shall be guilty of a gross misdemeanor.

NEW SECTION. Sec. 11. 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.

Passed the Senate March 8, 1982.

Passed the House March 5, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.