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HOUSE BILL 2791

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State of Washington

65th Legislature

2017 Regular Session

By Representative Kilduff

1 AN ACT Relating to faith-based exemptions regarding criminal  
2 mistreatment of children and vulnerable adults; amending RCW  
3 9A.42.005, 26.44.020, and 26.44.020; providing an effective date; and  
4 providing an expiration date.

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

6 **Sec. 1.** RCW 9A.42.005 and 1997 c 392 s 507 are each amended to  
7 read as follows:

8 The legislature finds that there is a significant need to protect  
9 children and dependent persons, including frail elder and vulnerable  
10 adults, from abuse and neglect by their parents, by persons entrusted  
11 with their physical custody, or by persons employed to provide them  
12 with the basic necessities of life. The legislature further finds  
13 that such abuse and neglect often takes the forms of either  
14 withholding from them the basic necessities of life, including food,  
15 water, shelter, clothing, and health care, or abandoning them, or  
16 both. Therefore, it is the intent of the legislature that criminal  
17 penalties be imposed on those guilty of such abuse or neglect. (~~It~~  
18 ~~is the intent of the legislature that a person who, in good faith, is~~  
19 ~~furnished Christian Science treatment by a duly accredited Christian~~  
20 ~~Science practitioner in lieu of medical care is not considered~~  
21 ~~deprived of medically necessary health care or abandoned.))~~

1 Prosecutions under this chapter shall be consistent with the rules of  
2 evidence, including hearsay, under law.

3 **Sec. 2.** RCW 26.44.020 and 2012 c 259 s 1 are each amended to  
4 read as follows:

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

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

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

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

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

33 (5) "Children's advocacy center" means a child-focused facility  
34 in good standing with the state chapter for children's advocacy  
35 centers and that coordinates a multidisciplinary process for the  
36 investigation, prosecution, and treatment of sexual and other types  
37 of child abuse. Children's advocacy centers provide a location for  
38 forensic interviews and coordinate access to services such as, but  
39 not limited to, medical evaluations, advocacy, therapy, and case

1 review by multidisciplinary teams within the context of county  
2 protocols as defined in RCW 26.44.180 and 26.44.185.

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

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

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

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

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

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

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

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

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

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

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

24 (17) "Pharmacist" means any registered pharmacist under chapter  
25 18.64 RCW, whether acting in an individual capacity or as an employee  
26 or agent of any public or private organization or institution.

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

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

39 (20) "Psychologist" means any person licensed to practice  
40 psychology under chapter 18.83 RCW, whether acting in an individual

1 capacity or as an employee or agent of any public or private  
2 organization or institution.

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

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

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

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

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

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

31 **Sec. 3.** RCW 26.44.020 and 2017 3rd sp.s. c 6 s 321 are each  
32 amended to read as follows:

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

35 (1) "Abuse or neglect" means sexual abuse, sexual exploitation,  
36 or injury of a child by any person under circumstances which cause  
37 harm to the child's health, welfare, or safety, excluding conduct  
38 permitted under RCW 9A.16.100; or the negligent treatment or  
39 maltreatment of a child by a person responsible for or providing care

1 to the child. An abused child is a child who has been subjected to  
2 child abuse or neglect as defined in this section.

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4 eighteen years of age.

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6 the department designed to protect children from child abuse and  
7 neglect and safeguard such children from future abuse and neglect,  
8 and conduct investigations of child abuse and neglect reports.  
9 Investigations may be conducted regardless of the location of the  
10 alleged abuse or neglect. Child protective services includes referral  
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12 children, the coordination of necessary programs and services  
13 relevant to the prevention, intervention, and treatment of child  
14 abuse and neglect, and services to children to ensure that each child  
15 has a permanent home. In determining whether protective services  
16 should be provided, the department shall not decline to provide such  
17 services solely because of the child's unwillingness or developmental  
18 inability to describe the nature and severity of the abuse or  
19 neglect.

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

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

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

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

37 (8) "Department" means the department of children, youth, and  
38 families.

39 (9) "Family assessment" means a comprehensive assessment of child  
40 safety, risk of subsequent child abuse or neglect, and family

1 strengths and needs that is applied to a child abuse or neglect  
2 report. Family assessment does not include a determination as to  
3 whether child abuse or neglect occurred, but does determine the need  
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8 using a differential response approach to child protective services.  
9 The family assessment response shall focus on the safety of the  
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11 the status of the child and the family in terms of risk of abuse and  
12 neglect including the parent's or guardian's or other caretaker's  
13 capacity and willingness to protect the child and, if necessary, plan  
14 and arrange the provision of services to reduce the risk and  
15 otherwise support the family. No one is named as a perpetrator, and  
16 no investigative finding is entered in the record as a result of a  
17 family assessment.

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19 by the department that, based on available information, it is more  
20 likely than not that child abuse or neglect did occur.

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

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27 other facility providing medical diagnosis, treatment, or care.

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29 prosecuting attorney, the state patrol, the director of public  
30 safety, or the office of the sheriff.

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32 to intimidate, annoy, or injure another person. Such malice may be  
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34 another, or an act wrongfully done without just cause or excuse, or  
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1 danger to a child's health, welfare, or safety, including but not  
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9 (25) "Supervising agency" means an agency licensed by the state  
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12 provide child welfare services.

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

18 NEW SECTION. **Sec. 4.** Section 2 of this act expires July 1,  
19 2018.

20 NEW SECTION. **Sec. 5.** Section 3 of this act takes effect July 1,  
21 2018.

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