



Supporting Survivors

Mandatory Reporting

Deliverable 9e: Final Report on Mandatory Reporting Requirements
March 10, 2023

Priority Recommendations

Research, student listening, and expert consultation has led us to an immodest conclusion: mandatory reporting **needs to change dramatically to align with best practice in trauma-informed and survivor-centered care** and to align with the self-defined needs of Washington students. Here are our primary recommendations:

- **Adopt a Consent-Based Standard:** We recommend that Washington adopt a consent-based reporting standard, instead of the current mandatory one. A consent-based standard would not alter the care provided by Child Protective Services (CPS), but would give students age 13+ a choice as to whether to access care.
- **Remove Criminalizing Penalties:** Mandatory reporting laws make important elements of survivor-centered and trauma-informed care illegal in Washington state. We recommend that the gross misdemeanor charge ([RCW 26.44.080](#)) and any other penalties be removed so professionals can legally affirm student agency and privacy.
- **Use Harm Reduction Strategies:** Until those changes are made, we recommend that reporters use harm reduction strategies to minimize negative impact while abiding by the law, such as by maximizing student choice and transparency when reporting.
- **Clarify CPS Response Limitations:** Another change that can be made now by DCYF is to instruct school-based reporters not to report assaults unless the respondent is a parent or guardian. Assaults by others, such as fellow students, are “screened out” by CPS anyway ([WAC 110.30.050](#)). Those reports cause needless stress without care.

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Legislative Context

Proviso [ESSB 5693 § 501\(4\)\(ee\)\(i\)](#) required that this project:

Review current legal requirements mandating that educators and staff report suspected sexual assault and assess whether changes to those requirements should be made to align them with best practices for responding to sexual assault and supporting survivors in schools.

The RFP prepared by the [Office of Superintendent of Public Instruction](#) (OSPI) further specified that best practices should be determined by both research and student voice. The report that follows integrates both sets of directives.

Introduction

► Rethinking Mandatory Reporting

Introduction: Rethinking Mandatory Reporting

Mandatory reporting is the legal obligation to report the abuse or neglect of a child, including sexual assault. A mandated reporter is a person with a role or profession which requires them to make that report to agencies and authorities able to provide protective care. A report¹ is most often triggered when a reporter observes abuse or neglect or receives a verbal disclosure of abuse or neglect upon a person younger than eighteen.

In 1962 the Children's Bureau of the U.S. Department of Health and Human Services hosted a meeting to discuss child mistreatment and consider protective actions available to government. Mandatory reporting laws were enacted at the state level in that decade and have expanded in scope since. **Intentions were good**, but also reflected an outdated and **ageist view of child welfare** in which adults act on behalf of children. Current best practice states that survivor agency should be prioritized through trauma-informed and survivor-centered practices, which will be explored in detail in the following section.

Though these laws are widespread, there has been **little research on how reporting impacts teen survivors of sexual assault** (Bailey, Shaw, and Harris, 2021). Research does show the harm of mandated reporting, though, specifically from the perspective of people who have entered the system by having their abuse or neglect reported (Lippy, Burk, and Hobart, 2016).

Moreover, **mandatory reporting is not a universal standard** of care, even among wealthy nations. For example, in New Zealand, where mandated reporting does not exist, a research team recently investigated the likely impact of implementing such a law. The resulting 2015 report recommended that the country not implement mandated reporting because researchers found that the policy would deter high school students from disclosing abuse to teachers and school counselors (Meiners and Tolliver, 2016; Lawson and Niven, 2015). This is precisely the result we found in our own listening sessions with Washington students (Joyce, 2022).

In addition, mandatory reporting is part of a larger system of "punitive and extractive practices" by the state upon already **marginalized groups**, particularly Black, Indigenous, queer, transgender, and disabled individuals and communities (Just Beginnings Collaborative, 2022). For example, Black, American Indian, Alaskan Native, and multiracial children are more likely to be identified as maltreated than are children of other

¹ Unless otherwise stated, the term "report" in the document refers to a mandatory report to state agencies, not to any formal or informal reporting process within a school or district.

ethnicities, making children of color more likely to have their lives upended by state intervention. (Child Trends Data Bank, 2015).

Finally, in many cases a mandatory report will not result in the protection of an assaulted student. In Washington state, CPS only “screens in” cases in which the alleged perpetrator (respondent) is a parent, guardian, or in loco parentis. This policy is consistent with [WAC 110.30.050](#) and was affirmed in an interview with a representative of the [Washington State Department of Children, Youth, and Families](#) (DCYF) (Copeland, 2022). This means that any case in which the respondent is a peer (fellow student) would result in no response from CPS, beyond possible referral to law enforcement, another path for youth, particularly Black and other youth of color, to enter the criminal justice system.

This also means that a report to CPS would not be able to resolve many of the high-profile cases in which a peer or school employee committed sexual harm. In the absence of effective school policies, CPS is being asked to play a role beyond its family remit.

Even beyond individual incidents, schools play a huge role in mandatory reporting. According to Child Welfare Information Gateway (2016), the most likely professions to make a mandated report are legal or law enforcement personnel (18.1%), followed closely by education personnel (17.7%). How mandatory reporters in schools enact mandatory reporting laws will have a dramatic impact on the welfare of students across the state.

Finally, we want to underline that we have no doubt that the individuals who make and respond to mandatory reports in Washington state are doing so with the best interests of students at heart. What we are proposing is the individuals supposedly benefiting from these reports — students themselves—want this system to change².

“It’s just another person taking control over your life.”

- Oliver, 16

² This report reflects the content of 8 group listening sessions and 10 individual interviews with 70 current and former Washington public schools students, aged 11 to 20. The average age was 15. Of the participants, 29% are survivors, 34% are peers, and 37% chose not to disclose their status. The students (96%) and former students (4%) are from Eastern and Western Washington and represent identities that are rural, low-income, disabled, LGBTQ+, Black, Indigenous, and other students of color, including Asian and Pacific Islanders and Latinx and Hispanic identities. Across the sessions, 56% of participants were Black, Indigenous, and people of color. Interviews and listening sessions were conducted by Do Big Good between October of 2022 and March of 2023.

Recommendations

- ▶ 1. Adopt a Consent-Based Reporting Standard
- ▶ 2. Inform School-Based Reporters on CPS Response Limitations
- ▶ 3. Adopt a "Support Without Report" Model
- ▶ 4. Empower Peers to Provide That Support
- ▶ 5. Change the Age Limit for Mandatory Reporting
- ▶ 6. Lengthen the Time to Report
- ▶ 7. Remove Criminalizing Penalties for Reporters
- ▶ 8. Adopt Harm Reduction Strategies
- ▶ 9. Know That, Without Change, Student Survivors Won't Seek Help

Recommendations

It is not by chance that we are putting the voices of Washington student survivors and their peers at the center of these recommendations. Students are they most directly impacted by the mandatory reporting policies meant to protect them and, from what they told us, they are extremely dissatisfied. Washington students, particularly teen students at and above the age of medical consent of 13, have the following requests:

1. Adopt a Consent-Based Reporting Standard

Reporting a sexual assault to CPS should not be mandatory. It should be by choice.

Overwhelmingly, students do not want anyone, including professional school personnel, to report their sexual assault to Child Protective Services (CPS) unless they, the student, choose for that report to be made. Legally, this could be achieved by changing "shall" to "may" in sections (1) (a) through (d) of [RCW 26.44.030](#).³

While a few students saw the protective value of reporting for younger students, not a single student we talked to as part of our group and one-one-one listening sessions wanted their own case to be reported to CPS without their consent. Here is what they had to say. All quotes are shared pseudonymously and with consent:

"I have friends who have been hurt by mandatory reporting.... Not that the mandatory reporter was trying to do something bad, but that's how it worked out. Just, at that time, they did not need someone to report. That was not the thing that was going to help them." - Cody the Penguin, 17

"It's just another person taking control over your life." - Oliver, 16

"I feel like they should report only if you feel safe." - Snow, 14

"In my opinion, absolutely, there should be boundaries... if it's unsafe at home... and by telling them something it puts me at risk.... But, if they're young, it's

³ Legal analysis and recommendations by Shannon Perez-Darby of Just Beginnings Collaborative.

unfortunate, because they can't even make their own decisions.... You could think that you're helping, but actually put them in a much worse situation." - Purple, 16

Trauma-informed and survivor-center best practice supports this position. In 2014, The [United Nations International Children's Emergency Fund](#) (UNICEF) created a suite of training resources called [Communities Care](#) aimed at preventing and responding to sexual violence. Here are the principles placed into a school context:

UNICEF Principles of Survivor-Centered Care

1. **Right to Safety:** Every student has the right to be protected from further violence. This includes protection from psychological and emotional violence as well as physical violence.
2. **Right to Confidentiality:** Maintaining confidentiality means not disclosing any information at any time to any party without the informed consent of the person concerned.⁴
3. **Dignity and Self-Determination:** Sexual violence is an assault on the dignity and rights of the student. Failing to respect the wishes and rights of survivors can increase their feelings of helplessness and shame, reduce the effectiveness of interventions, and cause re-victimization and further harm.
4. **Non-Discrimination:** All students have the right to the best possible assistance after an assault, without bias on the basis of gender, age, disability, race, color, language, religious or political beliefs, sexual orientation, status, or social class.

Mandatory reporting of a sexual assault without the consent of the student, particularly when the student is above the age of medical consent, **breaches all four principles of survivor-centered care** in the following way:

1. **Transgresses Right to Safety:** Mandatory reporting could deny the student of psychological and possibly even physical safety, as Purple and Snow's quotes allude to.

⁴ The UNICEF principles support, with misgivings, breaches of confidentiality in the cases of child sexual abuse. That UNICEF position, however, is not consistent with requests of Washington students interviewed for this project.

2. **Breaches Right to Confidentiality:** Mandatory reporting denies the student their right to confidentiality by sharing information about their case with a third party without their consent.
3. **Minimizes Dignity and Self-Determination:** Mandatory reporting denies the student of self-determination because the student is not allowed to choose — determine for themselves—if the report is made. This lack of choice could also deny the student of dignity.
4. **May Be Discriminatory:** Studies looking at data across the country have shown that social service agencies sometime operate in ways that are biased against marginalized identities. Mandatory reporting may also be discriminatory, even if that is not the intent of the professionals making or responding to the report (Meiners and Tolliver, 2016; Just Beginnings Collective, 2022).

It is worth noting here that the “interrupt” model is a step toward trauma-informed and survivor-centered response, but is insufficient. The model instructs school personnel to interrupt a student making a disclosure to inform the student they are disclosing to a mandated reporter, giving them the choice to continue. This warning prevents re-traumatization through multiple disclosures, but does not provide affirmative care.

Providing a choice to survivors is survivor-centered and trauma-informed. However, all options provided by the interrupt model are likely to be unappealing: Disclose to me and lose control of what happens next *or* continue to keep your assault secret and receive no support *or*, with no additional guidance, try to figure out the fine line between secrecy and disclosure that allows you to receive support without triggering a report. It is a difficult situation.

“I thought me speaking up was going to get me the support that I needed, but it didn’t. I was just right the whole time... not speaking....”

- Me, 19

2. Inform School-Based Reporters That Only Assaults By Parents/Guardians Will Be Screened In

Adopting a consent-based standard is a systemic and multi-year change, but some changes can be made now. One is that DCYF can instruct school-based professional not to report unless the respondent is a parent or guardian. As stated in [WAC 110.30.050](#) and affirmed by a DCYF representative during this project, these cases are “screened out” by CPS anyway. A report to law enforcement may still occur if a crime is suspected.

This means that if the alleged perpetrator is anyone other than a parent, guardian, or in certain DSHS-affiliated roles, CPS will take no action to protect or respond to the student assault, other than informing law enforcement, if they believe a crime has been committed. That opens another realm of consent-free state involvement in the child’s life.

In our listening sessions and consultations we found that this element of DCYF policy is not well known and that reporters do not currently have this latitude. Reporters think they are helping students harmed by peers or other adults when they report and students fear that CPS may interfere in their lives when, in fact, neither is likely to occur. This lack of understanding of current policy simply creates stress and absence of care.

DCYF is currently organizing a Mandatory Reporting Workgroup, with the specific goal of better sharing information about that topic. We believe that clarifying this existing DCYF policy to school-based reporters, would:

- **Limit screened-out reports** in which the respondent is not a parent, guardian, or in a DSHS affiliated role;
- **Decrease workload** by CPS staff taking reports that will be screened out;
- **Increase trust** between school-based mandated reporters and student survivors;
- **Decrease fear** and stress felt by student survivors about being reported.

3. Adopt a Confidential “Support Without Report” Model

During the listening sessions for this project, students’ primary request after an assault was the ability to receive emotional support and advice without the risk of being reported, affirming the survivor-centered right to confidentiality previously mentioned. Here are their words:

“You’re not ready to report it. You needed someone to talk to about it.” - Mai, 16

“I would just want someone to just be there to listen.” - Blair, 16

“A place where you could talk anonymously about your trauma, and have a support system without having to report and maybe... explaining what it would be to report... but not forcing it....” - Poppy, 14

“They need a safe space to talk to. They don’t want to risk having something they said end up criminalizing someone.” - Crispy, 17

“After something’s been reported, [to] come back to a counselor if a counselor has kind of betrayed you, in a way... in a situation you didn’t feel needed to be reported.” - Daveie, 17

“Maybe, get advice first on how to deal with it, but they’re not even getting that because they’re also afraid of the mandated reporting part.” - Raven, 17

“You reach a level of maturity where you realize this is not safe for me to report. I don’t feel like I am able to deal with those consequences yet. But I want to share.” - Dave, 16

This problem follows students outside of school. In one of our consultation calls, a representative for the Washington-based anonymous crisis service [Teen Link](#) reported that young callers who did give identifying information often chose not to continue their call for fear of being reported (Dobmeier, 2023).

Unfortunately, [RCW 26.44.030](#) defines all “professional school personnel” as mandated reporters, so it is illegal for staff to provide the survivor-informed care that students are asking for. Under current law, “support without report” is illegal in most cases because reporting is mandatory once a disclosure of sexual abuse is made by a student, unless the disclosure is made anonymously. To change the law, “professional school personnel” would need to be removed from the list of mandated reporters in addition to codifying the right to confidential disclosure for students.

“I have friends who have been hurt by mandatory reporting.... Not that the mandatory reporter was trying to do something bad, but that’s how it worked out.”

- Cody the Penguin, 17

“Just not feeling like she wanted to go back to the school for help because they had already broken that trust.”

- Charlie, 19

4. Empower Peers to Provide That Support

Currently, the only legal way to provide support without report is to create a structure in which students can get support from an individual who is not a mandated reporter. The Mandatory reporter list is long and thorough (see RCW section), but one such non-reporter group is peers: other students who could be trained to give support, but would not be mandated to report what they heard. Students in the listening sessions also requested peers support. Here is what they had to say:

"Giving someone a support person, someone they've worked well within the school district, someone they have a connection with.... It could be a staff member, a student." - Jamarcus, 15

"I think it would also be cool, like how [our group]'s a peer teaching class about sexual education. Maybe there could be really trusted students, or just younger adults, who are given the ability to also be there as a resource.... You're talking to someone who's near your age more and they can more help the fact that you might not want to talk to someone who might only be there to find the facts of the situation and solve it, [but] instead be there as someone listening and help[ing] you get through it." - Purple, 16

"Knowing you're not alone and there's other students going through the same thing you are..." - Blair, 16

"I feel like more opportunities would be good, just more open to more people to talk to, just someone more comforting to you. Maybe some people want an older person to talk to that makes them more comfortable, you know? Maybe someone their age, so they can feel understood.... [I would want] someone who's more my age, because they could understand me more...." - Mai, 16

The value of peers in supporting survivors is also part of trauma-informed best practice. While survivor-centered care supports people who have experienced the specific trauma of sex-based violence, trauma-informed care is a broader set of practices for responding to a broader range of traumas.

[The Substance Abuse and Mental Health Services Administration](#) (SAMHSA) defines trauma-informed care as following six (6) principles, which include the survivor-centered principals of sexual assault care and also go further, for example, by discussing the value of peer support (2014). These principles are placed into a school context below:

SAMHSA Principles of Trauma-Informed Care

1. **Safety:** Throughout the school, staff and the people they serve, whether children or adults, feel physically and psychologically safe. The physical setting is safe and interpersonal interactions promote a sense of safety. Understanding safety as defined by students is a high priority.
2. **Trustworthiness and Transparency:** School operations and decisions are conducted with transparency with the goal of building and maintaining trust with students, their families, staff, and others in the school community.
3. **Peer Support:** Mutual self-help among students, in general, and student survivors, in particular, is key for establishing safety and hope, building trust, enhancing collaboration, and utilizing personal stories and lived experience to promote recovery and healing.
4. **Collaboration and Mutuality:** Importance is placed on partnering and sharing power between staff and students and among school employees in different roles, demonstrating that healing happens in relationships and that everyone has a role to play in the school's trauma-informed approach.
5. **Empowerment, Voice and Choice:** Throughout the school, individuals' strengths and experiences are recognized and built upon, fostering resilience, the primacy of the student, and the ability of individuals, schools, and communities to heal and recover from trauma. Students are supported in shared decision-making, choice, and goal-setting to determine plans of action they need to heal and move forward. They are supported in cultivating self-advocacy skills. Staff are facilitators of recovery rather than controllers of recovery and are part of a parallel process in which they also feel safe.
6. **Cultural, Historical, and Gender Issues:** The school actively moves past cultural stereotypes and biases (e.g. based on race, ethnicity, sexual

orientation, age, religion, gender identity, geography, etc.). It provides access to gender responsive services, leverages healing from traditional cultural connections, incorporates policies and processes that are responsive to the racial, ethnic and cultural needs of students, and recognizes and addresses historical trauma.

While peer support is an important part of trauma-informed care, **relying on peers is an imperfect solution**. Asking students to heal each other because adults are constrained by the law from providing trauma-informed and survivor-center care is both problematic and troubling.

“Also, with mandated reporting I feel like it definitely drives some people away because they don’t want it to be reported or people knowing about that... but they still need help.”

- Raven, 17

5. Change the Age Limit for Mandatory Reporting

While it is important to provide solutions within the current system, students also want policy and legal change. One request is to change the age limit for mandatory reporting to the Washington age of medical consent, which is 13.

Changing the age limit would mean that, beginning at age 13, a student would need to give consent in order for a report to CPS to be made. Here is what students had to say about age and consent in the listening sessions:

“I just feel like there’s kind of a gray area for people who are more on the mature side who maybe don’t want to be reported safety-wise or don’t feel like it’s a good idea to report or for personal reasons. In a perfect world, maybe pre-teen to when you’re a legal adult you could have a little more of a conversation with whoever you reported to of, like, ‘I don’t want to go to the police quite yet, until I’m in a different housing situation’....” - Jimmy, 18

“We talked last year... about mandated reporting. We all came to that conclusion about the age that you should be able to decide. You reach a level of maturity where you realize this is not safe for me to report.” - Dave, 16

“I think this mandatory reporting would be particularly beneficial for people who are at a young age and may be unable to report it or know there is something wrong actually happening to them.... For people under the age of 13-ish it would be helpful, because under the age of 13, for me personally, I didn’t know things related to sex.” - Sea Salt, 17

“[L]egal stuff, like mental health counseling. You’re 13 and above, you don’t need to tell your parents It’s a good age. It makes sense.” - Cody the Penguin, 17

Because cognitive disability and other factors may affect the appropriateness of this age in the context of mandatory reporting, further consultation is needed before this change would be implemented, including with the Developmental Disabilities Administration (DDA), The Arc of Washington, and other partners.

6. Lengthen the Time to Report

An additional change students would like to see that would increase the trauma-informed and survivor-centered principles of transparency, collaboration, self-determination, and safety, would be to lengthen the amount of time that mandated reporters have to make a report.

Though a report must now be made within forty-eight (48) hours of the disclosure, according to [RCW 26.44.030](#), that time period could be longer, to accommodate student consent and response. This would allow students time to manage the likely fall-out of a report. Here is what students had to say in the listening sessions:

“It says here ‘the report must be made at the first opportunity, in no case longer than 48 hours.’ So I was questioning, is it necessary for a time limit? Because someone might not be ready to share out a report.” - Tofu, 17

“If the student goes, ‘I need to be talking to someone right now.’ Student goes in and talks to the teacher or whoever is appointed to help and they just take that time to talk about it, about how that person’s feeling. So then, ‘In a week from now,’ [the support person says], ‘I need you to come back in so I can file a report for this.’ It gives the student more time to reflect on it and feel more comfortable filing a report.” - Bob, 17

“You reach a level of maturity where you realize this is not safe for me to report.... But I want to share.”

- Dave, 16

7. Remove Criminalizing Penalties for Reporters

There are also two recommendations that come from adult experts, not student. The first, from the advocacy group [Mandatory Reporting is Not Neutral](#), suggests removing criminalizing penalties for workers who are mandatory reporters under current law. Here's how they make the case in a recent policy one-pager:

“Too often service providers are making liability-based decisions on whether or not to report. Determining the necessity of a report should be based on assessing the benefit to the person experiencing harm not whether or not they will ‘get in trouble.’ Workers making a good faith effort to support children, youth and families experiencing violence should not be working under the threat of criminalization.” (Mandatory Reporting is Not Neutral, 2022).

To realize this change the Washington State Legislature would need to remove [RCW 26.44.080](#), which makes failure to report a **gross misdemeanor**, and remove any other penalties at the local level.⁵

“In the past there definitely have been things that I’ve not told people, told mandated reporters, because I was afraid of what would happen.”

- Anna, 16

⁵ Legal analysis and recommendations by Shannon Perez-Darby of Just Beginnings Collaborative.

8. Adopt Harm Reduction Strategies

Another change that can be made right now is to adopt harm reduction strategies that maximize survivor-centered and trauma-informed practice within the constraints of current law. Here are some examples of how that could look, inspired by the work of Kara Hecker, a Counselor for [Vancouver Public Schools](#) and former Associate Program Director and Professor at [City University of Seattle](#):

- For the trauma-informed principle of **Transparency**, a mandatory reporter could say, "I have to report that to CPS within 48 hours because it's the law. After I do, ---- is likely to happen since the person who did this to you is [family/non-family]. Do you have any questions for me?"
- For the survivor-centered principle of **Confidentiality**, a mandatory reporter could say, "You should be able to choose whether I share this private information about you with CPS. The law prevents me from giving you the right to consent, but I'm going to give you the most choice and control I can."
- For the survivor-centered principle of **Self-Determination**, a mandatory reporter could say, "Would you like to be in the room when I make the call to CPS?"

We have proposed training on this method for school counselor in the Training Plan deliverable for this project (Joyce, 2023).

As mentioned in the first section, the **interrupt model**, sometimes called "gentle interruption" or "protective interruption," is an insufficient harm reduction strategy. It does prevent the re-traumatization of multiple disclosures by reducing the number of times the student will tell their story, but it **does not provide affirmative care**. A "gentle" or "protective" "no" to a student in pain seeking the support of a trusted adult is a refusal nonetheless.

9. Know That, Without Change, Students Won't Seek Help

The older students we have talked to thus far, aged 13+, understand mandatory reporting enough that they are strategizing around it. This means **students are purposely avoiding seeking school support after an assault**. Here is what they had to say:

"In the past there definitely have been things that I've not told people, told mandated reporters, because I was afraid of what would happen." - Anna, 16

"I thought me speaking up was going to get me the support that I needed, but it didn't. I was just right the whole time... not speaking...." - Me, 19

"Being forced to simmer through that experience in silence because you're afraid... It's a domino effect when you report. It's just very difficult." - Biscuit, 17

"Also, with mandated reporting I feel like it definitely drives some people away because they don't want it to be reported or people knowing about that... but they still need help." - Raven, 17

"Just not feeling like she wanted to go back to the school for help because they had already broken that trust." - Charlie, 19

"Even with counselors or therapists, a lot of them are mandated reporters.... It definitely drives people away from getting support...." - Jimmy, 18

The current situation is bleak, but change is possible. The recommendations made in this report present a range of options, from **changes that can happen quickly** (better informing school-based reporters about which reports are screened in) to paradigm shifts that will require multiple changes to law and policy to implement (replacing the mandatory reporting standard with a consent-based one). We hope this report gives you and others a place to start and that the voices of students stay at the center for your decision-making process.

Legal Requirements

- ▶ Revised Code of Washington (RCW)
- ▶ Washington State Administrative Code (WAC)

Legal Requirements

Revised Code of Washington (RCW)

Laws about mandated reporting are spread throughout the Revised Code of Washington (RCW) [RCW 26.44](#), which relates to the abuse of children. Relevant sections are as follows:

[RCW 26.44.010](#): Purpose

This section lays out the purpose of the law and introduces the need for emergency intervention, which is the purpose of making a mandatory report.

[E]mergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

This section also introduces the importance of privacy in making these reports, though the current law seems to highlight the privacy needs of the reported aggressor (“malicious...action”), rather than the privacy of the child survivor.

Reports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions.

This section also uses the phrase “subject of the report” in an ambiguous way. According to current procedure, the mandated reporter provides identifying details of the child harmed, not necessarily to person accused of committing that harm.

RCW 26.44.020: Definitions

This section lays out definitions related to child abuse response in Washington state. Of particular interest to the issue of sexual assault in schools is that definition of the type of mistreatment that mandates a report:

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.

It is interesting to note that while sexual exploitation is defined in the section as participation in prostitution or the creation of pornography, sexual abuse is not defined in this section, resulting in a lack of clarity as to which sexual acts committed against a student would mandate a report.

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

The section further stipulates that a child is anyone under the age of eighteen, even though cognitive capacity varies enormously from birth to early children and adolescence.

RCW 26.44.030: Reports

Mandated Reporters: This section receives the most attention in mandated reporting, as it speaks to the report itself. The section begins with a list of professions that are mandated reporters. The professions most relevant to sexual assaults affecting public schools students are "professional school personnel," "registered or licensed nurse," and "social service counselor."

- 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 children, youth, and families,

- licensed or certified child care providers or their employees,
- employee of the department of social and health services,
- 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...
- host home program
- ...department of corrections personnel
- ...any adult who has reasonable cause to believe that a child who resides with them
- ...any person, in his or her official supervisory capacity with a nonprofit or for-profit organization
- ...guardians ad litem,
- ...court-appointed special advocates
- ...administrative and academic or athletic department employees, including student employees, of institutions of higher education,
- ...Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report...

Specifically exempted from this list, but sometimes included in other states' mandated reporter laws are clergy and other church professionals including pastors and pastoral staff. [According to](#) the [Children's Bureau](#), an office of the federal [Administration for Children & Families](#), nineteen states list clergy as mandated reporters, but Washington is not one of them.

Reasonable Cause: The [standard for reporting is defined as "reasonable cause to believe that a child has suffered abuse or neglect"](#) and defines "reasonable cause."

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

Sexual Contact: Sexual contact is referenced here, but defined in [RCW 9A.44.010](#). This definition [would apply to all cases of student sexual assault](#) we learned of in our academic research and in student listening sessions, including groping and fondling that is non-penetrative and to acts committed upon students by peers as well as adults.

(13) "Sexual contact" means 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.

Whom to Report to: The law also dictates that law enforcement or "the department," (presumably the Department of Children, Youth, and Families) must be notified, but does not say in which cases it would be appropriate to report to one entity or the other.

...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...

Should a person identify within the list and have reasonable suspicion of child abuse, they may contact the [Washington State Department of Children, Youth, and Families](#) (DCYF) or law enforcement. There are various district DCYF [reporting options](#), though the easiest is to contact the following toll free number. +1 (866) END-HARM.

Role of Law Enforcement: In any case, the section later mandates that DCYF must inform **law enforcement** of the case in **twenty-four (24) or seventy-two (72) hours**, depending on danger to the child, so police must be involved whenever a report is made. When sexual assault is perpetrated by a minor, this could push the child into the criminal justice system in a way that could cause harm.

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.

Who Makes the Report: The wording "cause a report to be made" indicates that the individual with reasonable cause to believe abuse or neglect has occurred **does not need to make the report themselves**, but only is responsive for causing it to be made by some individual. During the course of our research, we learned that in schools, employees such as teachers and counselors will report to an administrator, who could then make the report in place of the person who received the disclosure.

[H]e or she shall report such incident, or cause a report to be made..."

This might cause difficulty for school personnel in a case where multiple personnel receive the report at once. A few minutes into the start of the school day, a student might come into the front office and announces to several teachers and administrators who are present: "Another student just sexually assaulted me in the hallway and I need to meet with someone right away."

[RCW 26.44.030](#) specifies that a professional school employee, individually "...shall report such incident, or cause a report to be made." Since the student made a statement to multiple staff simultaneously, this could potentially lead to multiple reports of the same incident, with varying degrees of consistency between them.

To avert ambiguity, as well as potential delays in reporting, OSPI can issue a guidance document on this matter, and training--at the local school level--should emphasize individual responsibilities using specific examples. These examples could include, but should not be limited to:

- When a survivor reports to multiple employees at once.
- When multiple survivors report at once.
- When multiple survivors report to multiple employees at once.

Finally, OSPI could, unilaterally, or in cooperation with state police, draft and disseminate model protocol for how to best provide follow-up reports and updates regarding a matter already reported under [RCW 26.44.030](#).

Time to Report: The section stipulates that must be made **no longer than forty-eight (48) hours** after an individual in the above-named professions has reasonable cause to believe abuse has occurred.

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.

This might cause difficulty for school administrators if a student emails the Title IX Coordinator/Civil Rights Coordinator/Principal on Friday at the end of the work day and says "I want to meet with you because I was recently raped by someone at school."

Under the statute, this administrator presumptively has to make a report based on this email within 48 hours, therefore before Sunday evening. This requirement means that a

report will be filed by the administrator, regardless of the reporting party's wishes and potentially without their knowledge, before they ever have an opportunity to meet with the student and review Supportive Measures/Safety Planning/Additional Options under Title IX/etc.

Additionally, on a strict reading of [RCW 26.44.030](#), there is not a parallel requirement for the administrator to give notice to the original student of what they did with the report based on the requirements of state law.

Privileged Communication: The issue of privileged communication is also raised as an exemption to mandated reporting, but [RCW 5.60.060](#) only provides children themselves with one opportunity for this type of privacy, which is in communication with their attorney.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian.

[RCW 26.44.080](#): Violation Penalty

Gross Misdemeanor: Not reporting or causing to report abuse or neglect, if one is mandated to do so, is a gross misdemeanor, which is punishable by up to 364 days in jail and/or a fine of up to \$5,000 in Washington.

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.

Washington State

Administrative Code (WAC)

Policies describing how to implement mandated reporting laws may be found in Washington State Administrative Code (WAC) [WAC 110-30](#), which relates to Child Protective Services (CPS) and has some information related to school responses to sexual assault:

[WAC 110.30.0030](#): What is child abuse or neglect?

This section defines which sex acts upon a child that are within the purview of CPS.

(3) **Sexual abuse** means committing or allowing to be committed any sexual offense against a child as defined in the criminal code. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party...

The definition of sexual exploitation includes a narrow range of sexual harm that is done for the financial gain and entertainment of the person manipulating the child into engaging in sexual acts. This would apply to student who are victims of sexual exploitation.

(4) **Sexual exploitation** includes, but is not limited to, sex trafficking and commercial sexual exploitation as those terms are defined by law and includes such actions as allowing, compelling, encouraging, aiding, or otherwise causing a child to participate in one or more of the following:

(a) Any sex act when anything of value is given to or received by any person for the sex act;

The **filming or photographing** of children with a sexual purpose would apply to the misuse of digital sexual images of minors, produced or shared with or without their consent.

(b) Sexually explicit, obscene, or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted;

(c) Sexually explicit, obscene, or pornographic activity as part of a live performance or for the benefit or sexual gratification of another person.

WAC 110.30.050: Who may receive child protective services?

This section is important to the role of schools because it indicates that **children assaulted by a peer (fellow student) or an adult who is not a legal custodian (such as a teacher) are not eligible for a CPS response.**

Children and families may receive child protective services when there is an allegation that a child has been abused or neglected:

(1) By a parent, legal custodian, or guardian of the child;
or

(2) In a DSHS licensed, certified, or state-operated facility; or

(3) By persons or agencies subject to licensing under chapter 74.15 RCW, including individuals employed by or volunteers of such facilities.

According to this list, CPS would only become involved if a child reported a sexual assault by a legal custodian, in a DSHS licensed facility, or by a DSHS licensed agency or individual.

WAC 110.30.090: What information may CPS share with mandated reporters?

This is another section relevant to schools. School counselors who report student sexual assault cases to CPS, according to their duty as mandated reporters, expressed during our consultation interviews their desire to know what happened to the student after the report.

According to this section of the administrative code, it seems that these school-based reporters do not fall within subset of “consultants designated by CPS,” who are the only individuals with permission to access confidential CPS records on a student’s case

(1) CPS in the conduct of ongoing case planning and consultation with those persons or agencies required to report alleged child abuse or neglect under RCW 26.44.030 and with consultants designated by CPS, may share otherwise confidential information with such persons, agencies, and consultants if the confidential information is pertinent to cases currently receiving child protective services.

These reporters may receive these records only from the student himself, if the student makes such a requests to CPS and opts to share that information with a school counselor or other individual.

(2) When CPS receives a report of alleged child abuse or neglect, mandated reporters, as identified in RCW 26.44.030, and their employees must provide upon request by CPS, all relevant records in their possession related to the child (RCW 26.44.030).

WAC 110.30.0100: When will CPS involve local community resources?

Administrators, counselors, and students all expressed an interest in being community to community resources to support student survivors. The statute says CPS “may use” community-based resources to respond to cases and to prevent them by remedying conditions. However, CPS is not mandated to work with local partners or develop these relationships.

(1) CPS may use local community resources to respond to reports of abuse or neglect when the department's assessment of risk determines that a community response is in the best interest of the child and family.

(2) CPS may involve local community resources in the planning and provision of services to help remedy conditions that contribute to the abuse or neglect of children.

WAC 110.30.0130: What are the department's responsibilities regarding notification of the parent or legal custodian in CPS cases?

Students expressed significant concern that the details of their disclosure might be shared with a parent or legal custodian. Many see this as a reason not to report their sexual assault to a member of the school community. At least one student in a listening session had a school counselor call her father, which she felt was wrong.

Although CPS must notify the parent or legal custodian when they are investigating a case, that notification should only be made if it will not "jeopardize... the safety or protection of the child."

CPS must notify the parent, guardian, or legal custodian of a child at the earliest possible point that will not jeopardize the investigation or the safety or protection of the child...

WAC 110.30.0180: Does CPS have to notify the alleged perpetrator of the results of CPS investigation?

In cases in which a member of the school community is supporting a student whose case is under CPS investigation, it may be helpful to know the perpetrator will be informed.

CPS has the duty to notify the alleged perpetrator in writing of any finding made by CPS in any investigation of suspected child abuse and/or neglect.

WAC 110.30.0210: What happens to screen-out CPS cases?

Because sexual abuse by peers and non-custodial adults are not within the purview of CPS, those cases will be "screened-out" by CPS. Those screened out cases will be destroyed after three (3) years.

(3) At the end of three years from the receipt of a screened-out report that alleged child abuse or neglect, the department must destroy its records relating to that report.

The remainder of the WACs in this section ([WAC 110.30.0220](#) through [WAC 110.30.0390](#)) relate to perpetrators challenging a CPS and the role of the administrative law judge (AJL) in making rulings on CPS findings and are not connected to the role of schools in responding to sexual assault.

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