

IN THE SENATE

SENATE BILL NO. 1254

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO INJURY TO CHILDREN; REPEALING SECTION 16-1605, IDAHO CODE, RE-
2 LATING TO THE REPORTING OF ABUSE, ABANDONMENT OR NEGLECT; REPEALING
3 SECTION 16-1606, IDAHO CODE, RELATING TO IMMUNITY; REPEALING SECTION
4 16-1607, IDAHO CODE, RELATING TO REPORTING IN BAD FAITH AND CIVIL DAM-
5 AGES; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A
6 NEW SECTION 18-1524, IDAHO CODE, TO PROVIDE FOR THE REPORTING OF ABUSE,
7 ABANDONMENT OR NEGLECT, TO DEFINE A TERM, TO PROVIDE EXEMPTIONS AND TO
8 PROVIDE PENALTIES; AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE
9 ADDITION OF A NEW SECTION 18-1524A, IDAHO CODE, TO PROVIDE IMMUNITY;
10 AMENDING CHAPTER 15, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SEC-
11 TION 18-1524B, IDAHO CODE, TO PROVIDE CIVIL DAMAGES FOR MAKING CERTAIN
12 REPORTS IN BAD FAITH; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE
13 THAT THERE IS NO LIMITATION OF TIME WITHIN WHICH A PROSECUTION MUST BE
14 COMMENCED FOR THE FAILURE TO REPORT CERTAIN OFFENSES; AMENDING SECTION
15 19-403, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SEC-
16 TION 6-1903, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMEND-
17 ING SECTION 54-4407, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. That Sections [16-1605](#), [16-1606](#) and [16-1607](#), Idaho Code, be,
21 and the same are hereby repealed.

22 SECTION 2. That Chapter 15, Title 18, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 18-1524, Idaho Code, and to read as follows:

25 18-1524. REPORTING OF ABUSE, ABANDONMENT OR NEGLECT -- PENALTY. (1)
26 Any physician, resident on a hospital staff, intern, nurse, coroner, school
27 teacher, day care personnel, social worker or other person having reason to
28 believe that a child under the age of eighteen (18) years has been abused,
29 abandoned or neglected, as such terms are defined in section 16-1602, Idaho
30 Code, or who observes the child being subjected to conditions or circum-
31 stances which would reasonably result in abuse, abandonment or neglect shall
32 report or cause to be reported within twenty-four (24) hours such conditions
33 or circumstances to the proper law enforcement agency or the department. The
34 department shall be informed by law enforcement of any report made directly
35 to it. When the attendance of a physician, resident, intern, nurse, day
36 care worker or social worker is pursuant to the performance of services as a
37 member of the staff of a hospital or similar institution, he shall notify the
38 person in charge of the institution or his designated delegate who shall make
39 the necessary reports.

40 (2) For purposes of subsection (3) of this section the term "duly or-
41 dained minister of religion" means a person who has been ordained or set

1 apart, in accordance with the ceremonial, ritual or discipline of a church or
 2 religious organization that has been established on the basis of a community
 3 of religious faith, belief, doctrines and practices, to hear confessions and
 4 confidential communications in accordance with the bona fide doctrines or
 5 discipline of that church or religious organization.

6 (3) The notification requirements provided in subsection (1) of this
 7 section do not apply to a duly ordained minister of religion, with regard to
 8 any confession or confidential communication made to him in his ecclesiasti-
 9 cal capacity in the course of discipline enjoined by the church to which he
 10 belongs if:

11 (a) The church qualifies as tax-exempt under 26 U.S.C. section
 12 501(c)(3);

13 (b) The confession or confidential communication was made directly to
 14 the duly ordained minister of religion; and

15 (c) The confession or confidential communication was made in the manner
 16 and context that places the duly ordained minister of religion specif-
 17 ically and strictly under a level of confidentiality that is considered
 18 inviolate by canon law or church doctrine. A confession or confiden-
 19 tial communication made under any other circumstances does not fall un-
 20 der this exemption.

21 (4) Failure to report as required in this section shall be:

22 (a) A misdemeanor if the unreported act of abuse, abandonment or ne-
 23 glect constitutes a misdemeanor.

24 (b) A felony if the unreported act of abuse, abandonment or neglect
 25 constitutes a felony. A felony conviction pursuant to this subsection
 26 shall be punishable by a fine of not more than five thousand dollars
 27 (\$5,000), a term of imprisonment not to exceed five (5) years, or both
 28 such fine and imprisonment.

29 SECTION 3. That Chapter 15, Title 18, Idaho Code, be, and the same is
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 31 ignated as Section 18-1524A, Idaho Code, and to read as follows:

32 18-1524A. IMMUNITY. Any person who has reason to believe that a child
 33 has been abused, abandoned or neglected and, acting upon that belief, makes
 34 a report of abuse, abandonment or neglect as required in section 18-1524,
 35 Idaho Code, shall have immunity from any liability, civil or criminal, that
 36 might otherwise be incurred or imposed. Any such participant shall have the
 37 same immunity with respect to participation in any such judicial proceed-
 38 ing resulting from such report. Any person who reports in bad faith or with
 39 malice shall not be protected by this section. Any privilege between hus-
 40 band and wife or between any professional person except the lawyer-client
 41 privilege including, but not limited to, physicians, counselors, hospitals,
 42 clinics, day care centers and schools and their clients shall not be grounds
 43 for excluding evidence at any proceeding regarding the abuse, abandonment or
 44 neglect of the child or the cause thereof.

45 SECTION 4. That Chapter 15, Title 18, Idaho Code, be, and the same is
 46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 47 ignated as Section 18-1524B, Idaho Code, and to read as follows:

1 18-1524B. REPORTING IN BAD FAITH -- CIVIL DAMAGES. Any person who
 2 makes a report or allegation of child abuse, abandonment or neglect knowing
 3 the same to be false or who reports or alleges the same in bad faith or with
 4 malice shall be liable to the party or parties against whom the report was
 5 made for the amount of actual damages sustained or statutory damages of two
 6 thousand five hundred dollars (\$2,500), whichever is greater, plus attor-
 7 ney's fees and costs of suit. If the court finds that the defendant acted
 8 with malice or oppression, the court may award treble actual damages or tre-
 9 ble statutory damages, whichever is greater.

10 SECTION 5. That Section 19-401, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstand-
 13 ing any other provision of law, there is no limitation of time within which a
 14 prosecution for the following crimes must be commenced:

- 15 (1) Murder;
- 16 (2) Voluntary manslaughter;
- 17 (3) Rape pursuant to section 18-6101(3) through (9), or section
 18 18-6108(3) through (7), Idaho Code, or the failure to report rape pursuant to
 19 such sections as required in section 18-1524, Idaho Code;
- 20 (4) Sexual abuse of a child or lewd conduct with a child as set forth in
 21 sections 18-1506 and 18-1508, Idaho Code, or the failure to report such sex-
 22 ual abuse of a child or such lewd conduct with a child as required in section
 23 18-1524, Idaho Code; or
- 24 (5) An act of terrorism as set forth in sections 18-8102, 18-8103,
 25 18-3322, 18-3323 and 18-3324, Idaho Code.

26 SECTION 6. That Section 19-403, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 19-403. MISDEMEANORS. (1) Except as provided in subsections (2) and
 29 (3) of this section, a prosecution for any misdemeanor must be commenced by
 30 the filing of the complaint or the finding of an indictment within one (1)
 31 year after its commission.

32 (2) A prosecution for failure to report or failure to cause to be re-
 33 ported the abuse, abandonment or neglect of a child as provided for in sec-
 34 tion ~~16-1605~~ 18-1524, Idaho Code, must be commenced by the filing of the com-
 35 plaint or the finding of an indictment within four (4) years after its com-
 36 mission.

37 (3) A prosecution for misuse of funds as provided for in section
 38 18-5702(1), Idaho Code, must be commenced by the filing of the complaint or
 39 the finding of an indictment within five (5) years after its commission.

40 SECTION 7. That Section 6-1903, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 6-1903. DISCHARGE OF A MENTAL HEALTH PROFESSIONAL'S DUTY TO WARN. (1)
 43 The duty to warn arises only under the limited circumstances specified in
 44 section 6-1902, Idaho Code. The duty to warn a clearly identifiable victim
 45 shall be discharged when the mental health professional has made a reason-

1 able effort to communicate, in a reasonable timely manner, the threat to the
2 victim and has notified the law enforcement agency closest to the patient's
3 or victim's residence of the threat of violence, and has supplied a request-
4 ing law enforcement agency with any information he has concerning the threat
5 of violence. If the victim is a minor, in addition to notifying the appropri-
6 ate law enforcement agency as required in this subsection, the mental health
7 professional shall make a reasonable effort to communicate the threat to the
8 victim's custodial parent, noncustodial parent, or legal guardian.

9 (2) The provisions of this section do not limit or affect the mental
10 health professional's duty to report child abuse or neglect in accordance
11 with section ~~16-1605~~ 18-1524, Idaho Code.

12 SECTION 8. That Section 54-4407, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 54-4407. PEER ASSISTANCE ENTITY TO REPORT TO BOARD. (1) The legisla-
15 ture recognizes that confidentiality is essential to obtaining maximum dis-
16 closure from impaired health care professionals; such disclosure is vital
17 to the success of the peer assistance process. It is also recognized that
18 the public must be protected from health care professionals who continue to
19 practice in an impaired state.

20 (2) If the peer assistance entity reasonably believes that a health
21 care professional continues to practice in an impaired state after entering
22 into the peer assistance entity's program and despite the peer assistance
23 entity's recommendations for treatment or modification of practice to
24 remove risk to the public from the effects of the impairment, the peer assis-
25 tance entity shall immediately notify the appropriate board regarding the
26 impaired health care professional and provide all documentation relevant
27 to substantiate the impaired practice. Similarly, if the licensing board
28 reasonably believes that a health care professional continues to practice in
29 an impaired state, it can require the peer assistance entity to provide all
30 documentation available on the current ability to practice of the individ-
31 ual. Information that does not deal directly with the professional ability
32 to practice will remain privileged.

33 (3) The board shall have access to financial and administrative records
34 necessary to determine contract compliance and to reports regarding aggre-
35 gate statistical information; provided, information released pursuant to
36 this subsection shall not contain data which could be used to specifically
37 identify past or present peer assistance program participants.

38 (4) The board shall have the authority to use any documentation or in-
39 formation supplied to it from a peer assistance entity pursuant to this sec-
40 tion or section 54-4406, Idaho Code, as it deems necessary and which is con-
41 sistent with applicable Idaho law.

42 (5) Nothing in this chapter shall be deemed to supersede any duty to
43 report under chapter 19, title 6, or section ~~16-1605~~ 18-1524 or ~~16-1606~~
44 18-1524A, Idaho Code.