

The Firehouse Lawyer

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CHILD AND ABUSE AND NEGLECT, OFF-DUTY

In March, 2017, we reported about a Court of Appeals case called *State v. James-Buhl*. Our conclusion from reading the holding of *James-Buhl*, was that “[U]nless the *James-Buhl* decision is *reversed* by the Washington Supreme Court, then persons such as EMTs and paramedics should be informed that even when they are not working in the scope of their employment, if they encounter a situation in which they have reasonable cause to believe child abuse or neglect has occurred, they are required to report this to either the Washington State Department of Social and Health Services, or some other appropriate law enforcement agency, or face civil or criminal liability.”¹

On April 19, 2018, the Washington Supreme Court **reversed** the Court of Appeals, and found that “a teacher's failure to comply with the mandatory reporting duty must have some connection to his or her professional identity.”² What this means is that paramedics and EMTs, who are mandatory reporters of child abuse and neglect under RCW 26.44.030, must witness child and abuse and neglect *in connection with*

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<https://www.firehouselawyer.com/Newsletters/March2017FINAL.pdf>

2

<http://www.courts.wa.gov/opinions/pdf/944091.pdf>

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their employment to be deemed civilly or criminally liable for a failure to report.

VETERANS' PREFERENCE POINTS AND ESHB 2701: A CHANGE IN THE LAW

Several years ago the veterans preference statute was changed; in recent years it has been re-named the "veterans scoring criteria status" but that is such a mouthful or awkward that we still "prefer" calling it "veterans preference".

RCW 41.04.010 is the relevant statute, which requires state and local government employers to provide veterans with either 10% or 5% to be added to their passing grade on all competitive employment examinations, based on a perfect score being 100.

10% is added to the score if the veteran served during a period of war as defined in other laws. 5% is added if the veteran did not serve during a period of war. Both "preferences" are applicable only if the applicant is not entitled to military retirement.

The Washington Legislature, however, did change the definition of "veteran" as set out in RCW 41.04.005 during the last session. By Engrossed Substitute House Bill 2701, which became chapter 61 of the Laws of 2018, the legislature modified the definition to make it a bit more broad with respect to the Persian Gulf "period of

war". Persons who served during the Persian Gulf War between August 2, 1990 and February 28, 1991 (or instead ending on November 30, 1995, if the person was awarded a campaign badge or medal) are entitled to the preference. The legislature deleted the prior language that provided the end date was set by presidential proclamation or law. This definitional change shall take effect on May 7, 2018.³

It is our opinion that the state legislature can enact such a change even though one might assume that defining when the Gulf War ended should be a matter of federal law. In our view, the state can provide greater benefits to veterans than that to which the federal government might do so. After all, RCW 41.04.010 is only being used to assist veterans with gaining employment in the state of Washington with State and local governments. Yes, we realized that private employers who are contractors with the state are also so required, but our clients who need to know about this law are all public employers.

SAFETY BILL

The vertical safety standards require that an incident commander manage an emergency incident—which is a "specific

³ <http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2701-S.SL.pdf>

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emergency operation.” WAC 296-305-05000 (3). One function of the incident commander is to clearly establish when his or her command is being continued, transferred or terminated. WAC 296-305-05000 (4)(g). That is the reason why mutual aid agreements and automatic aid agreements must contain provisions establishing how the transfer of command between agencies must be accomplished.

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