

HOUSE BILL REPORT

ESSB 6555

As Passed House - Amended:

March 6, 2012

Title: An act relating to child protective services.

Brief Description: Providing for family assessments in cases involving child abuse or neglect.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Shin and Roach).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/20/12, 2/21/12 [DPA];

Ways & Means: 2/24/12, 2/25/12 [DPA(ELHS)].

Floor Activity:

Passed House - Amended: 3/6/12, 80-17.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Requires the Department of Social and Health Services (DSHS) to implement a Family Assessment Response (FAR) within Child Protective Services (CPS) by December 1, 2013.
- Permits the DSHS to implement the FAR on a phased-in basis, by geographical area.
- Requires the DSHS to submit an implementation plan to the Legislature by December 31, 2012.
- Directs the Washington State Institute for Public Policy to evaluate the FAR and directs the DSHS to conduct client satisfaction surveys.
- Modifies the process to appeal CPS investigative findings and specifies items to be included in written notification to alleged perpetrators.
- Amends the purpose section of the statute governing child abuse and neglect to provide that the child's health and safety interests should prevail over conflicting legal interests of a parent, custodian, or guardian.
- Addresses the liability of governmental entities for acts or omissions in conducting emergent placement investigations of child abuse or neglect.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Provides that the state is not liable for actions taken to comply with court orders and that child abuse investigators are entitled to the same witness immunity as other witnesses.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 9 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson, Orwall and Overstreet.

Staff: Megan Palchak (786-7120).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Early Learning & Human Services. Signed by 26 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Parker.

Staff: Melissa Palmer (786-7388).

Background:

Child Abuse Prevention and Treatment Act Reauthorization Act of 2010.

The Child Abuse Prevention and Treatment Act (CAPTA) is the sole federal child welfare program focusing only on preventing and responding to allegations of child abuse and neglect; the CAPTA was reauthorized in 2010 through 2015 (Public Law 111-320). Public Law 111-320 encourages states to review their laws, policies, practices, and procedures regarding neglect to ensure children are protected. It also encourages Child Protective Services (CPS) agencies to utilize "differential response" which is described as "a state or community-determined formal response that assesses the needs of the child or family without requiring a determination of risk or occurrence of maltreatment. Such response occurs in addition to the traditional investigatory response." There are no federal regulations regarding the practice of differential response.

Differential Response.

According to the United States Department of Health and Human Services, definitions and approaches to differential response vary. Differential response systems may be referred to as "alternative response," "multiple track," or another term. Minnesota has a mature differential response system which is referred to as "family assessment response." (More than 15 states have implemented differential response within their respective CPS agencies.) The National

Quality Improvement Center on Differential Response in Child Protective Services describes the core elements of differential response as follows:

- two or more discrete responses to screened in and accepted reports of maltreatment;
- assignment to response pathway is determined by an array of factors;
- original response assignments can be changed;
- families assigned to non-investigation pathways are able to accept or refuse to participate in the non-investigation pathway or choose the traditional investigation pathway;
- after assessment in the non-investigation pathway, services are voluntary as long as child safety is not compromised;
- discrete responses are established by codification in statute, policy, or protocols;
- no substantiation of alleged maltreatment (services are offered without a formal determination that maltreatment has occurred); and
- use of the central registry depends on the type of response.

Child Protective Services in Washington.

Under the state's child abuse statutes, the Washington Department of Social and Health Services (DSHS) is responsible for responding to and investigating allegations of child abuse or neglect. The DSHS, Children's Administration (CA) estimates that in 2011, its CPS division received 77,139 reports of child maltreatment (most allege neglect), investigated 27,199 of those reports, and determined that 4,878 reports contained founded allegations. Approximately 66 percent of founded reports were regarding neglect, 25 percent were regarding physical abuse, and 9 percent were regarding sexual abuse. In 2011 approximately 82 percent of CPS investigations resulted in no finding of child abuse or neglect. In 2010 approximately 70 percent of neglect reports the DSHS responded to were regarding families who had previously been reported to the DSHS.

Response to Reports of Child Abuse or Neglect.

Under DSHS administrative rules, when responding to reports of alleged child abuse or neglect, CPS:

- must assess all reports that meet the definition of child abuse or neglect using a risk assessment process to determine level of risk and response time;
- must provide an in-person response to alleged victims and must attempt an in-person response to the alleged perpetrator of child abuse and neglect in referrals assessed at moderate to high risk;
- may refer reports assessed at low to moderately low risk to an alternative response system;
- may interview a child, outside the presence of the parent, without prior parental notification or consent;
- must make reasonable efforts to have a third party present at the interview so long as the third party does not jeopardize the investigation, unless the child objects;
- may photograph the alleged child victim to document the physical condition of the child; and
- attempt to complete investigations within 45 days. In no case will the investigation extend beyond 90 days unless the investigation is being conducted under local protocol, established pursuant to chapter, and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

Duty to Investigate.

The DSHS or law enforcement must investigate reports received concerning the possible occurrence of abuse or neglect. The DSHS is specifically required to investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that present an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodian, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries that are clearly not the result of a lack of care or supervision by the child's parents, legal custodian, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the DSHS must notify the appropriate law enforcement agency. Investigations may be conducted regardless of the location of the alleged abuse or neglect.

Protective Custody.

In some cases of alleged abuse or neglect, a child may be immediately removed from his or her parent or guardian and taken into protective custody. A court can order law enforcement or CPS to take a child into custody where the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A child may be taken into custody without a court order where law enforcement has probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order. A child can also be detained and taken into custody without a court order where a hospital administrator has reasonable cause to believe that allowing the child to return home would present an imminent danger to the child's safety. A shelter care hearing must be held within 72 hours of a child being taken into custody and placed under state care, excluding Saturdays, Sundays, and holidays. At the shelter care hearing, the court will determine whether the child can safely be returned home while the dependency is being adjudicated, or whether there is further need for an out-of-home placement of the child.

Tyner v. DSHS.

Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In the case *Tyner v. DSHS*, the Washington Supreme Court found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court based this holding in part on legislative intent statements in the child abuse statutes describing the importance of the family unit and the parent-child bond. There are three types of negligent investigation claims recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home.

Process to Appeal an Investigative Finding.

A person named as an alleged perpetrator in a founded report of child abuse or neglect has the right to seek review and amendment of the investigative finding. Within 20 days of receiving written notice from the DSHS that the person has been named as a perpetrator in a founded report of abuse or neglect, the person must provide written notice to the DSHS that he or she wishes to contest the finding. If the request is not made within the time period, the person may not seek further review of the finding. However, if the alleged perpetrator seeks

DSHS review within specified timeframes, receives notification of the results of the DSHS's review, then the alleged perpetrator has 30 days to request further review via an adjudicative proceeding. If the alleged perpetrator fails to request further review within the 30-day period, then the alleged perpetrator may not challenge the finding further.

Notice of Investigative Finding.

Under DSHS administrative rules, notification regarding an investigative finding must inform the alleged perpetrator about the legal basis for the findings and sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports. The notice must also contain the following:

- The alleged perpetrator may submit to the DSHS a written response regarding the finding. If a response is submitted, it must be filed in the DSHS's records.
- Information in the DSHS's records may be considered in later investigations or proceedings relating to child protection or child custody.
- Founded CPS findings may be considered in determining:
 - if an alleged perpetrator is qualified to be licensed to care for children or vulnerable adults;
 - if an alleged perpetrator is qualified to be employed by a child care agency or facility; and
 - if an alleged perpetrator may be authorized or funded by the DSHS to provide care or services to children or vulnerable adults.
- The alleged perpetrator's right to challenge a founded CPS finding.

Confidentiality.

An unfounded, screened-out, or inconclusive report of child abuse or neglect may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

Alternative Response System in Washington.

In 1997 the Legislature authorized an alternative response system (ARS). Chapter 386, Laws of 1997 described an ARS as "voluntary family-centered services provided by a contracted entity with the intention to increase the strength and cohesiveness of families that the DSHS determined to present a low risk of child abuse or neglect." Prior to expiration, Chapter 386, Laws of 1997 provided that:

- The DSHS was required to: (1) contract for the delivery of services for at least two, but not more than three, models of alternative response; (2) provide for the delivery of services in the least intrusive manner reasonably likely to achieve improved family cohesiveness, prevention of referrals of the family for alleged abuse or neglect, and improvement in the health and safety of children; (3) identify and prioritize risk and protective factors associated with the type of abuse or neglect referrals that are appropriate for services delivered by the ARS; and (4) identify appropriate data to determine and evaluate outcomes of the services delivered by ARS providers. Contracts were to include provisions and funding for data collection.
- Contracted providers were required to: (1) use risk and protective factors to determine which services to deliver; (2) recognize the due process rights of families that receive ARS services; and (3) recognize that services were not intended to be investigative.

- The court was authorized to order the delivery of services through any appropriate public or private provider.

According to the DSHS, "historically, the contracted alternate intervention program in Washington... [had] not achieved ideal outcomes and... had some program design weaknesses. There... [had] been a lack of adequate program and service definition, and engagement rates of families in services... [had] been an issue. The percentage of families engaged in services by contracted providers... [had been] low." In 2006 the DSHS initiated a redesign of the ARS, and renamed it "Early Family Support Services." The stated goals of the redesign included: implementation of a standardized assessment tool, development of service delivery standards, and integration of promising or evidence-based programs.

Enhanced Community-Based Services.

In 1987 the Legislature enacted Engrossed Second Substitute Senate Bill 5659 which required the DSHS, under the state's child abuse statutes, to offer enhanced community-based services to persons who are determined not to require further state intervention, within funds appropriated.

Summary of Bill:

Family Assessment Response.

Terms.

Family Assessment Response (FAR) means a way of responding to certain reports of child abuse or neglect using a differential response approach to CPS. The FAR must focus on safety of the child, the integrity and preservation of the family, must assess the status of the child and family in terms of risk of abuse and neglect including a parent's or guardian's capacity and willingness to protect the child, and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator and no investigative finding is entered into the record as a result of the FAR.

A family assessment means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. The assessment does not include a determination as to whether child abuse or neglect occurred but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

Implementation.

The DSHS must implement a FAR within CPS by December 1, 2013. The DSHS may implement the FAR on a phased-in basis, by geographical area. The DSHS must submit the implementation plan report to the Legislature by December 31, 2012.

The implementation plan must be developed in consultation with stakeholders, including tribes, and must include:

- a description of the FAR practice model;
- identification of possible additional non-investigative responses or pathways;
- an intake screening tool;

- a family assessment tool specifically to be used in the FAR, that at minimum, must evaluate the safety of the child and determine services needed by the family to improve or restore family well-being;
- staff training requirements;
- strategies to reduce disproportionality;
- strategies to assist and connect families with the appropriate private or public housing support agencies, for those parents whose inability to obtain or maintain safe housing creates a risk of harm to the child, risk of out-of-home placement of the child, or a barrier to reunification;
- identification of methods to involve specified local community partners in the development of community-based resources to meet family needs;
- mechanisms to involve the child's Washington tribe, if any, in any FAR, when the child subject to the FAR is an Indian child, as defined in 13.38.040;
- procedures to assure continuous quality assurance;
- identification of current departmental expenditures for FAR related services;
- identification of philanthropic funding to supplement public resources;
- a potential phase-in schedule, if proposed; and
- recommendations for legislative action required to implement the plan.

The items above must be developed prior to the implementation of the FAR.

Response to Reports of Child Abuse or Neglect.

When the DSHS receives a report of child abuse or neglect, the DSHS must use one of two responses for reports that are screened in and accepted for response: an investigation or a family assessment. In making this response, the DSHS must:

- use a method to assign cases to investigation or family assessment that are based on an array of factors that may include the presence of: imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics such as the type of alleged maltreatment and the age of the alleged victim (age of the alleged victim may not be used as the sole criterion for determining case assignment);
- allow for a change in response assignment based on new information that alters risk or safety level;
- allow families assigned to the FAR to choose to receive an investigation rather than a family assessment;
- provide a full investigation if a family refuses the initial family assessment;
- provide voluntary services to families based upon the results of the initial family assessment; and
- conduct an investigation, and not a family assessment, in response to allegations that:
 - pose a risk of imminent harm to the child;
 - pose a serious threat of substantial harm to the child;
 - constitute conduct that is a criminal offense and the child is the victim; or
 - identify an abandoned child or an adjudicated dependent child.

Law enforcement and the DSHS are not required to investigate reports of possible abuse or neglect that have been assigned to the FAR.

Operating the FAR.

For reports that are assigned to the FAR, the DSHS must:

- implement the FAR in a consistent, cooperative manner;
- provide the family with a written explanation of the procedure for assessment of the child and family and its purpose;
- collaborate with the family to identify strengths, resources, service needs, and to develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;
- have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under the FAR, all of their options and the options the DSHS has if parents do not sign the form;
- complete the family assessment within 45 days of receiving the report. Upon parental agreement, this time period can be extended to 90 days;
- offer services to the family in a manner that makes it clear acceptance of the services is voluntary;
- upon completion of the family assessment, if the DSHS determines that services are not recommended, then the case must be closed; and
- within 10 days of the conclusion of the family assessment, meet to discuss the recommendations for services to address child safety concerns or significant risk of subsequent child maltreatment. If the parent or guardian disagrees with the DSHS's recommendation regarding the provision of services, the DSHS must convene a family team decision-making meeting to discuss the recommendations and objections. The caseworker's supervisor and area administrator must attend the meeting.

Under this act, the DSHS is no longer required, within funds appropriated, to offer enhanced community-based services to persons who are determined not to require further state intervention.

Confidentiality.

Information related to FAR cases may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW without consent of the individual identified in the report, unless that individual: (a) seeks to become a licensed foster or adoptive parent, or (b) the individual is the parent or legal custodian of a child being served by one of the agencies referenced above.

Evaluation.

The WSIPP must conduct an evaluation of the implementation of the FAR. At a minimum, the evaluation must address child safety measures, out-of-home placement rates, re-referral rates, caseload, and demographics. The WSIPP's first report is due December 1, 2014, and its final report is due December 1, 2016.

The DSHS must conduct two client satisfaction surveys of families that have been placed in the FAR. The first survey results are to be reported by December 1, 2014, and the second survey results by December 1, 2016.

Liability.

Family Assessment Response.

The DSHS are not civilly liable in using the FAR to respond to an allegation of child abuse or neglect, unless the response choice was made with reckless disregard.

Pre-Shelter Care.

Governmental entities, and their officers, agents, employees, and volunteers, are not liable for acts or omissions in emergent placement investigations of child abuse or neglect unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing. A new section is added to the child abuse and neglect statute stating that the liability of governmental entities to parents, custodians, or guardians accused of abuse or neglect is limited as provided in the bill, consistent with the paramount concern of the DSHS to protect the child's health and safety interest of basic nurture, health, and safety, and the requirement that the child's interests prevail over conflicting legal interests of a parent, custodian, or guardian. The DSHS and its employees must comply with orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, employees of the DSHS are entitled to the same witness immunity as would be provided to any other witness. The purpose section of the child abuse statute is amended to state that a child's health and safety interests should prevail over conflicting legal rights of a parent and that the safety of the child is the DSHS's paramount concern when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

Appeal of an Investigative Finding.

Timeframes.

Within 30 calendar days after the DSHS has notified an alleged perpetrator that he or she has been named in a founded report of child abuse or neglect, he or she may request that the DSHS review the finding. If the request is not made within the specified time period, the person has no right to further review of the finding, unless the person can show that the DSHS did not comply with the notice requirements of RCW 26.44.100. The DSHS must complete its review within 30 days.

Notice.

The DSHS's written notice to an alleged perpetrator named in a founded report must contain the following:

- information about the DSHS's investigative finding as it relates to the alleged perpetrator;
- sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded allegation;
- that the alleged perpetrator has the right to submit a written response regarding the finding which the DSHS must file in the records;
- that information in the DSHS's records may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect;
- that founded allegations of abuse or neglect may be used in determining:
 - whether the person is qualified to be licensed or approved to care for children or vulnerable adults; or
 - whether the person is qualified to be employed by the DSHS in a position having unsupervised access to children or vulnerable adults; and
- that the alleged perpetrator has the right to challenge the founded allegation of abuse or neglect.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 and 3 through 11, relating to implementing the FAR, which take effect December 1, 2013.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) Child Protective Services investigations can be intrusive and prevent parents and families from moving forward in their lives. This type of reform would help families engage in needed services sooner. Case workers find this approach attractive, although change can be difficult. In other states, this type of reform has been proven to be effective for families and communities, and it has also resulted in cost savings. It has been particularly effective in terms of addressing the overlap between domestic violence and child maltreatment. Implementation should be swift, but should allow appropriate start-up.

(In support with concerns) There are many potential benefits to implementing a FAR within CPS. This type of reform allows more flexibility and maintains child safety. The DSHS has two concerns about this bill. First, the DSHS is unable to fund the provisions in the bill. Costs associated include computer/data systems, training, and evaluation. Second, this bill includes very broad language regarding safe and stable housing; the language should be revised so it is clear the DSHS will assist and connect families to housing resources. Service coordination needs to be added back into the definition of case management to sync with the performance-based contracting bill.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) The child welfare community is absolutely thrilled with the Legislature's support of this policy. House Bill 2289 passed out of the House unanimously and the Senate bill passed out of the Senate unanimously. During the process, there have been improvements made to the legislation. The proposed operating budget that this committee is considering includes funding to support implementation of Family Assessment Response, which is very pleasing.

(Opposed) None.

Persons Testifying (Early Learning & Human Services): (In support) Frank O'Dell, Washington Federation of State Employees; Gina Enochs, Washington Parent Advocacy Committee; Kelly St. Clair, Snohomish County Parent Advocacy Committee; Pamela Crone, Washington State Coalition Against Domestic Violence; and Laurie Lippold, Children's Home Society of Washington and Mockingbird Society.

(In support with concerns) Denise Revels Robinson, Department of Social and Health Services; and Alia Griffing, Washington Federation of State Employees.

Persons Testifying (Ways & Means): Laurie Lippold, Children's Home Society and the Mockingbird Society.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.