

SENATE BILL REPORT

SB 6238

As Reported By Senate Committee On:
Human Services & Corrections, February 4, 1998
Ways & Means, February 10, 1998

Title: An act relating to dependent children.

Brief Description: Changing provisions relating to dependent children.

Sponsors: Senators Stevens and Swecker.

Brief History:

Committee Activity: Human Services & Corrections: 1/21/98, 2/4/98 [DPS].
Ways & Means: 2/9/98, 2/10/98 [DPS (HSC)].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6238 be substituted therefor, and the substitute bill do pass.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Kohl, Schow and Stevens.

Staff: Joan K. Mell (786-7447)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6238 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Swecker and Zarelli.

Staff: Karen Barrett (786-7711)

Background: Parents have experienced an inability to provide input to the courts regarding their opinions with respect to their children. Further, in cases of negligent treatment, there exists a perception that families have been harmed by state intervention in situations where the conduct of the parents has not been egregious enough to outweigh the harm resulting from state intervention.

Under current law, a law enforcement officer, probation counselor, or child protective services official may, pursuant to a juvenile court order, remove a child and place the child in state custody if a petition is filed that alleges the child is dependent and the child's health, safety and welfare will be seriously endangered if the child is not taken into custody. The court can issue an order without notice to the parents or guardians, and without a preliminary

hearing where the parents, guardians or their counsel can present opinions and challenge information.

There is no statutory requirement that the petition be served upon the parent or guardian at the time the child is removed if ordered by the court. Child dependency statutes provide that a shelter care hearing must follow and will occur no later than 72 hours after the child is taken into state custody, with customary exceptions for weekends when the court may not be in session. To aid the court in its decision for disposition, the person or agency filing the petition is charged with the task of providing a social study of matters relevant to the case.

Summary of Substitute Bill: Any petition to take a child into custody must be accompanied by an affidavit or declaration, setting forth specific factual information evidencing reasonable grounds that the child's health, safety and welfare is seriously endangered if not taken into custody. At least one of the grounds set forth by the petitioner must demonstrate a risk of imminent physical harm to the child. Imminent physical harm is defined to include sexual abuse or sexual exploitation of a child. The petition, affidavit or declaration and order must be served upon the guardian or parent at the time the child is removed from the home.

Records the department intends to rely upon in support of its shelter care hearing must be produced within ten days of a written request and prior to any shelter care hearing. If the records are served upon legal counsel, legal counsel must have an opportunity to review these records prior to the shelter care hearing with the parents.

A summons served giving notice of a hearing on child custody must state that the parent or guardian has a right to records the department intends to rely upon at the time of its hearing.

Courts must consider whether nonconformance with any conditions upon the parent or custodian as it relates to child placement resulted from circumstances beyond the control of the parent or custodian.

The parent may submit a counselor's or health care provider's evaluation of the parents which is included in the social study or considered in conjunction with the social study. The social study identifies any services chosen and approved by the parents.

Substitute Bill Compared to Original Bill: In the substitute bill, an affidavit evidencing imminent physical harm may be submitted by the case worker or any other entity. In the underlying bill, there was no imminent physical harm requirement, but a physician or police officer would have had to sign a sworn statement that the child's health, safety and welfare would be seriously endangered if the child was not removed from the home.

The substitute bill does not make changes to the definition of negligent maltreatment but requires, in cases where notice and an opportunity to be heard are not afforded the parents, there must be factual evidence before an order to remove a child is entered that the child is at risk of imminent physical harm. Imminent physical harm includes cases of sexual abuse.

In the original bill, there was a 24-hour turn around requirement on production of records requested from the department. In the substitute bill, there is no 24-hour turn around requirement, but the records must be produced prior to a shelter care hearing and an

opportunity must be given to counsel and the parents to review the records prior to the hearing.

The substitute bill changes the language of the summons, and there is no such language change to the summons in the underlying bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Efforts at improving circumstances wherein children are removed from parents by the department are applauded by parent advocates.

Testimony Against: Imminent physical harm is not necessarily inclusive of sexual abuse. The 24-hour requirement is too quick a time frame for production of documents. Parents have legal representation to assist them in making sure information is appropriately presented to the court.

Testified: Marilyn Gunther (pro); Jennifer Strus, DSHS (con).