
Judiciary Committee

HB 3148

Title: An act relating to investigations of child abuse and neglect.

Brief Description: Concerning investigations of child abuse.

Sponsors: Representatives Kagi, Darneille and Roberts.

Brief Summary of Bill
<ul style="list-style-type: none">• Provides that a governmental entity, or its officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of a report of child abuse or neglect.• Provides that the duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decision.

Hearing Date: 2/1/06

Staff: Edie Adams (786-7180).

Background:

The child abuse laws impose a duty on the Department of Social and Health Services (Department) and law enforcement to investigate allegations or reports of suspected child abuse or neglect. The Department is required to offer services to a family based on findings of the investigation, and to notify the appropriate court or community agency, including law enforcement if a crime may have been committed against a child. If warranted, the Department may file a dependency petition with the court.

A person who is suspected of child abuse or neglect is provided with due process rights with regard to the investigation process. These rights include the right to receive notice of the allegations and the Department's findings, notice of his or her rights in the process, an opportunity to seek an administrative review and amendment of a finding that the allegation is founded, and judicial review of the final determination by the Department.

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 relied on intent language in the child abuse statutes that emphasizes the importance of the family unit and the parent/child relationship in determining that the purpose of the statute is to not only protect the child but also to preserve the integrity of the family. Based on this dual purpose, the court held that when investigating alleged abuse or neglect, the state has the duty to act reasonably with regard to all members of the family, even with regard to a parent who is suspected of the abuse.

There are three types of negligent investigation claims that have been 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. In a 2003 case, *M.W. v. DSHS*, the Washington Supreme Court rejected an argument that the child abuse investigation statute creates a cause of action for all physical or emotional harms that may occur during the investigation process.

In *M.W.* the court held that because the cause of action for negligent investigation derives from the statute, the duty is limited to the harm the statute was meant to address. Since the statute's purpose is to protect children from abuse within the home and to protect the integrity of the family, a claim for negligent investigation is limited to negligent investigations that lead to harmful placement decisions. A recent Washington Supreme Court decision, *Roberson v. Perez*, confirmed this holding that a claim for negligent investigation applies only where a faulty investigation leads to a harmful placement decision, such as placing a child in an abusive home, removing a child from a non-abusive home, or failing to remove a child from an abusive home.

Summary of Bill:

Legislative findings and intent are provided. The Legislature finds that judicial interpretation of child abuse investigation statutes as imposing both a duty to protect children by removing them from unsafe homes, and an equal duty to protect the family unit even where a parent is the alleged abuser, has imposed potentially irreconcilable duties on the entities that are obligated to investigate child abuse and neglect referrals. The Legislature recognizes the rights of parents and the importance of the family unit, but finds that the paramount purpose of the child abuse chapter is to benefit children. When the child's interests of basic nurture, physical and mental health, and safety conflict with the parents' interests, the interests of the child should prevail.

The Legislature intends to:

- Overrule *Tyner v. DSHS* and other cases in which the courts have held that the child abuse investigation statute creates an implied right of action for parents or other caretakers who are alleged abusers;
- Codify the portions of the holdings in *M.W. v. DSHS* and *Roberson v. Perez* that liability is limited to the initial placement decision and not the manner in which the investigation was conducted; and
- Have the interests of the parents protected through the judicial review and other procedures established under the child welfare statutes.

The purpose section of the child abuse statute is amended to state:

- When a child's interests of basic nurture, physical and mental health, and safety conflict with the parents' interests, the interests of the child should prevail; and
- The safety of the child is the department's paramount concern when determining whether a child should be placed outside the parents' home during or immediately following investigation of alleged abuse or neglect.

A new provision is added to the child abuse statute relating to a governmental entity's duty to conduct a reasonable investigation and potential liability relating to an investigation of child abuse or neglect. Governmental entities, or their officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of reports of child abuse or neglect. The duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decision.

Nothing in the child abuse investigation chapter creates a cause of action or right of review for an alleged abuser beyond the specific rights granted in the chapter, such as notice and the right to seek administrative or judicial review of an agency decision.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.