

HOUSE BILL REPORT

SSB 5321

As Reported by House Committee On:
Early Learning & Children's Services

Title: An act relating to the sharing of child welfare information.

Brief Description: Addressing child welfare.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Carrell, Regala, Stevens, Schoesler, Clements and Rasmussen).

Brief History:

Committee Activity:

Early Learning & Children's Services: 3/22/07, 3/29/07 [DPA].

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

- Establishes and amends definitions relating to screening, investigations, and findings of child abuse and neglect referrals.
- Establishes timelines for the completion of investigations of child abuse and neglect referrals.
- Establishes timelines for the destruction of child abuse and neglect referrals and investigative records.
- Provides for penalties and attorney fees for persons harmed by unauthorized disclosure of records relating to child abuse and neglect.
- Requires the sharing of information with foster parents regarding high-risk behaviors of children placed in foster care.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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.

Majority Report: Do pass as amended. Signed by 6 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Pettigrew and Roberts.

Staff: Sydney Forrester (786-7120).

Background:

The Children's Administration (CA) within the Department of Social and Health Services (DSHS) investigates allegations of child abuse and neglect. A report alleging child abuse or neglect is commonly called a *referral*. Referrals may involve allegations of abuse or neglect by a child's parent or other caregiver, or they may allege abuse or neglect in a state-licensed or state-operated facility.

Referrals Alleging Child Abuse or Neglect by Child's Parent/Caregiver

Upon receipt by CA's Child Protective Services (CPS) of a referral, CPS must make a determination whether to investigate the allegation. This is commonly called the intake or screening process.

Referrals to CPS may be screened-out and not investigated if any of the following apply:

- (1) the child cannot be located;
- (2) the alleged perpetrator is not the parent/caregiver of the child;
- (3) the allegation does not meet the legal definition of abuse/neglect; or
- (4) there are no alleged risk factors that place the child in danger of serious and immediate harm.

Screened-out referrals are labeled as *information-only* referrals, and the CA is required to maintain a log of screened-out referrals. Referrals not screened-out are investigated.

After an initial investigation by CPS, referrals presenting low-to-moderate safety risks may be addressed through an alternative response. In these cases, CPS makes no formal finding regarding the allegation and instead the family is referred to a community-based provider for voluntary participation in services.

Other referrals indicating moderate-to-high safety risks are investigated further. Based on the information obtained during the investigation, CPS makes one of three findings regarding the allegation at the close of the investigation as follows:

- (1) *Unfounded*: Based on the available information, more likely than not, the alleged abuse or neglect did not occur.
- (2) *Founded*: Based on the available information, more likely than not, the alleged abuse or neglect did occur.
- (3) *Inconclusive*: The available evidence is insufficient to make a determination that more likely than not, child abuse or neglect *did not* occur or *did* occur.

Only the term *unfounded* currently is established in statute. The terms *founded* and *inconclusive* are established in the DSHS rules.

Referrals Alleging Child Abuse or Neglect in Licensed Care Facilities

Referrals alleging child abuse or neglect in state-licensed or state-operated facilities are sent to the DSHS Division of Licensed Resources (DLR) for screening and investigation. These referrals may allege inadequate supervision of a child or failure to protect a child from abuse. In addition to determining whether an incident occurred, DLR investigators must address specific questions before making a finding regarding the allegation, including:

- (1) If the incident occurred, could the licensed, certified, or state operated facility have prevented or foreseen the occurrence of the incident?
- (2) If the agency/licensee failed to prevent or foresee the incident, does the failure constitute neglect as defined in law or rule?

At the close of its investigation, DLR makes a CPS finding regarding the allegation as either unfounded, founded, or inconclusive.

Records Relating to Referrals and Investigations of Child Abuse and Neglect

The CA is required to purge records relating to unfounded allegations of child abuse or neglect after six years if no subsequent referral has been received. Reports relating to unfounded allegations may not be disclosed or used in employment, licensing, or adoption-related processes.

Records relating to referrals of founded or inconclusive allegations of child abuse and neglect may not be disclosed, but may be considered by the DSHS and by the Department of Early Learning for the agencies' respective functions relating to employment, and licensing and approvals for child care, foster care, residential services, and adoption.

House Bill 3115 Work Group

In 2006, 2SHB 3115 was enacted, directing the CA to review its policies and make recommendations for improvements to current practices including the terminology related to referrals and investigative findings; time lines for investigation of referrals; destruction of records related to those investigations; and disclosure to foster parents of known behavioral patterns of children placed in their care. Two CA-convened workgroups met during the 2006 interim.

The workgroup addressing issues relating to disclosure of information to foster parents developed definitions for behavioral terms and a policy for sharing of information. That policy is scheduled for implementation this spring.

The workgroup addressing issues relating to screening, investigation, findings, and records of child abuse and neglect referrals recommended some revisions related to screening and investigation, and proposed implementation of a discretionary review process for inconclusive findings of child abuse or neglect. This workgroup did not recommend changes to the three-tier findings model, but did endorse a review of the findings system by the CA practice model team.

Summary of Amended Bill:

Definitions for Investigative Findings

Definitions are established for the following terms:

- (1) **Founded:** Based on available evidence, CPS has determined that more likely than not the abuse or neglect did occur.
- (2) **Inconclusive:** Based on available evidence a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.
- (3) **Screened-out:** CPS has determined that the referral does not rise to the level of a credible report of abuse or neglect.

Beginning October 1, 2008, the definition for *unfounded* is amended to include those findings for which there is not sufficient evidence to make a determination that child abuse or neglect did or did not occur, and the CA may no longer make a finding of inconclusive following an investigation of child abuse or neglect.

The CA must conduct an investigation of a referral alleging child abuse or neglect within 90 days. At the completion of an investigation, the DSHS must make a finding that the allegation is either founded or unfounded.

Records Destruction and Retention

The CA is directed to destroy all of its records relating to child abuse and neglect referrals on the following schedule:

- (1) screened-out referrals: within three years from receipt of the report; and
- (2) unfounded and inconclusive referrals: within six years of completion of the investigation, unless a prior or subsequent founded referral has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child.

The CA is authorized to retain records relating to founded allegations of child abuse and neglect as determined by agency rule. The CA may not disclose screened-out referrals and inconclusive findings to child-placing agencies, adoption agencies, or other DSHS-licensed providers.

If the CA fails to comply with its records destruction duties or fails to limit disclosure of unfounded or screened-out referrals or inconclusive findings, a person who is the subject of such records may bring an action for enforcement or injunctive relief in superior court. The court may award a penalty of up to \$1,000 and reasonable attorney fees and court costs to an individual harmed by unauthorized disclosure of such information

Sharing of Information with Foster Parents

The CA must disclose to foster parents, information about children in their care who have any of the following behaviors for which definitions are established in statute: high-risk; physically aggressive; physically assaultive; or sexually reactive.

The CA also must provide foster parents with information relating to whether the child: (1) has been diagnosed with fetal alcohol syndrome or effect or a mental health disorder; or (2) has been a victim of or witness to substantial violence, assault, or abuse in the recent past.

The CA cannot enter a finding that a foster parent has abused or neglected a child, nor can the foster parent be denied a license based on allegations of abuse or neglect if:

- (1) the child was not within the reasonable control of the foster parent at the time of the incident; or
- (2) if prior known conduct of the child was not disclosed to the foster parent; and
- (3) the allegations arise from the child's conduct that is substantially similar to prior conduct of the child.

Amended Bill Compared to Substitute Bill:

The Committee striking amendment adds the following provisions:

- (1) specifies that unfounded and inconclusive reports are to be expunged within six years unless a subsequent founded report has been received regarding the child who is the subject of the report, a sibling or half-sibling of the child, or a parent, guardian, or legal custodian of the child; and
- (2) authorizes the court in dependency fact-finding hearings to consider the history of past involvement with CPS or law enforcement agencies for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child, or for the purpose of establishing that reasonable efforts have been made to prevent or eliminate the need for removing the child from the home.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 1, creating definitions; section 2, relating limiting the cases the CA may investigate; and section 3, relating to records destruction and retention, which takes effect October 1, 2008.

Staff Summary of Public Testimony:

(In support) This bill is the result of about three year's work by the Senate Human Services and Corrections Committee. It also is the work of task forces that met this summer. Being a foster parent, particularly if you have a child who is a sex offender or who is difficult to work with and who knows the system can result in information being placed in your records for things you didn't have notice about or for which you have no control. Foster parents cannot control a child's behavior at school.

The equivalent of an inconclusive finding is purgatory. People should not be held in limbo regarding allegations against them. We want to encourage foster parents to be involved in helping the state. This bill is good for children and good for foster parents. This bill was very bipartisan in the Senate.

We have a system that allows dragging on investigations for a very long time. This bill supports making a determination as quickly as possible. Justice is also for the accused. Rules

and laws currently allow the CA to mull over the allegations and investigations for a long time. Ninety days is long enough. People are either guilty or they are not.

As soon as there is a cloud hanging over your head it is virtually impossible for foster parents to be licensed by another agency. This bill doesn't make all records go away, but keeping them for six years is long enough. Given that records are going to stay around, we should make a call one way or the other. Is the DSHS going to make some wrong decisions, probably yes. This is about justice for kids and foster parents.

Foster children can make false allegations and so do some parents whose children are in foster care. An inconclusive finding is totally bogus. We should have a system of founded or unfounded. For an inconclusive, if someone in the agency is at fault for not sharing information with the foster parent, the foster parent is blamed and blackballed. The information follows them from agency to agency.

A key part of this bill that is important to foster parents is the sharing of information and not having inconclusive findings on your record. Inconclusive findings can be very damaging if you are trying to become licensed as a foster parent.

Disclosure of information to foster parents provides them the opportunity to protect themselves and the other foster kids in the home. Neighbors who don't like foster parents can make referrals to CPS even without a basis. This can result in piles of inconclusive findings of abuse and neglect. Currently, the DSHS can avoid the burden of a forensic investigation by using the inconclusive finding.

This bill is based on the needs and interests of foster parents but it is important to consider that these are the same needs and interests of birth parents.

(Opposed) None.

Persons Testifying: Marcella Vasquez; Daryl Dawgs, Washington Federation of State Employees and Foster Parents Association of Washington State; and Dave Wood, Washington Families United.

Persons Signed In To Testify But Not Testifying: None.