

# HOUSE BILL REPORT

## HB 2289

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**As Reported by House Committee On:**  
Early Learning & Human Services  
Ways & Means

**Title:** An act relating to establishing a flexible approach to child protective services.

**Brief Description:** Establishing a flexible approach to child protective services.

**Sponsors:** Representatives Kagi, Walsh, Roberts, Carlyle, Jinkins, Ormsby and Dickerson.

**Brief History:**

**Committee Activity:**

Early Learning & Human Services: 1/17/12, 1/26/12 [DPS];

Ways & Means: 2/1/12, 2/7/12 [DP2S(w/o sub ELHS)].

**Brief Summary of Second Substitute Bill**

- Authorizes the Department of Social and Health Services (DSHS) to establish at least two sites to begin implementing Family Assessment Response (FAR) within Child Protective Services.
- Requires the DSHS to develop an implementation plan in consultation with stakeholders.
- Provides guidelines to operate the FAR in implementation sites.
- Requires the Washington State Institute for Public Policy to evaluate implementation sites and report results to the Legislature.

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### HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. 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).

**Background:**

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*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.*

### Recent Child Abuse and Neglect Statistics.

Washington's Department of Social and Health Services (DSHS), Children's Administration (CA) estimates that in 2011, its Child Protective Services (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.

### 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 CPS 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.

### Defining 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." 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.

Child protective services are defined as services provided by the DSHS designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective

services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home.

#### Duty to Investigate.

The DSHS is 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 non-accidental 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.

#### 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." From 1998-2005, 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 alternative response system; 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; and
- 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.

#### Consideration of Differential Response in Washington.

In 2008 the DSHS issued a legislative report regarding its consideration of a differential response system. The report described pros and cons associated with implementing differential response, which are summarized below.

#### Pros:

- Social workers could concentrate on family assessment and case planning rather than the outcome of an investigation.
- Investigative findings may become more consistent, due to a narrower focus.
- Families that are chronically reported to CPS may receive more therapeutic interventions that are motivational in nature.

#### Cons:

- In order for change to succeed the total agenda must be staged and doable.
- Funding, service levels, and ability to meet the basic needs of families would limit the outcomes of a differential response system.
- The CA would likely not have the ability to respond to families in an assessment track with immediate services to meet their basic living needs and if Washington prioritized services for the most at-risk children, then lower risk families in the assessment track would receive fewer services paid by the DSHS/CA.
- All social work staff must be trained in engaging families and assessing safety and risk factors.
- Implementation of non-contracted differential response system would require further specialization of staff and additional categorization of families.
- Agencies serving vulnerable adults and children would not learn about some potential CPS concerns regarding persons applying to be employed or licensed since CPS investigative findings on some cases involving maltreatment would no longer occur for families diverted to the "assessment track."
- Research did not clearly indicate that referring moderate risk families to differential response will improve outcomes (some states limit an alternate response to low-risk cases).

#### Cost Effectiveness of Family Assessment Response.

A 2011 cost-benefit analysis performed by the Washington State Institute for Public Policy (WSIPP) concluded that Minnesota's approach to differential response, called "Family Assessment Response," both reduced out-of-home placements and saved taxpayer dollars.

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#### **Summary of Substitute Bill:**

The DSHS is authorized to establish at least two sites to begin implementing "Family Assessment Response" (FAR) within CPS. Site implementation is contingent on the provision of philanthropic funding.

"Family Assessment Response" is defined as a way of responding to certain reports of child abuse and neglect, using a differential response approach to CPS, which does not include a determination of whether child abuse or neglect occurred, but does determine the need for services. No one is named as a perpetrator and no investigative finding is entered into the record as a result of FAR. ("Family assessment" and other terms are defined.)

The DSHS is required to develop a plan to implement FAR sites in consultation with stakeholders, and in compliance with its administrative policy regarding Native American Indian tribes. Items in the plan are specified and must be addressed in a summary report to the Legislature by September 2012. The report must include, but is not limited to: a description of the FAR practice model, a statement of FAR site implementation timeframes, identification of potential additional non-investigative pathways, identification of methods to involve local community partners in the development of community-based resources to meet families' needs, training, records retention policies, a review of operating guidelines provided in this bill, and other items.

Sites selected to implement FAR must operate within the following guidelines:

- respond to reports of child abuse and neglect that are screened in and accepted for departmental response with a discrete response, such as investigation or a family assessment;
- utilize a method to assign cases to investigation or family assessment based on an array of factors;
- allow response assignment to change based on new information;
- refer a family to investigation if the family refuses the initial family assessment;
- provide voluntary services to families based on the initial family assessment;
- conduct an investigation and not a family assessment in response to specified allegations;
- conduct child interviews, as needed, consistent with current law regarding CPS child interviews;
- establish a time limit for FAR cases with the provision of exceptions based on the safety of the child;
- maintain confidentiality of families involved in FAR; and
- provide families engaged in FAR with information about the process and instructions on how to contact the Office of the Family and Children's Ombudsman.

The DSHS may keep records regarding FAR referrals and cases as the department determines in rule. Family assessment response referral and case information may not be disclosed for background check purposes.

The WSIPP must conduct a rigorous evaluation of each implementation site in consultation with the DSHS and a university-based child welfare research entity in Washington. The evaluations must address, at minimum, child safety measures, out-of-home placement rates, re-referral rates, and caseloads. The WSIPP must deliver a progress report to the Legislature after the demonstration sites have been operating for the one and a half years; the final evaluation reports must be delivered after sites have been operating for three years.

The Legislature must consider the final evaluation results and decide whether to authorize statewide implementation of FAR.

## Substitute Bill Compared to Original Bill:

The substitute bill expresses legislative intent to establish FAR in compliance with applicable provisions of DSHS administrative policy 7.01 (regarding Native American Indian Policy), and the federal and state Indian Child Welfare Act.

The implementation plan and summary report are modified to:

- clarify that the DSHS must consult with stakeholders and be in compliance with the consultation provisions of DSHS administrative policy 7.01;
- clarify that the development of strategies to increase housing for child welfare involved families must be done in collaboration with philanthropic partners. The term "safe and stable housing" is removed;
- add that the DSHS must develop effective mechanisms which assure and maximize to the greatest extent practicable that FAR for Native American Indian children will be completed in a timely manner by a worker from the child's tribe or by a worker approved by the child's tribe;
- add records retention to the list of policies and procedures necessary to implement sites; and
- add that the DSHS must review of operating guidelines provided in this act.

The guidelines to operate FAR in sites are modified to:

- remove the requirement that a report of child abuse or neglect be responded to with *either an assessment or an investigation*. Instead child abuse or neglect reports that are screened in and accepted for departmental response may be responded to using a response *such as investigation or family assessment*;
- remove *source of report, presenting case characteristics, such as type of alleged maltreatment and the age of the alleged victim* from the list of factors that the DSHS may use to assign cases to investigation or FAR (instead, the DSHS may utilize a method to assign cases to investigation or family assessment, based on an array of factors which may include, but is not limited to: *the presence of imminent danger, level of risk, and number of previous reports*);
- remove the 45 day time limit for FAR cases. Instead the DSHS must establish a time limit for FAR cases;
- clarify that the Family and Children's Ombudsman, consistent with its duties, may assist families engaged in FAR by providing information regarding their rights and responsibilities, or investigating acts or conduct by the DSHS alleged to be contrary to law, rule, or policy imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds. When necessary, the Ombudsman may induce corrective action by the DSHS;
- clarify that the confidentiality of families involved in FAR must be maintained consistent with RCW 26.44.031 (statute regarding CPS records); and
- add that children may be interviewed as needed consistent with 26.44.030(12)(a) (statute regarding CPS investigation child interviews).

The DSHS may keep records concerning FAR referrals and cases, as the department determines in rule. Family assessment response referral and case information must not be disclosed for background check purposes.

The WSIPP must specifically consult with a university-based child welfare research entity in Washington and the DSHS, in compliance with applicable provisions of DSHS administrative policy 7.01.

References to RCW 26.44 (abuse statutes) are added throughout the act to further clarify that the DSHS may respond to certain reports of child abuse and neglect using FAR or an investigation. The RCW references to the definition of FAR provided in this act are replaced with the full text of the definition. A family assessment worker is explicitly defined as a *child protective services* worker for additional clarity.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available. New fiscal note requested on January 26, 2012.

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

**Staff Summary of Public Testimony:**

(In support) Traditional CPS investigations can be adversarial and counterproductive for everyone involved. This approach provides a number of exciting opportunities, and aligns well with work the DSHS is already engaged in. Under the current system, there are more ways to separate families than to support them. Poverty, stigma, and racial bias often unnecessarily thrusts families into the system. This approach could help keep families together. Using a FAR approach will help: prevent children and families from entering the dependency and criminal justice systems, prevent trauma experienced while in the system, engage families in services that help earlier, reduce re-referral to the system, reduce disproportional representation in the system, support child safety, support case worker satisfaction, and reduce long-term costs to the state. This approach could also help address the systemic overlap between domestic violence and child welfare. The bill could be strengthened by adding a domestic violence expert in the design process. It also offers an opportunity to implement the domestic violence guidelines that have been developed.

Since Children's Advocacy Centers (CACs) strengthen CPS investigations, CACs could support a FAR approach by adding integrity to the entire system. The Office of Public Defense may be able to help address concerns about whether FAR would feel like a voluntary process and whether there would be an opportunity to review the situation if the family feels that services are not offered on a voluntary basis.

(In support with concerns) If appropriately funded and implemented using evidenced-based approaches, this approach to CPS holds exciting potential. To be clear, children must be safe or will not be eligible for FAR. Currently, the DSHS does not have funding to implement this bill. Specifically, the DSHS does not have access to flexible funding needed for front-end services. The DSHS has concerns regarding specific elements in the bill; of particular concern is the specificity of the implementation plan and elements that the DSHS would be

held accountable for. If implemented, this bill could help with a large portion of referrals regarding neglect. The DSHS could potentially tailor a response for families that repeatedly come back to the child welfare system.

(Information only) Flexible approaches to child protective services in other states have been at least as effective as the traditional investigative approach. Traditional investigations emphasize determining whether child abuse or neglect occurred. However, approximately 72 percent of reports of child abuse or neglect do not result in a substantiated finding. Cases such as situational neglect are especially helped by this approach. Some jurisdictions have observed significantly improved outcomes using a flexible approach to CPS.

(With concerns) Current CA Family Voluntary Services workers already do the work proposed under this bill, to some degree. This bill sets up a work group, a study, and recommendations, which are not needed. The state should move to this approach quickly. Family Voluntary Services workers enjoy the work they are currently engaged in.

(Opposed) None.

**Persons Testifying:** (In support) Representative Kagi, prime sponsor; Mary Van Cleve; Brenda Kaufman; Sasha Kobel; Mary Ann Murphy, Children's Advocacy Centers of Washington; Grace Huong, Washington Coalition Against Domestic Violence; Joanne Moore, Office of Public Defense; Ramata Diebate and Patricia Ridge, Washington State Parent Advocacy Committee; Laurie Lippold, Children's Home Society of Washington and Mockingbird Society; and Lillian Hewko, King County Parent Advocacy Committee and University of Washington Incarcerated Mothers Advocacy Project.

(In support with concerns) Denise Revels Robinson, Department of Social and Health Services.

(Information only) Eric Fenner, Casey Family Services.

(With concerns) Tony Gonini, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Early Learning & Human Services. Signed by 27 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, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

**Staff:** Melissa Palmer (786-7388).



## **Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Early Learning & Human Services:**

The second substitute bill adds domestic violence advocates to the list of community partners that the Department of Social and Health Services (DSHS) may involve in developing community-based resources to meet families' needs as part of the Family Assessment Response (FAR). The references to the DSHS administrative policy 7.01 are removed and replaced with references to intergovernmental agreements between the state and tribal governments.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) Under the current Child Protection Services (CPS) system, all of the calls to CPS are investigated. Sixty-five to 70 percent of the calls involve neglect. The current system focuses on whether there is a founded finding. For cases involving neglect, this approach is not a good use of resources. Under the FAR, an assessment worker will meet with the family, assess the situation, and determine what services can help the family become more functional. The investigations will focus on the cases where there is an imminent risk of harm or safety of a child.

There is an upfront cost to this approach, as more dollars will be needed to address concrete goods. There is a commitment for funding front-end services from the philanthropic community. A phased approach is necessary because there are limited resources. It will also allow time to determine how to do this well. The resources available under a Title IV-E waiver can help sustain this effort and move it statewide. There is continuing work related to lowering costs reflected in the fiscal note.

Family Assessment Response will help families stay together and reduce the cost to the state. Placing a child in foster care is costly and traumatic. The FAR will provide the resources needed to respond to situations that include domestic violence and substance abuse. Additionally, the FAR saves the state money and breaks the chain of defensiveness, which allows Children's Administration to become a better partner with families.

(Opposed) None.

**Persons Testifying:** Representative Kagi, prime sponsor; Nadine Miller, Pierce County Parent Advocacy Committee; Gina Enochs, Washington State Parent Advocacy Committee; Molly Rowe and Alia Griffing, Washington Federation of State Employees; and Laurie Lippold, Children's Home Society of Washington.

**Persons Signed In To Testify But Not Testifying:** None.