

HOUSE BILL REPORT

HB 2510

As Reported by House Committee On: Judiciary

Title: An act relating to limiting government liability during preshelter care investigations of child abuse or neglect.

Brief Description: Limiting government liability during preshelter care investigations of child abuse or neglect.

Sponsors: Representatives Kagi, Walsh, Pedersen, Orwall, Jinkins, Dickerson, Ryu, Van De Wege, Darneille and Roberts.

Brief History:

Committee Activity:

Judiciary: 1/25/12, 1/30/12 [DPS].

Brief Summary of Substitute Bill

- Amends the purpose section of the statute governing child abuse and neglect to provide that the child's interests and safety are the paramount concern when the interests of the parent and child conflict.
- Addresses the liability of governmental entities for acts or omissions in conducting emergent placement investigations of child abuse or neglect.
- 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 JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Hansen, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Klippert, Nealey and Rivers.

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.

Staff: Edie Adams (786-7180).

Background:

Under the state's child abuse statutes, the Department of Social and Health Services (Department) is responsible for investigating and responding to allegations of child abuse or neglect. 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 Child Protective Services 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.

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.

Witness immunity is a common law doctrine that provides witnesses in judicial proceedings immunity from suit based on their testimony. The purpose of witness immunity is to preserve the integrity of the judicial process by encouraging full and frank disclosure of all pertinent information within the witness's knowledge. The rule is based on the safeguards in judicial proceedings that help to ensure reliable testimony, such as: the witness's oath, the hazards of cross examination, and the threat of prosecution for perjury.

Summary of Substitute Bill:

The purpose section of the child abuse statute is amended to state that a child's interests of basic nurture, physical and mental health, and safety, should prevail over conflicting interests of a parent and that the safety of the child is the Department's paramount concern when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

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 duty of the Department to protect the child's interest of basic nurture, health, and safety, and the requirement that the child's interest prevail over conflicting interests of a parent, custodian, or guardian.

The Department 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 Department are entitled to the same witness immunity as would be provided to any other witness.

Substitute Bill Compared to Original Bill:

In the original bill, the standard of liability for the Department for emergent placement investigations was gross negligence of whether there was reason to believe the child was in danger of abuse or neglect. The original bill did not include the new section in the child abuse statute stating that the liability of governmental entities when investigating alleged abuse by parents or guardians is limited as provided in the bill. The substitute bill revised the definition of emergent placement investigation to correct an inaccurate cross reference.

Appropriation: None.

Fiscal Note: Available.

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) Under our current statutes, the Department can be sued if a child is taken from the home and they can be sued if the child is not taken from the home. This bill will make clear that the Department's primary duty is to the child, and that the court at the shelter care hearing can make a determination of whether the child should be returned home. The number of suits in this area has steadily increased. The law needs to have clarity as to the duty of caseworkers when they go into the home.

Caseworkers are currently placed in a real dilemma. The caseworker must make a decision as to whether there is reason to believe there is abuse or neglect. When an allegedly abusive parent denies the abuse, there is an immediate conflict. Under current case law, the caseworker is charged with an equal duty to both the child and the parent. The *Tyner* decision has affected the freedom of case workers to act in these difficult and sometimes hazardous situations. The bill's narrow exception creating a gross negligence standard in emergent placement investigations is agreed to because caseworkers need to be able to act quickly in these difficult situations. This bill would restore the law as it existed prior to the *Tyner* decision, that the Department's primary duty runs to the child.

(Opposed) None.

Persons Testifying: Representative Kagi, prime sponsor; Rene Tomissen, Office of the Attorney General; Frank O'Dell, Washington Federation of State Employees; and Larry Shannon, Darrell Cochran, and Becky Roe, Washington State Association of Justice.

Persons Signed In To Testify But Not Testifying: None.