

HOUSE BILL REPORT

ESSB 6555

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

Title: An act relating to child protective services.

Brief Description: Providing for family assessments in cases involving child abuse or neglect.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Shin and Roach).

Brief History:

Committee Activity:

Early Learning & Human Services: 2/20/12, 2/21/12 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Requires the Department of Social and Health Services (DSHS) to implement a Family Assessment Response (FAR) within Child Protective Services (CPS) by December 1, 2013.
- Permits the DSHS to implement the FAR on a phased-in basis, by geographical area.
- Requires the DSHS to submit an implementation plan to the Legislature by December 31, 2012.
- Directs the Washington State Institute for Public Policy to evaluate the FAR; and directs the DSHS to conduct client satisfaction surveys.
- Modifies the process to appeal CPS investigative findings and specifies items to be included in written notification to alleged perpetrators.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: Do pass as amended. 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.

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: Megan Palchak (786-7120).

Background:

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.

Definition of Child Protective Services.

Child protective services are defined as services provided by the DSHS designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. 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.

Response to Reports of Child Abuse or Neglect.

Under DSHS administrative rules, when responding to reports of alleged child abuse or neglect, CPS:

- must assess all reports that meet the definition of child abuse or neglect using a risk assessment process to determine level of risk and response time;
- must provide an in-person response to alleged victims and must attempt an in-person response to the alleged perpetrator of child abuse and neglect in referrals assessed at moderate to high risk;
- may refer reports assessed at low to moderately low risk to an alternative response system;
- may interview a child, outside the presence of the parent, without prior parental notification or consent;
- must make reasonable efforts to have a third party present at the interview so long as the third party does not jeopardize the investigation, unless the child objects;
- may photograph the alleged child victim to document the physical condition of the child; and
- attempt to complete investigations within 45 days. In no case will the investigation extend beyond 90 days unless the investigation is being conducted under local protocol, established pursuant to chapter, and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

Duty to Investigate.

The DSHS or law enforcement must investigate reports received concerning the possible occurrence of abuse or neglect. The DSHS is specifically 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 nonaccidental 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. Investigations may be conducted regardless of the location of the alleged abuse or neglect.

Process to Appeal an Investigative Finding.

A person named as an alleged perpetrator in a founded report of child abuse or neglect has the right to seek review and amendment of the finding. Within 20 days of receiving written

notice from the DSHS that the person has been named as a perpetrator in a founded report of abuse or neglect, the person must provide written notice to the DSHS that he or she wishes to contest the finding. If the request is not made within the time period, the person may not seek further review of the finding. However, if the alleged perpetrator seeks DSHS review within specified timeframes, receives notification of the results of the DSHS's review, then the alleged perpetrator has 30 days to request further review via an adjudicative proceeding. If the alleged perpetrator fails to request further review within the 30-day period, then the alleged perpetrator may not challenge the finding further.

Notice of Investigative Finding.

Under DSHS administrative rules, notification regarding an investigative finding must inform the alleged perpetrator about the legal basis for the findings and sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports. The notice must also contain the following:

- The alleged perpetrator may submit to the DSHS a written response regarding the finding. If a response is submitted, it must be filed in the DSHS's records.
- Information in the DSHS's records may be considered in later investigations or proceedings relating to child protection or child custody.
- Founded CPS findings may be considered in determining:
 - if an alleged perpetrator is qualified to be licensed to care for children or vulnerable adults;
 - if an alleged perpetrator is qualified to be employed by a child care agency or facility; and
 - if an alleged perpetrator may be authorized or funded by the department to provide care or services to children or vulnerable adults.
- The alleged perpetrator's right to challenge a founded CPS finding.

Confidentiality.

An unfounded, screened-out, or inconclusive report may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

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." Until 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 the ARS; 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.
- 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.

Enhanced Community-Based Services.

In 1987 the Legislature enacted Engrossed Second Substitute Senate Bill 5659 which required the DSHS to, within funds appropriated, offer enhanced community-based services to persons who are determined not to require further state intervention [via CPS].

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.

Summary of Amended Bill:

Family Assessment Response.

Terms.

Family Assessment Response (FAR) is a way of responding to certain reports of child abuse or neglect using a differential response approach to CPS. The FAR must focus on safety of the child, the integrity and preservation of the family, must assess the status of the child and family in terms of risk of abuse and neglect including a parent's or guardian's capacity and willingness to protect the child, and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator and no investigative finding is entered into the record as a result of the FAR.

A family assessment is a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. The assessment does not include a determination as to whether child abuse or neglect occurred but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

Implementation.

The DSHS must implement a FAR within CPS by December 1, 2013. The DSHS may implement the FAR on a phased-in basis, by geographical area. The DSHS must submit the implementation plan report to the Legislature by December 31, 2012.

The implementation plan must be developed in consultation with stakeholders, including tribes, and must include:

- a description of the FAR practice model;
- identification of possible additional non-investigative responses or pathways;
- an intake screening tool and a family assessment tool specifically to be used in the FAR;
- staff training requirements;
- strategies to reduce disproportionality;
- strategies to assist and connect families with the appropriate private or public housing support agencies, for those parents whose inability to obtain or maintain safe housing creates a risk of harm to the child, risk of out-of-home placement of the child, or a barrier to reunification;
- identification of methods to involve specified local community partners in the development of community-based resources to meet family needs;

- procedures to assure continuous quality assurance;
- identification of current departmental expenditures for FAR related services;
- identification of philanthropic funding to supplement public resources;
- a potential phase-in schedule, if proposed; and
- recommendations for legislative action required to implement the plan.

The items above must be developed prior to the implementation of the FAR.

Response to Reports of Child Abuse or Neglect.

When the DSHS receives a report of child abuse or neglect, the DSHS must use one of two responses for reports that are screened in and accepted for response: an investigation or a family assessment. In making this response, the DSHS must:

- use a method to assign cases to investigation or family assessment that are based on an array of factors that may include the presence of: imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics;
- allow for a change in response assignment based on new information that alters risk or safety level;
- allow families assigned to the FAR to choose to receive an investigation rather than a family assessment;
- provide a full investigation if a family refuses the initial family assessment;
- provide voluntary services to families based upon the results of the initial family assessment; and
- conduct an investigation, and not a family assessment, in response to allegations that:
 - pose a risk of imminent harm to the child;
 - pose a serious threat of substantial harm to the child;
 - constitute conduct that is a criminal offense and the child is the victim; or
 - identify an abandoned child or an adjudicated dependent child.

Law enforcement and the DSHS are not required to investigate reports of possible abuse or neglect that have been assigned to the FAR.

Operating the FAR.

For reports that are placed in the FAR, the DSHS must:

- provide the family with a written explanation of the procedure for assessment of the child and family and its purpose;
- complete the family assessment within 45 days of receiving the report. Upon parental agreement, this time period can be extended to 60 days;
- offer services to the family in a manner that makes it clear acceptance of the services is voluntary;
- implement the FAR in a consistent, cooperative manner;
- have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under the FAR, all of their options and the options the DSHS has if parents do not sign the form; and
- upon completion of the family assessment, if the DSHS determines (based on the family's needs or lack thereof identified in the assessment) that services are not recommended, then the case must be closed; and

- within 10 days of the conclusion of the family assessment, meet to discuss the recommendations for services to address child safety concerns or significant risk of subsequent child maltreatment. If the parent or guardian disagrees with the DSHS's recommendation regarding the provision of services, the DSHS must convene a family team decision-making meeting to discuss the recommendations and objections. The caseworker's supervisor and area administrator must attend the meeting.

Under this act, the DSHS is no longer required, within funds appropriated, to offer enhanced community-based services to persons who are determined not to require further state intervention.

Liability.

The DSHS may not be held civilly liable in using the FAR to respond to an allegation of child abuse or neglect, unless the response choice was made with reckless disregard.

Confidentiality.

Information related to FAR cases may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW without consent of the individual identified in the report, unless that individual: (a) seeks to become a licensed foster or adoptive parent, or (b) the individual is the parent or legal custodian of a child being served by one of the agencies referenced above.

Evaluation.

The WSIPP must conduct an evaluation of the implementation of the FAR. At a minimum, the evaluation must address child safety measures, out-of-home placement rates, re-referral rates, caseload, and demographics. The WSIPP's first report is due December 1, 2014, and its final report is due December 1, 2016.

The DSHS must conduct two client satisfaction surveys of families that have been placed in the FAR. The first survey results are to be reported by December 1, 2014, and the second survey results by December 1, 2016.

Appeal of an Investigative Finding.

Timeframes.

Within 30 calendar days after the DSHS has notified an alleged perpetrator that he or she has been named in a founded report of child abuse or neglect, he or she may request that the DSHS review the finding. If the request is not made within the specified time period, the person has no right to further review of the finding, unless the person can show that the DSHS did not comply with the notice requirements of RCW 26.44.100. The DSHS must complete its review within 30 days.

Notice.

The DSHS's written notice to an alleged perpetrator named in a founded report must contain the following:

- information about the DSHS's investigative finding as it relates to the alleged perpetrator;
- sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded allegation;

- that the alleged perpetrator has the right to submit a written response regarding the finding which the DSHS must file in the records;
- that information in the DSHS's records may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect;
- that founded allegations of abuse or neglect may be used in determining:
 - whether the person is qualified to be licensed or approved to care for children or vulnerable adults; or
 - whether the person is qualified to be employed by the DSHS in a position having unsupervised access to children or vulnerable adults; and
- that the alleged perpetrator has the right to challenge the founded allegation of abuse or neglect.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill:

- replaces references to "Family Assessment Track" with references to "Family Assessment Response;"
- allows the DSHS to implement the FAR on a phased-in basis, by geographical area;
- modifies components in the implementation plan, and subsequent report to the Legislature to:
 - clarify that the DSHS must develop strategies to assist and connect families with the appropriate private or public housing supports for those parents whose inability to obtain or maintain safe housing creates a risk of harm to the child, risk of out-of-home placement of the child, or a barrier to reunification;
 - add domestic violence victims advocates to the list of community partners the DSHS may include in the development of community-based resources;
 - add a potential phase-in schedule if proposed;
 - add recommendations for legislative action required to implement the plan; and
 - add identification of philanthropic funding available to supplement public resources;
- provides that if a family refused voluntary services, and the DSHS cannot identify specific facts related to risk or safety that warrant an investigation, or a *history of reports of child abuse or neglect*, then the DSHS must close the FAR case. (History of reports of child abuse or neglect is added;)
- clarifies that the DSHS may not provide the FAR in response to reports that identify an adjudicated dependent child, or a child in a facility that is licensed, operated, or certified for the care of children by the DSHS under chapter 74.13 RCW, or by the Department of Early Learning;
- clarifies that the DSHS must implement the FAR in a consistent and cooperative manner, rather than in a nonarbitrary, noncoercive manner;
- provides that FAR related information may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW without consent of the individual who is the subject of the FAR report, unless that individual: (a) seeks to become a licensed foster or adoptive parent, or (b) the individual is the parent or legal custodian of a child being served by one of the agencies referenced above;

- clarifies that upon completion of the family assessment, if, based upon the family's needs or lack thereof, identified in the family assessment, the DSHS recommends that no services be offered, then the FAR case must be closed;
 - restores the definition of case management; and
 - modifies the DSHS's written notification requirements to individuals identified in founded reports of child abuse or neglect; removes the provision stating that founded allegations of child abuse or neglect may be used by others only if the perpetrator consents to the release of information to another individual.
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Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 11, relating to implementing the FAR, which take effect December 1, 2013.

Staff Summary of Public Testimony:

(In support) Child Protective Services investigations can be intrusive and prevent parents and families from moving forward in their lives. This type of reform would help families engage in needed services sooner. Case workers find this approach attractive, although change can be difficult. In other states, this type of reform has been proven to be effective for families and communities, and it has also resulted in cost savings. It has been particularly effective in terms of addressing the overlap between domestic violence and child maltreatment. Implementation should be swift, but should allow appropriate start-up.

(In support with concerns) There are many potential benefits to implementing a FAR within CPS. This type of reform allows more flexibility and maintains child safety. The DSHS has two concerns about this bill. First, the DSHS is unable to fund the provisions in the bill. Costs associated include computer/data systems, training, and evaluation. Second, this bill includes very broad language regarding safe and stable housing; the language should be revised so it is clear the DSHS will assist and connect families to housing resources. Service coordination needs to be added back into the definition of case management to sync with the performance-based contracting bill.

(Opposed) None.

Persons Testifying: (In support) Frank O'Dell, Washington Federation of State Employees; Gina Enochs, Washington Parent Advocacy Committee; Kelly St. Clair, Snohomish County Parent Advocacy Committee; Pamela Crone, Washington State Coalition Against Domestic Violence; and Laurie Lippold, Children's Home Society of Washington and Mockingbird Society.

(In support with concerns) Denise Revels Robinson, Department of Social and Health Services; and Alia Griffing, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.