

FINAL BILL REPORT

ESSB 6555

C 259 L 12
Synopsis as Enacted

Brief Description: Implementing provisions relating to child protection.

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

Senate Committee on Human Services & Corrections
Senate Committee on Ways & Means
House Committee on Early Learning & Human Services
House Committee on Ways & Means

Background: Child Protective Services (CPS) in Washington. CPS are services provided by the Department of Social and Health Services (DSHS) designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and to investigate reports of child abuse and neglect. Investigations may be conducted regardless of the location of the alleged abuse or neglect. CPS includes a 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. A number of professionals who regularly work with children are mandated reporters in Washington State. If the mandated reporter has reasonable cause to suspect that a child has been abused or neglected the fact must be reported to DSHS or law enforcement. DSHS must 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 presents an imminent risk of serious harm. On the basis of the findings of such investigation, DSHS or law enforcement must offer child welfare services to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court or other community agency. An investigation is not required of non-accidental injuries that clearly do not result from a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, DSHS must notify an appropriate law enforcement agency.

Appeal of a Finding of Child Abuse or Neglect. A person named as an alleged perpetrator in a founded allegation of child abuse or neglect has the right to seek review and amendment of the finding. Within 20 days of receiving such notice, the person must notify DSHS in writing

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.

that he or she wishes to contest the finding. If the request is not made within the 20-day time period, the person has no right to agency review or further administrative or court review of the finding. After receipt of notification of the results of DSHS's review, the person has 30 days within which to ask for an adjudicative hearing with an administrative law judge. If the request is not made within the 30-day period, the person has no right to further review

Alternative Response System in Washington. In 1997 the Legislature authorized an alternative response system (ARS). ARS was a voluntary family-centered service provided by a contracted entity with the intention to increase the strength and cohesiveness of families that DSHS has determined to present a low risk of child abuse or neglect. The families referred to ARS were families that would not have been screened in for investigation. In 2006 DSHS redesigned ARS because a study of ARS determined that it was not producing good outcomes. The new program was called Early Family Support Services (EFSS). The stated goals of this program included the implementation of a standardized assessment tool, development of service delivery standards, and integration of promising or evidence-based programs. Again, families referred to this program were those not likely to be screened in for an investigation.

Consideration of Differential Response in Washington. In 2008 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:

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

Cons:

1. In order for change to succeed the total agenda must be staged and doable, organizational capacity must be addressed given the number of change initiatives underway.
2. Funding, service levels, and ability to meet the basic needs of families would limit the outcomes of a differential response system.
3. The Children's Administration (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.
4. All social work staff must be trained in engaging families and assessing safety and risk factors.
5. Implementation of non-contracted differential response system would require further specialization of staff and additional categorization of families.
6. 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 in some cases involving maltreatment would no longer occur for families diverted to the assessment track.

7. Research does not clearly indicate that referring moderate risk families to differential response would improve outcomes (some states limit an alternate response to low risk cases).

Differential Response In Other States. Approximately 18 other states have implemented a differential response system. Minnesota has the longest running differential response system. In a differential response system, a family's strengths and weaknesses and child safety are assessed and no investigation is conducted nor findings of child abuse made for cases that would otherwise be screened in and investigated. If the family does not wish to participate in the assessment, the case is referred for investigation, unless no child safety issues are presented.

Under the state's child abuse statutes, DSHS 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 a parent or guardian and taken into protective custody.

A court may order law enforcement or CPS to take a child into custody when the child's health, safety, and welfare would be seriously endangered if the child is not taken into custody. A child may be taken into custody without a court order when law enforcement has probable cause to believe that the child has been 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 may also be detained and taken into custody without a court order when 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 determines 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 *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 with 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: Family Assessment Response (FAR). When DSHS receives a report of child abuse or neglect, it must use one of two responses for reports that are screened in and accepted for response: an investigation or a family assessment. A family assessment is defined as 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. FAR is defined as a way of responding to certain reports of child abuse or neglect using a differential response approach to child protective services. FAR must focus on the safety of the child, the integrity and preservation of the family, and assessment of 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. No one is named as a perpetrator and no investigative finding is entered in DSHS's database as a result of the FAR.

In responding to a report of child abuse or neglect, DSHS must:

1. use a method by which to assign cases to investigation or family assessment that are based on an array of factors which may include the presence of imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics.
2. allow for a change in response assignment based on new information that alters risk or safety level;
3. allow families assigned to FAR to choose to receive an investigation rather than a family assessment;
4. provide a full investigation if a family refuses the initial family assessment;
5. provide voluntary services to families based upon the results of the initial family assessment; however, if the family refuses the services and DSHS cannot identify specific facts related to risk or safety that warrant assignment to an investigation, and there is no history of child abuse or neglect reports related to the family, then DSHS must close the case; or
6. conduct an investigation in response to allegations that:
 - a. pose a risk of imminent harm to the child;
 - b. pose a serious threat of substantial harm to the child;
 - c. constitute conduct that is a criminal offense and the child is the victim; or
 - d. the child is an abandoned or adjudicated dependent child.

DSHS must develop a plan to implement FAR in consultation with stakeholders, including tribes. The plan must be submitted to the appropriate legislative committees by December 31, 2012. The following must be developed before implementation and submitted in the report to the Legislature:

1. description of the FAR practice model;
2. identification of possible additional non-investigative responses or pathways;
3. development of an intake and family assessment tool specifically to use for FAR;
4. delineation of staff training requirements;
5. development of strategies to reduce disproportionality;
6. development of strategies to assist and connect families with the appropriate private- or public-housing support agencies;

7. identification of methods by which to involve community partners in the development of community-based resources to meet families' needs;
8. delineation of procedures to ensure continuous quality assurance;
9. identification of current DSHS expenditures for services appropriate to FAR;
10. identification of philanthropic funding available to supplement public resources;
11. mechanisms to involve the child's Washington state tribe, if any, in FAR;
12. creation of a potential phase-in schedule, if proposed; and
13. recommendations for legislative action necessary to implement the plan.

DSHS is not liable for using FAR to respond to an allegation of child abuse or neglect unless the response choice was made with reckless disregard.

DSHS must implement FAR no later than December 1, 2013. DSHS may phase-in implementation of FAR basis by geographic area. DSHS must develop an implementation plan in consultation with stakeholders, including tribes. DSHS must submit a report of its implementation plan to the Legislature by December 31, 2012.

For allegations that are placed in FAR, DSHS must:

1. provide the family with a written explanation of the procedure for assessment of the child and family and its purpose;
2. collaborate with the family to identify family strengths, resources and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;
3. complete the family assessment within 45 days of receiving the report. Upon parental agreement, this time period may be extended to 90 days;
4. offer services to the family in a manner that makes it clear acceptance of the services is voluntary;
5. implement the family assessment response in a consistent and cooperative manner;
6. conduct an interview with the child's parent, guardian, or other adult residing in the home who serves in a parental role. The interview must focus on ensuring the immediate safety of the child and mitigating risk of future harm to the child in the home environment;
7. conduct an interview with other persons suggested by the family or persons DSHS believes has valuable information; and
8. conduct an evaluation of the safety of the child and any other children living in the same home. The evaluation may include an interview with or observation of the child.

The Washington State Institute for Public Policy (WSIPP) must conduct an evaluation of the implementation of FAR. WSIPP must define the data to be gathered and maintained. At a minimum, the evaluation must address child safety measures, out of home placement rates, re-referral rates and caseload sizes and demographics. WSIPP's first report is due December 1, 2014, and its final report is due December 1, 2016.

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

Appeal of a Finding of Child Abuse or Neglect. A person named as an alleged perpetrator in a founded allegation of child abuse or neglect has the right to seek review of the finding. Within 30 days of receiving notice from DSHS, the person must notify DSHS in writing that the person wishes to contest the finding. The written notice provided by DSHS to the alleged perpetrator must contain the following:

1. information about DSHS's investigative finding as it relates to the alleged perpetrator;
2. sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded allegation;
3. the right of the alleged perpetrator to submit a written response regarding the finding, which DSHS must file in the records;
4. that information in DSHS records may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect;
5. that founded allegations of abuse or neglect may be used in determining:
 - a. whether the person is qualified to be licensed or approved for care of children or vulnerable adults;
 - b. whether the person is qualified to be employed by DSHS in a position having unsupervised access to children or vulnerable adults.
6. that the alleged perpetrator has the right to challenge the founded allegation of abuse or neglect.

If the request is not made within the 30-day time period, the person has no right to agency review or further administrative or court review of the finding, unless the person can show that DSHS did not comply with the notice requirements of RCW 26.44.100. After receiving notification of the results of DSHS's review, the person has 30 days within which to ask for an adjudicative hearing with an administrative law judge. If the request is not made within the 30-day period, the person has no right to further review.

Government Liability. The purpose section of the child abuse or neglect statute is amended to provide that a child's health and safety interests should prevail over conflicting legal rights of a parent and that the safety of the child is DSHS'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 or 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 concern of DSHS to protect the child's health and safety interest of basic nurture, health, and safety, and the requirement that the child's interests prevail over conflicting legal interests of a parent, custodian, or guardian.

DSHS 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, DSHS employees are entitled to the same witness immunity as would be provided to any other witness.

Votes on Final Passage:

Senate	46	0	
House	97	0	(House amended)
Senate			(Senate refused)
House	80	17	(House receded/amended)
Senate	49	0	(Senate concurred)

Effective: June 7, 2012
December 1, 2013 (Sections 1 and 3-10)