

SENATE BILL REPORT

SB 6370

As Reported by Senate Committee On:
Early Learning & K-12 Education, February 4, 2016

Title: An act relating to the department of early learning's access to records and personal information for purposes of determining character and suitability of child care workers.

Brief Description: Concerning the department of early learning's access to records and personal information for purposes of determining character and suitability of child care workers.

Sponsors: Senators Litzow, Billig, Mullet, Fain, Hobbs, Hill and McAuliffe; by request of Department of Early Learning.

Brief History:

Committee Activity: Early Learning & K-12 Education: 1/28/16, 2/04/16 [DPS].

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 6370 be substituted therefor, and the substitute bill do pass.

Signed by Senators Litzow, Chair; Dammeier, Vice Chair; McAuliffe, Ranking Member; Billig, Fain, Hill, Mullet, Rivers and Rolfes.

Staff: Ailey Kato (786-7434)

Background: Background Check Requirements for Child Care Providers. State law requires the Department of Early Learning (DEL) to conduct background checks on anyone who is authorized to care for or have unsupervised access to children in licensed child care facilities. In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, DEL may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged may be used for such purposes.

Abuse and Neglect Allegations, Investigations, and Findings. The Children's Administration of the Department of Social and Health Services (DSHS) investigates reports of suspected child abuse and neglect. DSHS determines whether the report meets the criteria for investigation. "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a

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child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding certain conduct; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.

"Founded" means the determination following an investigation by DSHS that, based on available information, it is more likely than not that child abuse or neglect did occur. "Unfounded" means the determination following an investigation by DSHS that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for DSHS to determine whether the alleged child abuse did or did not occur.

Juvenile Justice or Care Agency Records. Records retained or produced by any juvenile justice or care agency are confidential unless state law allows them to be released. "Juvenile justice or care agency" means any of the following: police, diversion units, court, prosecuting attorney, defense attorney, detention center, Attorney General, the legislative Children's Oversight Committee, the Office of the Family and Children's Ombuds, DSHS and its contracting agencies, schools, persons or public or private agencies having children committed to their custody, and any placement oversight committee.

No unfounded allegation of child abuse or neglect may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

Family Assessment Response (FAR) Program. This program is a method of responding to certain reports of child abuse or neglect that does not involve an investigation and where voluntary services are provided. No unfounded, screened-out, or inconclusive report or information about a family participation in FAR may be disclosed to a child-placing agency or any other agency receiving children without consent of the subject of the report unless:

- the individual seeks to become a licensed foster parent or adoptive parent; or
- the individual is the parent or legal custodian of a child being served by one of the agencies.

Summary of Bill (Recommended Substitute): Background Check Requirements for Child Care Providers. To satisfy DEL's background check requirements, DEL must obtain from DSHS records of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care. The records must include (1) civil adjudication proceeding records, and (2) investigative records and files held by DSHS that pertain to:

- founded findings of abuse or neglect;
- unfounded allegations of abuse or neglect; and
- ongoing investigations of abuse or neglect.

When licensing, certifying, authorizing, contracting, and establishing criteria for individuals and entities that will or may involve unsupervised access to children, DEL's director must adopt rules and investigate other information including investigative records and files held by DSHS that pertain to the previous bulleted items. This information may come from confidential child welfare records maintained by DSHS, and it may only be shared with other state agencies or persons allowed under the law.

DEL may have access only to the records held by DSHS that pertain solely to the individuals who have or may have unsupervised access to children in child care facilities.

The limitation that no report of child abuse or neglect that has been destroyed or expunged can be used to determine whether an individual can provide child care and early learning services is removed. DEL may not deny a license to an individual based solely on an unfounded allegation of child abuse or neglect.

Nothing in this section affects the appeal rights under current law.

Juvenile Justice or Care Agency Records. DEL must, upon request, be given access to records and information collected and retained by a juvenile justice or care agency that pertain to:

- founded findings of abuse or neglect;
- unfounded allegations of abuse or neglect; and
- ongoing investigations of abuse or neglect.

These records may come from confidential child welfare records maintained by DSHS, and it may be shared only with other state agencies or persons allowed under the law. The records must only be those of the applicant for a license or a licensee, including household members, issued by DEL or a person seeking to volunteer with or be employed by a person or entity licensed by DEL.

A person's physical or mental health medical reports and drug and alcohol evaluations must not be disclosed to DEL without consent of the person who is the subject of the report or evaluation. DEL must not be given access to a person's adoption records.

The prohibition against disclosing unfounded allegations of child abuse or neglect to certain entities does not apply to DEL.

DSHS Records. The following are removed from current law:

- DSHS must destroy all of its records concerning a screened out report, within three years from the receipt of the report; and
- DSHS must destroy all of its records concerning an unfounded or inconclusive report, within six years of completion of the investigation, unless a prior or 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, before the records are destroyed.

FAR Program. Exceptions to the rule that no unfounded, screened-out, or inconclusive report or information about a family's participation in the FAR program may be disclosed to a child-placing agency, private adoption agency, or any other agency receiving children, expectant mothers, or developmentally disabled persons for supervision or care are removed.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended Substitute): The requirement that DEL receive records and information regarding "allegations of abuse or neglect for which there is not a finding" is removed. Language is added that the records accessed by DEL is only for license applicants,

employees or volunteers of licensed entities, and individuals who may have unsupervised access to children. Provisions are added that information may come from confidential child welfare records maintained by DSHS, and it only may be shared with state agencies or persons allowed by law. DEL may not deny a license to an individual based solely on an unfounded allegation of child abuse or neglect. The section including DEL in the definition of juvenile justice or care agency is removed. A provision is added that appeal rights under current law are not affected.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Background checks are critical to the safety of children in licensed childcare. This bill seeks to reinstate what was common practice when DSHS was conducting background checks. Other legislation limited DEL's access to certain information that it was previously able to access. Attorneys for DEL and DSHS are continuing to look at the bill. DEL wants to make sure that it only gets access to the information it needs. Unfounded is the marker of when DSHS will take action in a case. Sometimes DSHS will determine that a child does not need to be removed from a family, so there is an unfounded allegation of abuse or neglect. DEL has a different bar or standard for what makes someone suitable to provide child care.

OTHER: There is concern that unfounded allegations of abuse or neglect can be used to deny someone a childcare license. The statutory definition for unfounded is not clear. The bill should be amended so that DEL cannot deny a childcare license based solely on unfounded allegations. The bill should include the appeals process. There is concern that this bill could restrict access to child care and impinge on due process rights. Removing the requirement that DSHS destroy screened-out reports and unfounded or inconclusive reports after a certain time is a significant departure from current law. These records will follow individuals for many years. Some of the bill language is broad, so it could affect people beyond those applying for a childcare license.

Persons Testifying on Original Bill: PRO: Frank Ordway, Department of Early Learning.

OTHER: Alex Hur, SEIU 925; Michael Althausser, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying on Original Bill: No one.