

SENATE BILL REPORT

SB 5656

As of February 13, 2017

Title: An act relating to ending homelessness.

Brief Description: Concerning the goal of ending homelessness.

Sponsors: Senators Miloscia and Rivers.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/08/17.

Brief Summary of Bill

- Expands the definition of neglect to include a runaway or unaccompanied homeless child.
- Expands mandated reporter requirements to street youth services staff and people who work with children.
- Mandates that a parent, legal guardian, or caregiver who knowingly fails to report to law enforcement that a child in their care has been missing for more than 48 hours is guilty of a misdemeanor.
- Preempts homeless encampments.
- Creates presumption that a person is gravely disabled for the purposes of civil commitment if the person is an active heroin user who has been homeless for at least one year.
- Revises the Homeless Housing and Assistance Act.
- Restructures the allocation of document recording surcharge fees and extends the increased Homeless and Housing Assistance Act surcharge to 2022.
- Provides appropriations for programs to implement a quality management award system.
- Appropriates funds to the State Auditor for the purpose of an audit determining the effectiveness and efficiency of the state homeless programs.

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.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Alison Mendiola (786-7444)

Background: Child Protective Services in Washington. Child Protective Services (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 conduct investigations of child abuse and neglect reports. 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 they have reasonable cause to suspect that a child has been abused or neglected, they must report that fact 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 present an imminent risk of serious harm. On the basis of the findings of such investigation, DSHS or law enforcement must 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.

Abuse and Neglect. Abuse and neglect means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety.

DSHS Division of Licensed Resources. The Division of Licensed Resources (DLR) was established by Executive Order to improve the health and safety of children in out-of-home care, to strengthen monitoring and licensing of all licensed care resources, and to separate regulatory oversight from placement activities.

Office of Homeless Youth Prevention and Protection Programs. In 2015, the Legislature created the Office of Homeless Youth Prevention and Protection Programs (OHY) within the Department of Commerce (Commerce). The OHY is responsible for leading efforts to coordinate a spectrum of funding, policy, and practice efforts related to homeless youth with a stated goal of preventing state systems from discharging youth and young adults into homelessness. Additionally, the OHY was authorized to provide the management and oversight of HOPE Centers, Crisis Residential Centers (CRCs), street youth services, and the Independent Youth Housing Program.

- The five stated goals of the OHY are stable housing, family reconciliation, permanent connections, education and employment, social and emotional well-being for youth and young adults.

- The OHY is to consult with an advisory committee, which consists of 12 members; comprised of advocates, at least two legislators, at least two parent advocates, at least one representative from law enforcement, service providers, and other stakeholders knowledgeable in the provision of services to homeless youth and young adults, including the prevention of youth and young adult homelessness, the dependency system, and family reunification. The members of the advisory committee must be appointed by the Governor, except for the Legislators who must be appointed by the Speaker of the House of Representatives and the President of the Senate.
- HOPE Centers provide temporary residential placements for street youth under the age of 18. Youth may self-refer to a HOPE Center for services, and entering a center is voluntary. While residing in a HOPE Center, youth undergo a comprehensive assessment in order to develop the best plan for the youth.
- The CRCs are short-term, semi-secure facilities for runaway youth and adolescents in conflict with their families. Youth cannot remain in a CRC more than 15 consecutive days. Counselors at a CRC work with the family to resolve the immediate conflict and develop better ways of dealing with the conflict in the future. DSHS is responsible for licensing CRCs.
- The Independent Youth Housing Program provides rental assistance and case management services to eligible youth, ages 18-22, who have aged out of the foster care system.

Homeless Management Information System (HMIS). Commerce oversees Washington's HMIS. The HMIS is used by state and federally funded homeless and housing service providers to collect and manage data gathered during the course of providing housing assistance to people experiencing homelessness and to households at-risk of losing their housing. The purpose of HMIS is to provide information on the number of individuals experiencing homelessness in the state. Homeless persons may opt-in to HMIS.

Involuntary Treatment Act. The Involuntary Treatment Act (ITA) allows for the detention and commitment of person based on a finding that 1) the person has a mental disorder; 2) as a result of the mental disorder, the person either presents a likelihood of serious harm or is gravely disabled; 3) the person will not accept voluntary care; and 4) there is no less restrictive alternative that would meet the needs of health and safety of the person and the public. Likelihood of serious harm means a substantial risk of physical harm being inflicted to self, to another person, or to the property of others. Gravely disabled means that, as a result of a mental disorder, the person is in danger of serious physical harm resulting from a failure to provide for essential needs of health and safety, or manifests a severe deterioration in routine functioning and is not receiving essential care.

In 2016, the ITA was amended with an effective date of April 1, 2018, to incorporate crisis response based on substance use disorders. At that time, a person will also qualify for detention and commitment if that person has a substance use disorder which causes them to present a likelihood of serious harm or to be gravely disabled, and meets the other conditions outlined above.

State Preemption. State preemption of a subject of law occurs when the Legislature has determined that it will regulate a field of law and that local control over that subject is not permitted. For example, the state of Washington has preempted the field of firearms

regulation and setting penalties for violations of the controlled substances act; for those subjects local governments may only enact laws and ordinances that are authorized by and consistent with state law.

Homeless Housing and Assistance Act (Act). The Legislature enacted the Act in 2005, with the goal of reducing homelessness by 50 percent statewide and in each county by 2015. Commerce with the support of the Interagency Council on Homelessness and the Affordable Housing Advisory Board, is responsible for preparing and publishing a 10-year homeless housing strategic plan with statewide goals and performance measures, and providing biennial progress reports to the Governor and the Legislature. Local areas must also have 10-year plans that are substantially consistent with the state plan.

Homeless Assistance Programs. Commerce manages a range of homeless assistance, prevention, and housing programs. Commerce programs include:

- The Housing and Essential Needs Program which provides rent assistance and essential needs - e.g. toiletries, bus tokens - for persons with a temporary disability who are homeless or at imminent documented risk of becoming homeless;
- The Consolidated Homeless Grant which provides grants for county governments and other designated entities for prevention services, emergency shelters, transitional housing and temporary rent assistance for people facing homelessness; and
- The OHY.

Homeless Assistance Program Funding. State homeless assistance programs are funded from a combination of the State General Fund and surcharges on documents recorded at county auditor offices. Revenue from these surcharges are split between the state and counties.

- The \$10 Affordable Housing for All surcharge was authorized by the Legislature in 2002. The county is allowed to keep up to 5 percent of the \$10 surcharge for the collection, administration, and local distribution of the funds. Of the remaining funds, 40 percent is transmitted into the state Affordable Housing for All Account administered by Commerce for extremely low-income households. The remaining revenue is retained by the counties for low-income housing programs and projects.
- The local homeless housing and assistance surcharge was first authorized in 2005 at \$10. The surcharge has increased to \$40 and will remain at that amount until June 30, 2019. The county auditor retains 2 percent; 60 percent goes to the county for homeless housing and assistance, of which 6 percent may be used by the county for administrative costs. Remaining funds are deposited into the Home Security Fund account. Commerce may use 12.5 percent for administrative fees and the remaining 87.5 percent is used to provide housing and shelter for homeless people and fund the homeless housing grant program. At least 45 percent of Home Security Account funds must be used for private rental housing payments; however, some uses such as youth prevention and protection programs are exempted from this requirement.
- Another local homeless housing and assistance surcharge was authorized in 2007 at \$8. The county auditor retains 90 percent of the funds for the county, of which 6 percent may be used by the county for administrative costs, and the remainder for the county's local homeless housing plan. The remaining funds are deposited into the state Home Security Fund account for Commerce to use for costs of creating and updating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless

housing grant program. Funds may be also be used for housing and shelter for homeless people.

Washington State Quality Award Program. The Washington State Quality Award (WSQA) program recognizes organizations that have implemented and achieved exceptional quality performance. The WSQA program is administered by a board of directors and volunteers operating as a non-profit organization. The program receives applications from organizations seeking feedback and recognition for significant performance efforts. Through an assessment process of evaluation and scoring, the program decides whether to give the WSQA to the organization.

Summary of Bill: Part I. CPS. Neglect includes a runaway or unaccompanied homeless youth as the child's lack of supervision may cause harm to the child's health, welfare, or safety. Mandated reporters include street youth services staff and any person who works with children. If CPS receives a report of alleged abuse or neglect, including a report of a runaway or unaccompanied homeless youth, DSHS is to screen the report in for an investigation or family assessment. DLR is to conduct annual inspections of facilities licensed by the division that provide shelter to unaccompanied homeless youth. The results of these inspections are to be provided to the OHY and the Legislature. DSHS is to develop a process to locate unaccompanied homeless children with the primary goal of returning the child to his or her parents/legal guardian. DSHS is to track a specific information which is to be reported to the Legislature on a monthly basis.

Missing Children. A parent, legal guardian, or caregiver who knowingly fails to report to law enforcement that a child in their care has been missing for more than 48 hours is guilty of a misdemeanor.

Part II. Office of Homeless Youth Prevention and Protection Programs. It is the stated goal of the Legislature that there will be no runaway or unaccompanied homeless youth by July 1, 2018. By July 1, 2108, no youth shall be discharged from a public system of care into homelessness. The OHY is limited to working with youth under the age of 18. The goals of the OHY are to provide stable housing, increase family reconciliation, and improve social and emotional well-being for homeless youth. Grants made by the OHY shall only fund housing or family reconciliation. No funds may be used for street youth services. The Independent Youth Housing Program is no longer administered by the OHY. As of August 1, 2017, all grants must require outcome measures that demonstrate the services provided either reduces unaccompanied youth homelessness or increases family reunification, or both.

By December 1, 2017, the OHY is to report to the Legislature its status on reaching its measurable goals, and continue to provide such a reporting monthly thereafter. The initial report to the Legislature and Governor is an annual report, informing the Legislature and Governor of its recommendations for funding, policy, and best practices in the three key components of the office.

The advisory committee is restructured to include four legislators and eight additional members as appointed by the Legislature.

Homeless Management Information System. Any person seeking services from a service provider that uses HMIS must provide their personally identifying information to that service provider. For service providers that utilize HMIS and receive public funding, providing personally identifying information is required in order to receive any services. Commerce is to develop a system to share personally identifying information with DSHS and local law enforcement. By December 1, 2018, Commerce is to develop a web-based system for HMIS that is updated daily.

Part III. Involuntary Commitment. Effective April 1, 2018, for the purposes of a civil commitment investigation under the ITA, a person is presumed to be gravely disabled as a result of a substance use disorder if the person has an opioid use disorder characterized by active heroin use and has been a homeless person for at least one year. Homeless person means living outside, in a building not meant for human habitation, a building which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program if a time limit exists.

Part IV. Unlawful Camping and Homeless Encampments. It is unlawful for any person camp on private property without the consent of the property owner. Camping on public property is only allowed where expressly provided for by law. A law enforcement officer is to cite or arrest a person for unlawful camping unless the person is need of medical or human services assistance. A violation for unlawful camping is a misdemeanor.

Commerce is to develop and maintain a central information system updated daily with reports from homeless shelters regarding the availability of bed space. Law enforcement is to have access to this system when enforcing unlawful camping. Beginning December 1, 2017 and annually thereafter, Commerce is report the Legislature regarding recommendations for improvements to the central information system.

The State preempts the entire field of homeless encampments. Commerce may authorize homeless encampments within specific guidelines. By July 1, 2018, a local government that duly enacts laws and ordinances that provide for homeless encampments must authorize as many spaces as necessary to house all of that local government's homeless population. All available sites are to be listed on the local government's website. A local government that fails to provide adequate spaces must not receive any state funding for homeless services. The State Auditor is to provide an annual certification to the Legislature and the Department of Health that Commerce is complaint with these requirements.

Part V. Homeless Housing and Assistance Act: Program and Funding. The Legislature concludes that state and local homelessness strategies require more frequent review and transparent reporting of spending and performance to improve the development of cost-effective programs and identification of best practices. Commerce's annual Point-in-Time census must collect data on specific subpopulations of the homeless. The state homeless housing strategic plan must be updated by July 1, 2018 and every five years thereafter. The plan must be coordinated with the OHY advisory committee and its strategies to reduce homeless youth.

Commerce will create guidelines by December 1, 2017, for local governments to update their homeless housing plans by December 1, 2018, and every five years thereafter. Local plans

must include a local homelessness reduction goal for the county and an implementation plan, including a more aggressive goal and plan for youth homelessness, to achieve the goal over the five-year plan period. Commerce may require changes in local plans to be eligible for state funding appropriated for homeless programs and may withhold funds and require changes if locals are not meeting performance goals.

Each February 1st, Commerce must provide an update on the state's homeless housing strategic plan and its activities for the prior fiscal year. The report must include, but is not limited to: 1) an assessment of the current condition of homelessness; 2) the state's performance in meeting its strategic plan goals; 3) the results of the annual homeless point-in-time census; 4) an analysis of current drivers of homelessness; and 5) the amount of federal, state, local, and private funds spent on homelessness assistance, categorized by funding source and major assistance types. The report must be posted on its website and links can be included to updated information.

Every February 1st, any local government receiving state funds for homeless assistance must provide an annual performance report on meeting the goals in its homeless housing strategic plan. The report must be posted on Commerce's website. Commerce must produce and report on local government homelessness spending from all sources by project during the prior state fiscal year in a format similar to the Commerce's report under subsection. If a local government fails to report or provides an inadequate performance report, Commerce must take corrective action, including withholding state funding for homeless assistance until the report is remedied.

The Interagency Council on Homelessness must respond to all state and local legislative and policy recommendations included in the state and local ending homeless plans. The Council must annually present its strategy for addressing the issues raised to the Legislature and include a report on the actions taken to date that addresses these issues.

Revenue from document recording surcharges are revised. Revenue from the \$10 Affordable Housing for All surcharge and the \$40 surcharge are first split 40 percent to the state and 60 percent to the county. The county may use up to 6 percent of its funds for county collection and administrative costs. Of the \$8 surcharge, counties may use up to 6 percent of its funds for county collection and administrative costs. State annual reporting and auditing of document recording surcharge usage is changed to fiscal year and due dates are changed to align with due dates of annual performance reports. The Homeless Housing and Assistance Act \$40 surcharge authorized by RCW 36.22.179 is extended to June 30, 2022.

During each calendar year in which moneys from the Home Security Fund are available, grants may only be awarded for programs directly related to addressing the root causes of homelessness, preventing homelessness, and collecting data and information on homeless individuals.

Part VI. Appropriations. Up to \$50,000 is appropriated for the fiscal year ending June 30, 2018 from the state General Fund to Commerce to be distributed to five housing authorities to implement a quality management system and prepare and submit an application to the Washington Quality Awards Program by December 1, 2019. Up to \$50,000 is appropriated for the fiscal year ending June 30, 2018, from the state General Fund to Commerce to be

distributed to five community action agencies to implement a quality management system and prepare and submit an application to the Washington Quality Awards Program by December 1, 2019. Up to \$200,000 is appropriated for the fiscal year ending June 30, 2019, and every two years thereafter, from the state General Fund to the State Auditor's Office for the purpose of an audit to determine the effectiveness and efficiency of the state homeless programs.

Appropriation: Yes.

Fiscal Note: Requested on January 27, 2017.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Section 302 which takes effect April 1, 2018.

Staff Summary of Public Testimony: PRO: We have a statewide emergency regarding homelessness. We need to have a conversation about what is working and what is wrong. We have spent \$1 billion on homelessness yet things are getting worse. What do we do when someone refuses treatment? Shelter? Do we set statewide standards for housing like we did for farmworkers? We need to address the gaps, determine the root causes, and eliminate homelessness.

CON: This bill creates two misdemeanors which increase the numbers of those coming through the courts and increase the number of people in jail. Counties already struggle to meet these costs and the state only pays 4 percent of such costs. Cities and counties work hard to meet the competing needs of homeless families and others in the community. At the local level, we should be able to do what works best for our community. A one-size-fits-all solution does not mean that all needs will be met. Regarding the restructuring of the surcharge fees, the county auditors are against removing the 2 percent administrative fee. This bill makes being homeless a crime. What is missing from this bill is housing, which is not a mat on the floor of a gym. Jails are not a home. Section 404—state preemption of homeless encampments—violates civil liberties. Section 206 requires people to share personally identifiable information without any confidentiality protections. This violates and conflicts with federal law in a number of ways—Violence Against Women Act, federal regulations for HMIS. We need to engage with the homeless, not jail them. This bill requires police to act as social services providers. They are not trained to provide such services. What if the bed space available doesn't meet the needs of the person needing the space? We need real solutions like supporting the Housing Trust Fund. We need to provide family reconciliation services early. We support the provision that no youth should be discharged into homelessness. We've worked a decade to get where we are. There was bi-partisan support to create the Office of Homeless Youth (OHY), the first of its kind in the nation. Eliminating youth over the age of 18 from the OHY is a problem, they constitute 80 percent of the unaccompanied youth and are very vulnerable. If we want to prevent chronic adult homelessness, we need to target the youth. The difference between a 17 year old and an 18 year old is a day. The needs of an 18 year old are more similar to a 17 year old than a 45 year old. Extending the increase in the surcharge should be made permanent. There is a real lack of affordable housing and this bill does not address this dire issue.

OTHER: Most people don't reach full maturity until they are 25 years old so youth should include young adults. There is a concern about homeless encampments—local governments are in the best position to address these decisions. Supportive of language regarding more data and the point in time count. Seattle has an unprecedented homelessness problem, there are over 3000 people on the streets. The City estimates a one-time cost of \$60 million to provide shelter space to all of the people who are experiencing homelessness, increased policing, and additional resources required under this bill.

Persons Testifying: PRO: Senator Mark Miloscia, Prime Sponsor.

CON: Juliana Roe, Washington State Association of Counties; Ann LoGerfo, Columbia Legal Services; Elisabeth Smith, American Civil Liberties Union of Washington; David Lord, Disability Rights Washington; Tamaso Johnson, Washington State Coalition Against Domestic Violence (WSCADV); Sean Smith, Nickolsville; Courtney O'Toole, Share; Bob Cooper, WA Defender Association, WA Association of Criminal Defense Lawyers; Jim Theofelis, A Way Home Washington; Kate Baber, Washington Low Income Housing Alliance; Erin Coomer, YouthCare, Board Member; Liz Trautman, Washington Coalition for Homeless Youth Advocacy; Kira Zylstra, All Home King County; Alison Eisinger, Seattle King County Coalition on Homelessness; Robin Corak, Multi-Service Center (MSC); Deacon Dave Jones, citizen.

OTHER: Lyset Cadena, City of Seattle; Alexandre Chateaubriand, Washington State Department of Commerce / Legislative Director.

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