

# HOUSE BILL REPORT

## SHB 1419

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### As Passed House:

March 10, 2009

**Title:** An act relating to sexually aggressive youth.

**Brief Description:** Revising provisions affecting sexually aggressive youth.

**Sponsors:** House Committee on Health & Human Services Appropriations (originally sponsored by Representatives Kagi, Dickerson, Walsh, Roberts, Hunt and Appleton).

### Brief History:

#### Committee Activity:

Early Learning & Children's Services: 2/5/09, 2/6/09 [DP];

Health & Human Services Appropriations: 2/25/09 [DPS].

#### Floor Activity

Passed House: 3/10/09, 96-0.

### Brief Summary of Substitute Bill

- Clarifies that appropriate and available treatment services for sexually aggressive youth referred to the Department of Social and Health Services from law enforcement or a prosecutor may be offered to the child and his or her parents regardless of whether a dependency petition has been filed.

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### HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

**Majority Report:** Do pass. Signed by 7 members: Representatives Kagi, Chair; Roberts, Vice Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Angel, Goodman and Seaquist.

**Staff:** Sydney Forrester (786-7120)

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### HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Schmick,

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Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Ericksen, Johnson, Miloscia, Morrell, O'Brien, Roberts, Walsh and Wood.

**Staff:** Melissa Palmer (786-7388)

**Background:**

The legal framework relating to children and their ability to commit crimes is:

- Children under age 8 are incapable of committing a crime.
- Children over age 8 and under age 12 are presumed to be incapable of committing a crime, but the presumption may be overcome by proof the child had sufficient capacity to understand the act and knew it was wrong.
- Children age 12 and over are capable of committing a crime, but like adults, evidence may be offered sufficient to find that the child did not have sufficient capacity to understand the act and did not know it was wrong.

When a law enforcement agency is investigating a complaint alleging a child has committed a sex offense and the investigation reveals the child is under age 8, the law enforcement agency must refer the case to the Department of Social and Health Services (DSHS) for a Child Protective Services (CPS) investigation. If, however, there is probable cause to believe the child is over age 8 and has committed a sex offense, the agency must refer the case to the local prosecutor for a determination of whether the child may be prosecuted for the offense. For children over age 8 but under age 12, the judge or prosecutor may determine the child cannot be prosecuted because the child is incapable of committing a crime. When such a determination is made on behalf of a child under age 12, and when the prosecutor determines there is probable cause to believe the child engaged in conduct that would constitute a sex offense, the prosecutor must refer the child to CPS as a sexually aggressive youth.

A "sexually aggressive youth" is defined as a child who has been abused and has committed a sexually aggressive act or other violent act of a sexual nature, and who:

- is in the care and custody of the state or a tribe;
- is subject to a dependency proceeding or a tribal child welfare proceeding; or
- has been referred to CPS by law enforcement based on a determination the child cannot be detained in the juvenile justice system based on age or incompetence to stand trial for acts that could be prosecuted as sexual offenses.

Child Protective Services must investigate all referrals from law enforcement regarding a sexually aggressive youth, including referrals relating to children under age 12. The purposes of the CPS investigation are to determine whether:

- the child has been abused or neglected; or
- the child or the child's parents are in need of services or treatment.

The DSHS may offer services and treatment or refer the child and his or her parents to appropriate services and treatment in the community. If the child's parents refuse to accept or fail to obtain appropriate services, and the circumstances indicate the refusal or failure constitutes abuse or neglect, the DSHS may pursue a dependency action.

Laws relating to expenditures of funding appropriated to treatment programs for sexually aggressive youth have been interpreted by some practitioners to limit the access to treatment to only those children and families subject to dependency proceedings.

**Summary of Substitute Bill:**

A child and his or her parents are declared eligible to receive services under treatment programs for sexually aggressive youth, regardless of whether the child has been found to be dependent or whether the child and family are subject to dependency proceedings.

Protective plans, service and treatment plans, including progress reports, and the child's status as a sexually aggressive youth are confidential and not subject to disclosure by the DSHS. Information sharing with other juvenile justice and care agencies is permitted, but the information remains confidential and is not subject to public disclosure by those agencies.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Early Learning & Children's Services):**

(In support) The issue in this bill is primarily about children between the ages of 8 and 12 years old. The typical fact pattern is that the child has acted out sexually with another child. The current law already seems to allow for access to treatment programs by children who are not in state custody or subject to dependency court, but there has been an increase in the number of counties interpreting the statute as not allowing access to these treatment programs unless the child is in state custody. We want to clarify eligibility for voluntary participation in these programs because they can be effective in preventing these children from entering the system later after committing a more serious act. This should be a viable option for parents who want to access a treatment program that can assist their children and prevent the behavior from escalating. It is the responsible thing to do and the right thing to do.

Parents are sometimes hesitant about treatment programs, fearing their child will be labeled or ostracized. We have included language consistent with current confidentiality requirements for children receiving such treatment in order to give parents an additional and visible source of clear information and assurance that all aspects of treatment are confidential.

(Opposed) None.

**Staff Summary of Public Testimony (Health & Human Services Appropriations):**

(In support) This bill clarifies laws so that they are implemented uniformly across the state. There are some children for whom a dependency has not been filed that have not been able to

access services for sexually aggressive youth. It is important to address these behaviors early. The funding for this was under-expended last year. It can be clarified in the bill that parents cannot receive this treatment without their child.

These are behaviors we want to address early before the child is older. There are just a handful of cases. Under the current statute these children are eligible but there are two counties that have interpreted the current statute to be only available to children in state custody. There are probably only three or four children a year not getting service that should be. The fiscal note is based on an implication that parents can access services separately but this is not the case. The program serves about 290 children a year. This is a voluntary program and parents do not have to participate. There is privacy language to make sure that parents know that it is not a disservice to their children.

(Opposed) None.

**Persons Testifying** (Early Learning & Children's Services): Representative Kagi, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Testifying** (Health & Human Services Appropriations): Representative Kagi, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying** (Early Learning & Children's Services): None.

**Persons Signed In To Testify But Not Testifying** (Health & Human Services Appropriations): None.