

HOUSE BILL REPORT

ESSB 5811

As Reported by House Committee On:
Early Learning & Children's Services

Title: An act relating to foster child placements.

Brief Description: Concerning foster child placements.

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

Brief History:

Committee Activity:

Early Learning & Children's Services: 3/24/09, 3/27/09 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Requires the court to inquire and make findings in children's dependency cases relating to placement of the child with a relative.
- Adds references to other suitable persons with whom the court may order a child placed in dependency proceedings.
- Directs the Department of Social and Health Services (DSHS) to post on its website and provide to youth in foster care a listing of its responsibilities toward youth age 12 years and older while in foster care.
- Authorizes the Office of the Family and Children's Ombudsman to investigate allegations of retaliation against foster parents and provide findings to the DSHS.
- Requires the Administrative Office of the Courts to develop mandatory court forms for dependency cases and requires use of the forms beginning January 1, 2010.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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.

Majority Report: Do pass as amended. 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)

Background:

Placements for Children Needing Out-of-Home Care in Dependency Cases.

Whenever the court orders a child placed in out-of-home care at a shelter care hearing, the priority placement is with a relative or another suitable person who is willing and able to meet the child's needs. Suitable persons are those persons with whom the child or family has a pre-existing relationship, who have completed all necessary background checks, and who appear to be suitable and competent to care for the child.

Depending on the urgency of the child's case, placement with a relative or other suitable person may not always be possible for the initial placement following shelter care. When the initial placement is not with a relative, the Department of Social and Health Services (DSHS) continues to try to identify a relative placement for the child. At the disposition hearing (immediately following fact-finding), the preferred placement for a child needing out-of-home care also is with a relative, and in cases where the suitability of a relative has not been determined by the time of the disposition hearing, the court must direct the DSHS or other supervising agency to conduct the necessary background check and report back to the court within 30 days.

Absent good cause, the DSHS or supervising agency must follow the wishes of the parent regarding placement of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child will be jeopardized or the reunification will be hindered, the child must be placed with a relative with whom the child has a relationship and is comfortable and who is willing and available to care for the child. Placements with nonrelatives are conditioned on the court finding that the placement is in the child's best interests.

Mandatory Standard Court Forms.

The Administrative Office of the Courts (AOC) is required to develop and revise standard court forms and format rules for the use in family law cases. The forms are available on the AOC's website to be downloaded and are also available for purchase from county court clerks' offices. There is no statutory requirement for the AOC to produce specific forms for use by litigants in dependency cases.

Office of the Family and Children's Ombudsman.

The Office of the Family and Children's Ombudsman (OFCO) was established in 1996 by the Legislature to ensure that abused and neglected children and their parents are served reasonably and fairly by government agencies. The OFCO is part of the Governor's office and operates independently from the DSHS and other state agencies.

The OFCO investigates complaints about agency actions or inaction that involve:

- any child at risk of abuse, neglect, or other harm; and

- a child or parent involved with child protection or child welfare services.

The OFCO intervenes in cases in which it determines that an agency's action or inaction is unauthorized or unreasonable. In addition to addressing complaints, the OFCO works to identify system-wide issues and recommend appropriate changes in public reports to the Governor, the Legislature, and agency officials. The most current report from the OFCO was received January 30, 2009.

Children's Interests and Representation in Dependency Cases.

Upon the filing of a dependency petition, state law requires a copy of the summons and petition be sent to children ages 12 years and older who are the subject of such petitions. Parents, guardians, and custodians of children also are summoned, and the court may include an order for the child to be brought to the fact-finding hearing on the dependency petition. For children in dependencies, the court is required to appoint a guardian ad litem (GAL) unless good cause exists not to do so. This requirement is considered satisfied for children who are directly represented by independent counsel. The court may appoint an attorney to represent a child age 12 years or older who requests independent counsel, or if the court or the GAL determine the child should be directly represented by counsel.

Statewide there is considerable variability regarding both GAL programs and whether children in dependencies are represented by independent counsel. Counties without a sufficient number of contracted or available GALs may appoint lay volunteers to serve as special advocates for children in dependencies. In some counties most children are represented by independent counsel, and these children may or may not also have an appointed GAL or volunteer advocate.

Both GALs and volunteer advocates are charged with investigating relevant information and making recommendations to the court regarding what they believe is in the child's best interests. Some GALs are also licensed attorneys, although their role as GAL differs from that of independent counsel. Attorneys providing direct representation must represent the child's stated interests and are required to protect the child's legal rights and interests in the dependency case.

Other than the requirement for a child over the age of 12 years to receive a summons and petition when a dependency is initiated, there is no requirement for a youth to receive further notice of dependency hearings or other information about his or her case. Similarly there is no express right granted to a child to be heard in dependency proceedings, except in a limited pilot program established in 2008 by the Legislature.

That pilot program is operating in Spokane, King, Thurston, and Benton-Franklin counties and is structured as follows:

- For children ages 12 years and older who are the subjects of dependency proceedings, the following rights are established: (1) the right to receive notice of hearings; (2) the right to be present at hearings; and (3) the right to be heard personally.
- Prior to hearings, the child's GAL or attorney must determine if the child wishes to attend the hearing. If the child wishes to attend, the attorney and GAL must coordinate with the child's caregiver and the DSHS or other supervising agency to arrange for transportation. If the child exercises his or her right to be present, the

court may interview the child in chambers to determine the child's wishes regarding issues before the court.

Summary of Amended Bill:

Placements for Children Needing Out-of-Home Care in Dependency Cases.

The court must inquire and make an express finding during the shelter care hearing whether the DSHS discussed with the child's parents the option of placing the child with a relative or other suitable person. Whenever the DSHS or supervising agency recommends moving a child from a current placement with a relative, other suitable person, or a foster parent, the court must inquire and make a finding as to the reasons for requesting the child's placement be changed. Additional references are added to the dependency court statute to reflect the option of placing a child with a relative or other suitable person. When making decisions regarding a child's placement, the court is required to base the determination on the child's best interests and to consider the child's existing relationships and attachments in order to minimize disruption.

Mandatory Standard Court Forms.

By November 1, 2009, the AOC must develop standard court forms and rules for mandatory use in children's dependency cases. The mandatory use requirement takes effect January 1, 2010. The AOC has continuing responsibility to develop and revise the forms and format rules as appropriate. Rules must allow a party to delete from the mandatory form unnecessary portions and to supplement the forms with additional material. If a party fails to use a mandatory form or follow the format rules, the case cannot be dismissed, a filing refused, or a pleading stricken, but the court may require the party to submit a corrected pleading and may impose terms. The AOC must distribute a master copy of the forms to all county court clerks and the AOC and the clerks must distribute the forms upon request. A fee may be charged for the cost of production and distribution of the forms, which may be delivered in hard copy or by electronic means.

Office of the Family and Children's Ombudsman.

The OFCO is expressly authorized to investigate allegations of retaliation against foster parents. Upon conclusion of its investigation, the OFCO must provide the DSHS with a written report of its findings.

Children's Interests and Representation in Dependency Cases.

The DSHS must place on its public website a document listing the duties and responsibilities it has to a child in a dependency case. The document must describe at least the following requirements and services:

- reasonable efforts toward reunification of the child with the child's family;
- sibling visits;
- parent-child visits, subject to the applicable statutory restrictions;
- a statutory preference for placement with a relative or other suitable person; and
- a statutory preference for the placement to allow the child to remain in the same school district when practical and in the child's best interests.

The document must be prepared with the assistance of a community-based organization and must be updated as needed. Once a dependency is established by court order, the social worker assigned to a child's case must provide a child age 12 years and older with a copy of the document from the website, explain the contents of the document to the child, and direct the child to the DSHS's website for further information. The social worker must document that this requirement was met.

At any hearing occurring after the dependency is established, the court must ensure a youth over the age of 12 years who is present in the courtroom is aware of and understands the duties and responsibilities the DSHS has toward him or her. The court must specifically address the issues required to be included in the document and website. If the child is represented by independent counsel, the court need not address the duties and responsibilities of the DSHS toward the child.

Amended Bill Compared to Original Bill:

The striking amendment makes the following changes to the underlying bill:

1. removes all elements relating to *housing services and assistance* in children's dependency cases;
2. removes certain elements requiring the court to make express findings about relative placements for children in all dependency hearings, but retains the following requirements relating to inquiries and findings about a child's placement:
 - a. during the shelter care hearing the court must inquire whether the DSHS discussed with the parents the option of placing the child with a relative or other suitable person and make a finding of the DSHS's efforts; and
 - b. during the permanency planning hearing, if the DSHS or supervising agency is recommending a change in the child's placement, the court must inquire as to the reasons for recommending the child be moved;
3. incorporates references to *other suitable persons* as described in RCW 13.34.130 (1) (b) into the provisions governing shelter care hearings and disposition hearings in children's dependency cases;
4. revises the standard by which the dependency court makes placement decisions for children needing out-of-home care by inserting a requirement for a best interests finding and directing the court to consider the child's existing relationships and attachments in order to minimize disruption;
5. revises the requirements for the posting and distribution of information to youth in foster care by:
 - a. adding the concept of preference for placement with a suitable person (in addition to a relative);
 - b. adding the concept of the child's best interests into the preference for placements that allow children to remain in the same school district; and
 - c. specifying that the DSHS's duty to provide and explain the information extends only to youth age 12 years and older;
6. removes the requirement for the DSHS to take action against an employee based on results of an investigation by the OFCO relating to retaliation against a foster parent, but preserves the authority for the OFCO to investigate such allegations and to provide findings to the DSHS; and

7. revises current statute relating to Foster Care to 21 services to clarify the DSHS has continuing authority, within amounts appropriated, to provide foster care placement services to youth up to age 21 who are enrolled in post-secondary education programs.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Foster parent retaliation happens, and when it does, foster children are punished as well. Some foster parents, including relative foster parents, indicate that when they request intensive services for children in their care, the caseworker removes the children instead, saying that the foster parents are abusive even though the child has been in the home for a long time. This kind of retaliation extends to the children as well by making them endure multiple moves in foster care. There is no accountability when a foster parent license is cancelled. There is no way to hold DSHS caseworkers accountable for retaliating against foster parents who try to protect children.

Caseworkers can intentionally take too long to complete a home study for a potential relative adoptive placement in order to get the child adopted out to a non-relative even though a relative placement or guardianship was available. Caseworkers also might decide not to process an application for a foster parent license, in which case there is no official denial and no right to due process of the decision.

The OFCO has reported that there are problems with the system when caseworkers see foster parents as advocating too strongly for the interests and needs of foster children. If foster parents file a complaint with the OFCO, they risk angering the caseworker who can hide behind the child's right to privacy to avoid being accountable for bad behavior.

The housing services and assistance provisions of the bill are positive steps. Housing is a significant issue in removal of children from home and reunification of families. Standardizing court forms in dependency cases will help track what is going on in the dependency court system.

Notifying youth in foster care of their rights and the responsibilities the DSHS has toward them is a very important part of engaging youth in decision-making on their own behalf and empowering them. The Mockingbird Society already has developed a model brochure to provide information to youth in foster care.

(In support with concerns) The DSHS has, in previous testimony, expressed concerns regarding the possibility the department could become responsible for actually providing

housing. We support the requirement for our social workers to be providing current referral information to homeless families in dependencies and the appropriate help in finding available housing.

The DSHS has concerns with legal issues presented by the requirements in section 10 of the bill for the DSHS to take employee disciplinary action based on results of the OFCO's investigation. Under collective bargaining agreements and civil service rules, disciplinary action may only be taken for "just cause" which requires a fair and thorough investigation by the DSHS, sufficient proof, and notice to the employee that an act constitutes misconduct. This means management would have the obligation to conduct its own investigation that may or may not reach the same conclusion as the OFCO, and management's disciplinary decision would have to comply with just cause requirements. The OFCO's files are confidential and not subject to discovery, judicial or administrative subpoena, or other legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding. Requiring the DSHS to take action in all cases where the OFCO finds the employee engaged in retaliation could place us in the position of taking disciplinary action without the use the OFCO's information to justify that action. Collective bargaining agreement provisions limit the disciplinary action that can be taken unless the DSHS makes its own findings (supported by evidence that must be discoverable) and follows a number of other procedures.

(Opposed) None.

Persons Testifying: (In support) Keneth Burlile; Kathleen Chafin; Laurie Lippold, Children's Home Society; Gary Malkasian, Foster Care Justice Alliance; and Jim Theofelis, Mockingbird Society.

(In support with concerns) Randy Hart, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.