

HOUSE BILL REPORT

SSB 6730

As Passed House:
March 10, 2010

Title: An act relating to implementing recommendations made by the office of the family and children's ombudsman in its 2009 Colville investigation by requiring the department of social and health services to notify parents the relatives that have been considered as a placement resource.

Brief Description: Concerning child welfare.

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

Brief History:

Committee Activity:

Early Learning & Children's Services: 2/19/10, 2/23/10 [DPA];
Health & Human Services Appropriations: 2/25/10 [DPA(APPH w/o ELCS)].

Floor Activity:

Passed House: 3/2/10, 96-0.
Senate Refuses to Concur.
Passed House: 3/10/10, 97-0.

Brief Summary of Substitute Bill

- Requires the Department of Social and Health Services (DSHS) to provide relative caregivers and other suitable persons with whom a child has been placed and resided for 90 or more days with the same five-day prior notice as required for foster parents when a child's placement is being changed.
- Requires the DSHS and the court to consider written information about the child submitted by persons who have a significant relationship with the child and persons who have provided care to the child within the 12 months preceding a hearing on changing the child's placement.
- Requires written notice to caregivers of dependent children regarding placement changes after 12 or more months.
- Requires annual reporting to the Legislature regarding changes in placements for dependent children who have resided with a caregiver for 12 or more months.

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.

- Clarifies the investigative duties of a guardian ad litem in dependency and termination cases.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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).

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Health & Human Services Appropriations and without amendment by Committee on Early Learning & Children's Services. Signed by 15 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Schmick, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Fagan, Johnson, Miloscia, Morrell, O'Brien, Roberts, Walsh and Wood.

Staff: Melissa Palmer (786-7388).

Background:

Report from the Office of the Family and Children's Ombudsman.

In 2008 the Office of the Family and Children's Ombudsman (OFCO) was asked to examine child welfare practice in Colville through a regionally focused systemic investigation. This investigation was in addition to case-specific investigations conducted prior to, during, and after 2008 relating to child welfare practice in Colville and surrounding areas. In its May 2009 report of the regional review, the OFCO provided recommendations addressing a variety of issues identified in its investigation, including several recommendations relating to notice, due process, and fairness in working with foster parents and relative caregivers.

Specifically, the OFCO report recommended that:

1. parents be informed of all relatives whom the Children's Administration considered as a placement option in a dependency, and that the outcomes of those considerations also be provided;
2. all caregivers, foster and relative, be provided with at least five days notice prior to a child being removed from the placement, unless there is an imminent risk of harm;
3. children not be removed from relative care providers unless Child Protective Services (CPS) has made a finding that the relative has abused or neglected the child, or has violated a court order, or the child is at risk of imminent harm;
4. relative caregivers be granted the right to a review of a decision to remove a child who has been in the relative's care for six months or longer; and

5. caseworkers be required to convene a face-to-face meeting with a caregiver when a referral has been received regarding abuse or neglect that could lead to removal of the child, that the allegations be explained, and that the caregiver be given a reasonable opportunity to respond.

Placement Authority and Preferences.

Throughout the dependency process, the preferred placement for a child needing out-of-home care is with a relative, with fictive kin, also called a suitable person, or with a foster parent the child previously was placed with, if reentering care. Prior to moving a child who has been placed with a foster parent for 90 days or longer, state law requires the DSHS to provide the foster parent with at least five days notice unless:

- the court has ordered an immediate change in placement;
- the child is being returned home;
- the child's safety is in jeopardy; or
- the child is residing in a receiving or group home.

The policy of the DSHS is to also follow this statute with regard to relatives.

Guardian Ad Litem Duties.

A guardian ad litem (GAL) in dependency matters has responsibility to:

- investigate and collect information about the child's situation;
- meet with, interview, and observe the child;
- monitor all court orders for compliance;
- report to the court the child's status in an Indian tribe, if applicable;
- represent, be an advocate for, and make recommendations to the court about the best interests of the child; and
- convey the child's position or wishes regarding matters pending before the court.

Summary of Bill:

The DSHS must provide relative caregivers and other suitable persons with whom a child has been placed and resided for 90 or more days with the same five-day prior notice as required for foster parents when a child's placement is being changed. When a child has been placed with and resided in the home of a foster family, relative caregiver, or other suitable person for 12 or more consecutive months, the required notice must be provided in writing and must specify the reasons for changing the child's placement.

The DSHS must report annually to the Legislature beginning September 1, 2011, through September 1, 2015, regarding placement changes for children who have resided in the home of a foster family, relative caregiver, or other suitable person for 12 or more consecutive months.

All caregivers of dependent children have the right to receive notice of hearings and the right to be heard in all proceedings regarding children in their care. In hearings on the issue of changing a child's placement, the DSHS and the court also must consider written information about the child submitted by persons who have a significant relationship with the child and

persons who have provided care to the child within the 12 months preceding a hearing on changing the child's placement.

The investigative duties of a GAL in dependency and termination cases is clarified to state that the GAL will make a referral to CPS if the child discloses abuse or neglect in the course of the GAL's investigation.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 25, 2010.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, section 2 of the bill is Null and Void unless funded in the budget.

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

(In support) This bill is primarily a response to the report from the OFCO regarding the Colville investigation. We have attempted to resolve some of the initial concerns from the DSHS and the Office of the Attorney General. This bill is intended to institute some common sense reforms and create some transparency and due process for caregivers.

(Information only) Available to answer questions.

(With concerns) The Court Appointed Special Advocates encourage a closer look at this bill, especially section 6, relating to the duties of a GAL in a child dependency proceeding. As written, the language causes confusion and could render the whole notion of an independent voice for the child moot. The committee should consider adopting language clarifying the GAL's duty to make a referral to CPS when a child discloses abuse or neglect to a GAL in the course of the GAL's investigation.

The intent of this bill is positive but of concern is that the petition to be heard is predicated on the child's parent agreeing to the petition being filed. If a parent agrees, the parent could file his or her own petition to be heard on the issue of the child's placement. The petition for an emergency hearing should require at least an allegation that the child will be harmed by a change in placement. There are cases when a child wants to be moved to a new caregiver and that should be allowed to happen.

This bill creates protections for children placed with relative caregivers, but does not create the same protections for children placed with foster parents. From the child's perspective those emotional attachments that form during long-term placements are just as strong, regardless of whether the caregiver is a legal relative or someone else to whom the child has developed a healthy and positive bond.

We would suggest that recent caregivers be allowed to provide information to the court, regardless of whether the child is still placed in the caregiver's home. There are multiple times when a previous caregiver or a significant person in the child's life does not want custody of the child but does have valuable information about the child. These individuals

are unable to provide such information because they are not a current caregiver and have no right to be heard.

A relative who would have the right to petition could be placed in the position of cross examining a foster parent or a different relative with whom the child has been placed after removal from the petitioning relative's care. Limiting the circumstances when a child's placement can be changed after the child has been stable for 12 months makes sense, but it would make more sense to require a hearing in all cases prior to removal, rather than removing the child and then allowing the former and current caregivers battle it out in court.

(Opposed) None.

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

(In support) People come to our offices and contact their representatives because their children are being taken away. We worked with a prosecuting attorney from Colville and the Offices of the Family and Children's Ombudsman (OFCO), who completed an investigation titled, "Loss of Trust: A Crisis of Confidence in the Child Welfare System in Colville." Both the OFCO and the Office of the Attorney General are supportive of the bill. It is important that people have notice when a child's placement is changed. We are willing to work to see that this bill moves forward.

Persons Testifying (Early Learning & Children's Services): (In support) Senator Becker, prime sponsor.

(Information only) Denise Revels Robinson, Department of Social and Health Services.

(With concerns) Ryan Murry, Washington State Court Appointed Special Advocate; and Gary Malkasian, Foster Care Justice Alliance.

Persons Testifying (Health & Human Services Appropriations): Senator Becker, prime sponsor.

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.