

SENATE BILL REPORT

2SHB 2106

As Reported by Senate Committee On:
Human Services & Corrections, March 26, 2009
Ways & Means, April 2, 2009

Title: An act relating to improving child welfare outcomes through the phased implementation of strategic and proven reforms.

Brief Description: Improving child welfare outcomes through the phased implementation of strategic and proven reforms.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kagi, Roberts, Kenney and Morrell).

Brief History: Passed House: 3/09/09, 97-0.

Committee Activity: Human Services & Corrections: 3/26/09 [DPA].

Ways & Means: 4/02/09 [DPA, DNP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Honeyford, Kline, McDermott, Murray, Oemig, Parlette, Pflug, Regala, Rockefeller and Schoesler.

Minority Report: Do not pass.

Signed by Senator Pridemore.

Staff: Michael Bezanson (786-7449)

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.

Background: The Children's Administration (CA) within the Department of Social and Health Services (DSHS) provides child welfare services (CWS) to children in out-of-home care and their families. CWS includes out-of-home care, case management, and adoption services. CWS also includes the legal case management of the case. Historically, about 30 percent of CWS has been provided by child-placing agencies with whom CA contracts. The contracts, however, are not performance-based.

CA contracts with many private agencies across the state to provide a host of services to its clients. There are currently about 1,800 contracts with different providers. The contracts are managed at both the regional and headquarters level.

Budgeting for the state's share of foster care costs includes use of information developed by the Caseload Forecast Council. State appropriations for foster care are increased or reduced depending on the forecasted caseload. When DSHS is successful in reducing foster care caseloads through implementation of prevention and intervention programs and policies, the savings from reduced caseloads are not available to be used for reinvestment into sustaining or expanding these programs to achieve long-term statewide reforms.

Summary of Bill (Recommended Amendments): Beginning on December 1, 2010, CA must begin converting its existing contracts with child-placing agencies into performance-based contracts to provide child welfare services (CWS). The Attorney General's Office must provide legal representation to the private agencies in the dependency cases. The provisions in the Civil Service Act regarding the specific requirements around state employees bidding to provide services do not apply.

Beginning on July 1, 2014, all CWS for 60 percent of the children for whom CA has legal custody must be provided by private agencies (referred to in the bill as supervising agencies) with whom CA has entered into performance-based contracts. Supervising agencies are defined as agencies licensed by DSHS or an Indian tribe that has entered into a performance-based contract with DSHS to provide child welfare services. The provision of Child Protective Services remains the responsibility of CA. After July 1, 2014, for the 60 percent of children for whom supervising agencies are providing CWS, CA may not directly provide CWS except in an emergency or as a provider of last resort. In this situation, DSHS is also considered a supervising agency. CA is considered a "provider of last resort" when it is unable to contract with a private agency to provide CWS in a particular geographic area or the contract with the private agency is terminated by CA or the contractor. After July 1, 2014, for the 60 percent of children for whom supervising agencies are providing CWS, CA is responsible only for monitoring the quality of services for which it has contracted and ensuring that those services meet federal and state requirements, including the Indian Child Welfare Act. DSHS must give a preference to private nonprofit agencies when entering into performance-based contracts. This requirement does apply to Indian tribes. Children whose cases are managed by supervising agencies remain dependents of the state.

As child welfare and staff vacancies occur due to voluntary employee departures, if DSHS decides the vacant positions should be filled with existing staff because there are insufficient supervising agency resources available in that region, DSHS is to then determine if there are other services in the region where the work can be performed by supervising agencies.

The performance-based contracts used by CA must be structured to hold the private agencies accountable for achieving the following goals in order of importance: child safety; reunification of the child with the parents; child permanency with a preference for reunification; and reducing racial disproportionality.

The Child Welfare Transformation Design Committee (Committee) is established. The members of the Committee are as follows:

- the Governor or the Governor's designee;
- four private agencies, two of which are headquartered in western Washington and two of which are headquartered in eastern Washington. Two of the agencies must have an annual budget of over 1 million state-contracted dollars and two of the agencies must have an annual budget of less than 1 million state-contracted dollars;
- the Assistant Secretary of the Children's Administration;
- two CA regional administrators, one from eastern Washington and one from western Washington;
- the CA Division of Licensed Resources administrator;
- two nationally recognized experts in performance-based contracting;
- the Attorney General (AG), or the AG's designee;
- a representative of the collective bargaining unit that represents the largest number of CA employees;
- a representative of the Office of the Family and Children's Ombudsman;
- four representatives from federally-recognized Indian Tribes, two of which must operate child welfare programs selected by the Indian Policy Advisory Committee convened by DSHS's Indian Policy and Support Services Office;
- a foster parent;
- a parent representative who has had personal experience with the dependency system;
- two present or former superior court judges with significant experience in dependency matters, selected by the Superior Court Judge's Association;
- a representative of the Washington Racial Disproportionality Advisory Committee;
- and
- one representatives of Partners for Our Children (POC).

The President of the Senate and the Speaker of the House of Representatives jointly appoint the four private agencies, the foster parent, the parent representative and the two nationally-recognized performance-based contracting experts.

The POC representatives convene the initial meeting no later than June 15, 2009. The chair or co-chairs of the Committee are selected from among the Committee's membership by majority vote of those present at the initial meeting of the Committee. The Committee may establish advisory committees as necessary. Staff support for the Committee will be provided jointly by POC and legislative staff. The Committee is subject to the Open Public Meetings Act and the Ethics in Public Service statutes. Administrative costs for the Committee will be paid from private funds.

The Committee is to develop a transition plan that contains recommendations to the Legislature for the provision of CWS by supervising agencies. The plan must include the following:

- a model or framework for performance-based contracts to be used by CA that must include the following:
 - the target population;
 - the contract referral and exit criteria;
 - the CWS to be provided by the contractor;
 - the roles and responsibilities of public and private agency workers in key case decisions;
 - provision of culturally competent services;
 - contract performance and case outcomes expectations;
 - the method by which to measure whether the contractor has met the goals in order of importance; and
 - incentives to meet program goals; and
- a method by which CA can substantially reduce the current number of contracts for CWS;
- a method by which clients access community-based services, how supervising agencies engage other services or form local service networks, develop subcontracts, etc.;
- contract monitoring and evaluation procedures to ensure children and families are receiving timely and quality services from the supervising agencies;
- a process by which to expand the capacity of private agencies to meet the service needs of children and families in a performance-based contractual arrangement;
- a review of the necessity of continued administrative staffing levels in the regions in which the majority of child welfare services are being provided by supervising agencies;
- a preparation of the plan to manage the delivery of child welfare services in a manner that maximizes coordination of services and programs that deliver primary prevention services;
- an inclusion of methods to address the effects of racial disproportionality;
- inclusion of the principles and requirements of the Centennial Accord executed in November 2001, between the state of Washington and federally recognized tribes in Washington State;
- development of methods for assuring performance-based contracts adhere to the letter and intent of the federal Indian Child Welfare Act;
- a method by which supervising agencies can expand services in underserved areas of the state;
- appropriate reimbursement levels for supervising agencies;
- a method to enhance existing data systems;
- a financing arrangement that examines different payment methods and ways to reduce contractor's liability;
- a description of how the transition may affect the state's ability to obtain federal funding;
- a description of the costs of the transition:
 - the initial startup costs and mechanisms to periodically assess the overall adequacy of funds;
 - the fiscal impact of the changes;
 - the feasibility of the plan; and
 - the impact of the plan on DSHS employees during the transition; and
- identification of any statutory or regulatory changes needed.

The Committee must also recommend how to implement its plan in stages across the state so that the 60 percent implementation is accomplished by July 1, 2014.

The Committee must report, in writing, to the Children's Oversight Committee on a quarterly basis starting on June 30, 2009. The Committee must report to the Children's Oversight Committee by June 1, 2010, its recommendation for staged implementation of the act across the state.

The Committee expires on June 30, 2014.

Within 18 months after DSHS has entered into performance-based contracts with supervising agencies, the Washington State Institute for Public Policy (WSIPP) is to provide a preliminary report due June 30, 2012, in which it reviews the outcomes achieved by the supervising agencies and compare those outcomes with the existing services offered by DSHS. Among the outcomes to be compared are relative placements, placements with siblings, re-referrals for cases in which the children who were placed in out-of-home care were reunified and then returned to out-of-home care, reducing racial disproportionality, and timelines to achieve permanency.

No later than July 1, 2013, WSIPP is to provide to the Governor and the Legislature with the final results of the outcome comparison.

If the report indicates improved outcomes through the use of performance-based contracts with supervising agencies, the Governor is encouraged to expand the use of supervising agencies statewide.

Sections 1 through 6 take effect July 1, 2010, and Section 7 takes effect immediately. The act is only in effect if funds are specifically appropriated for this purpose.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments):

- Adds to the intent section that the changes from performance-based contract should also result in reducing racial disproportionality in the child welfare system.
- Adds to the membership of the Child Welfare Transformation Advisory Committee a member of the Washington Racial Disproportionality Advisory Committee.
- Requires Children's Administration to add language to performance-based contracts that supervising agencies will provide culturally competent services.
- Adds the extent to which racial disproportionalities were decreased to the outcomes that WSIPP must review.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): E2SSB 5943 replaces this bill with the following changes:

- Applies the bill to 60 percent of the children for whom DSHS has legal custody, down from 100 percent.
- For the other 40 percent, DSHS workers are to provide the child welfare services.

- The date by which DSHS must have child welfare services provided to 60 percent of the children in the legal custody of DSHS remains July 1, 2014.
- Language is added that children whose cases are managed by a supervising agency remain dependents of the state.
- Adds to the membership of the Child Welfare Transformation Design Committee the following: the Governor or the Governor's designee; a foster parent and a parent representative who has had personal experience with the dependency system.
- The tribal members are to be selected by the Indian policy advisory committee convened by DSHS's Indian Policy and Support Services Office.
- The Committee's recommendations are to be presented to both the Governor and the Legislature.
- Added to the list of responsibilities of the Committee are the following:
 - A review of the necessity of continued administrative staffing levels in the regions in which the majority of child welfare services are being provided by supervising agencies.
 - A preparation of the plan to manage the delivery of child welfare services in a manner that maximizes coordination of services and programs that deliver primary prevention services.
 - An inclusion of methods to address the effects of racial disproportionality.
 - Inclusion of the principles and requirements of the Centennial Accord executed in November 2001, between the state of Washington and federally-recognized tribes in Washington State.
 - Development of methods for assuring performance-based contracts adhere to the letter and intent of the federal Indian Child Welfare Act.
- An evaluation by WSIPP is added.
- If the evaluation indicates improved outcomes through the use of performance-based contracts with supervising agencies, the Governor is encouraged to expand the use of supervising agencies statewide.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Sections 1 through 6 take effect July 1, 2010, and Section 7 takes effect immediately. The act is only in effect if funds are specifically appropriated for this purpose.

Staff Summary of Public Testimony on Second Substitute House Bill (Human Services & Corrections): OTHER: Children's Home Society is supportive of the efforts by both the House and Senate to improve the lives of children and families in this state. CHS is very supportive of the reinvestment strategy contained in the bill. Children's already contracts out many of the services it provides to its clients. The reinvestment strategy is a good idea. Use of evidence based and promising practices is also important but there is a cost to providing this array of services.

Persons Testifying (Human Services & Corrections): OTHER: Laurie Lippold, Children's Home Society; Randy Hart, Children's Administration.

Staff Summary of Public Testimony on Second Substitute Senate Bill 5943 (Ways & Means): PRO: This bill establishes a process to require performance-based contracts for the provision of child welfare services and provides a more rational division between the public and private sector. The proposed shift from the public sector to the private sector is something that occurs across the country where child welfare services have long been provided by the private sector. Performance contracting can bring success. Several jurisdictions show significant caseload drops. The substitute bill is encouraging because it provides a longer timeframe. This allows the private sector to grow and gives CA time to increase its experience in performance-based contracting.

This bill will increase accountability. There is no panacea for child welfare service. Performance-based contracting offers an opportunity to increase performance-based outcomes. This is not about which sector can do it better. This bill is about serving children and families in this state. Performance-based contracts are demanding and will take a bit to get up to speed. The timeframe the substitute offers should allow this to happen.

CON: The bill does not work. The bill mandates that DSHS stop filling child welfare vacancies and begin contracting out immediately regardless of where those vacancies are or whether or not there is a qualified contractor. The bill does not discuss what will happen when the contractor fails or when services will be increasingly inconsistent. Section 6 says that the costs will be paid by the private sector which provides the appearance of a potential conflict. Section 45 amends the employees' collective bargaining law. The fiscal note is not completed but it will increase costs. The bill would create contract divisions and increase liability. The bill could put federal dollars at risk because under federal rules legal responsibility for placement and care must remain with the state. The bill would create recessionary costs as hundreds of middle-wage workers are replaced by lower-wage workers who frequently have no benefits. Outcomes will be no better and may be even worse. The case has not been made that the private sector can deliver services any better than public. Several jurisdictions with a privatized system show the same complaints that you see under a public system.

OTHER: The intent of this bill is sound because we can do better. The bill creates a large magnitude of change and needs more consultation with tribes. Indian children are roughly 2 percent of the population but make up 22 percent of the foster care caseload. The substitute allows for contracts with the tribes. However, the bill needs to continue child services to Indian children and their families that honors their federally-protected right; specifically terminating parental rights without discussing with the child's tribe. There needs to be more time to work on this bill. The last time the Legislature looked at CWS it looked at caseload and staffing; it should look at performance.

DSHS has received hundreds of FTEs and billions of dollars but people die and complaints go up. Killing the bill does not solve the problem. The bill needs to address the tribes interest in federal law. Indian tribes ask that you take as long as you can so that tribes can provide constructive feedback.

Persons Testifying (Ways & Means): PRO: Mark Courtney, Partner's For Our Children; Terra Bianchi, Mockingbird Society; Laurie Lippold, Children's Home Society.

CON: Dennis Eagle, Washington Federation of State Employees.

OTHER: Miguel Perez Gibson, Colville Tribes; Mike Moran, Spanish, Hoh, and Umatilla Tribes.