

# SENATE BILL REPORT

## ESSB 5811

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As Amended by House, April 13, 2009

**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:** Human Services & Corrections: 2/19/09, 2/23/09 [DPS].

Passed Senate: 3/09/09, 47-0.

Passed House: 4/13/09, 98-0.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5811 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Jennifer Strus (786-7316)

**Background:** Currently, when a child is placed in out-of-home care, the priority placement for the child is with a relative unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunify the parent and child would be hindered. Before the child is placed with a relative, the court must find that the person is willing and available to care for the child and be able to meet the child's special needs. The court must also find that the placement with a relative is in the child's best interests. The Department of Social and Health Services (DSHS) or a child placing agency (CPA) must document its effort to place the child with a relative or other suitable person requested by the parent.

The Administrative Office of the Courts (AOC) is currently statutorily required to develop and revise standard court forms and format rules for the use of litigants in dissolution, non-parental custody, and uniform parentage actions. The forms are available on AOC's website to be downloaded and are also available for purchase from the county court clerk's office.

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*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.*

AOC has on its website numerous forms in addition to the mandatory forms required to be used in dissolution, non-parental custody, and uniform parentage actions. The additional forms available on the website include those that can be used in juvenile court, domestic violence, and guardianship actions. Some local courts may require non-statewide forms to file a case and those are created and managed by the local court.

Currently, there is no statutory requirement that AOC produce, or that litigants use, specific forms in dependency cases.

DSHS must include in its social study report what preventive services were offered or provided to the family and have failed to prevent the need for out-of-home placement. Housing services, which are considered preventive services, may include referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

The court's ability to order housing assistance under chapter 13.34 RCW is limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement and subject to the availability of funds appropriated specifically for this purpose.

Under current law, other than an attorney appointed to represent the child in a dependency matter, no party or other interested person is required to explain to the dependent child what responsibilities DSHS has toward the child and the child's family.

**Summary of Engrossed Substitute Bill:** At shelter care, dispositional, and review hearings, the court must inquire of the parents whether DSHS has discussed a relative placement with them. The court must make an express finding in this regard. At disposition, if the court does not place the child with a relative, the court must make an express finding as to the reasons it did not.

When DSHS or a supervising agency recommends against continued placement with either a relative or a foster parent, and the court agrees with that recommendation, the court must make an express finding as to its reasons for its agreement with DSHS or supervising agency.

The Family and Children's Ombudsman may investigate allegations of retaliation. Upon conclusion of its investigation, the Ombudsman must provide DSHS with a written report of its findings. DSHS is to take immediate action against an employee based, in part, on the Ombudsman's findings that the employee has more than likely not participated in retaliatory action against a foster parent. DSHS must also notify the Ombudsman within 30 days of receiving the Ombudsman's report of any personnel action taken or to be taken against the department employee.

At the shelter care hearing on a dependency petition, the court must inquire into what services, including housing services or assistance, were provided to the family to prevent or eliminate the need for removal of the child. At the dispositional hearing, the court is to choose services, including housing services and assistance, that least interfere with family autonomy and are adequate to protect the child.

Housing services or assistance is defined to mean at least effective referrals to federal, state, local, or private agencies or organizations, assistance with forms, or any financial subsidies or other monetary assistance for housing.

"Homelessness or lack of adequate and safe housing" constitutes the primary reason for out-of-home placement when the provision of housing services or assistance would likely prevent the need for out-of-home placement or shorten the length of stay in out-of-home care.

The section dealing with the court's ability to order housing services or assistance cannot be construed to create an entitlement to housing services or assistance nor to create judicial authority to order that services or assistance be provided if the services or funding for those services or assistance is unavailable or the child or family is ineligible.

DSHS must place on its public website a document listing the duties and responsibilities DSHS has to a child subject to a dependency petition. DSHS must include in the document at least the following:

- reasonable efforts toward reunification of the child with the child's family;
- sibling visits;
- parent-child visits, subject to the restrictions in RCW 13.34.136(2)(b)(ii); and
- statutory preference for placement with a relative.

DSHS must prepare the document with the assistance of a community-based organization and must update the document as needed.

Once the dependency is established, the social worker assigned to a child's case must provide the child with a copy of the same document that DSHS must place on its website. The social worker must also explain the contents of the document to the child and direct the child to DSHS's website for further information. The social worker must document that this requirement was met.

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

AOC must develop standard court forms and format rules for mandatory use by parties in dependency matters. The forms must be developed by November 1, 2009, and the mandatory use requirement goes into effect January 1, 2010. AOC has continuing responsibility to develop and revise the forms and format rules as appropriate.

Pursuant to rules established by AOC, a party may delete from the mandatory form unnecessary portions and may 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 struck. However, the court may require the party to submit a corrected pleading and may impose terms.

AOC must distribute a master copy of the forms to all county court clerks. AOC and the clerks must distribute the forms upon request and may charge a fee for the cost of production and distribution of the forms. The forms may be distributed in hard copy or by electronic means.

**Appropriation:** None.

**Fiscal Note:** Not requested.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill addresses proper parental authority when the safety of the child is not at issue. The law already states that the child's preferred placement is with a relative; this bill gives teeth to that law. When the safety of the child is not at issue, the court follows DSHS's recommendations without independent evaluation, and this bill would require, rather than just doing what DSHS wants in a case. This bill would not place the foster parent's wants above that of the child's parents because the parent's approval is needed.

OTHER: This bill would result in increased hearings in dependency cases and in some situations, the needs of the child and parents might be lost in the litigation over a threatened placement. Protecting foster parents from retaliation is the better way to handle these situations than the method suggested in this bill. There could be a number of situations in which a parent may say no to the placement of his or her child with a relative and that placement with that relative would be in the child's best interests. The bill is too rigid; there are not enough options included depending upon the different situations. It is also not clear how family team decision meetings would fit in.

**Persons Testifying:** PRO: Gary Preble, citizen.

OTHER: Gary Malkasian, Foster Care Justice Alliance; Kenneth Burlile, Amy Langley, foster parents; David Del Villar Fox, Nicole Muller, DSHS; Laurie Lippold, Children's Home Society.

**House Amendment(s):** The term "suitable person" is added in each area of the statute in which the term "relative" appears.

Adds the criteria "best interest of the child" in several areas regarding placement.

In the dispositional phase of the dependency, the court is to consider the child's existing relationships and attachments in order to minimize the disruption in determining if the child should be placed with a relative or other suitable person.

Adds that within appropriated amounts, DSHS has authority to provide foster care to age 21 if the youth is enrolled or participating in a post-high school academic program or vocational program.