
Judiciary Committee

HB 1680

Title: An act relating to child abuse investigations and proceedings.

Brief Description: Concerning child abuse investigations and proceedings.

Sponsors: Representatives Eddy, Anderson, Carlyle, Morris, Kagi, Takko, Maxwell and Clibborn.

Brief Summary of Bill

- Provides that a governmental entity, or its officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of a report of child abuse or neglect.
- Provides that the duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decisions.
- Provides that the state is not liable for actions taken to comply with court orders and that child abuse investigators are entitled to the same witness immunity as other witnesses.

Hearing Date: 2/9/11

Staff: Edie Adams (786-7180).

Background:

Under the state's child abuse statutes, the Department of Social and Health Services (Department) is responsible for investigating and responding to allegations of child abuse or neglect. Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In the case *Tyner v. DSHS*, the Washington Supreme Court (Court) found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court based this holding in part on legislative intent

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.

statements in the child abuse statutes describing the importance of the family unit and the parent-child bond.

There are three types of negligent investigation claims that have been recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home. In a 2003 case, *M.W. v. DSHS*, the Court rejected an argument that the child abuse investigation statute creates a cause of action for all physical or emotional harms that may occur during the investigation process.

In *M.W. v. DSHS*, the Court held that because the cause of action for negligent investigation derives from the statute, the duty is limited to the harm the statute was meant to address. Since the statute's purpose is to protect children from abuse within the home and to protect the integrity of the family, a claim for negligent investigation is limited to negligent investigations that lead to harmful placement decisions, such as placing a child in an abusive home, removing a child from a non-abusive home, or failing to remove a child from an abusive home. This holding was subsequently confirmed by the Court in *Roberson v. Perez*.

Witness immunity is a common law doctrine that provides witnesses in judicial proceedings immunity from suit based on their testimony. The purpose of witness immunity is to preserve the integrity of the judicial process by encouraging full and frank disclosure of all pertinent information within the witness's knowledge. The rule is based on the safeguards in judicial proceedings that help to ensure reliable testimony, such as: the witness's oath, the hazards of cross examination, and the threat of prosecution for perjury. Cases dealing with child abuse investigators have not specifically addressed the potential conflict between liability for negligent investigation and possible witness immunity provided to child abuse investigators.

Summary of Bill:

Legislative findings and intent are provided. The Legislature finds that judicial interpretation of child abuse investigation statutes has imposed potentially irreconcilable duties on the entities that are obligated to investigate child abuse and neglect referrals by imposing both a duty to protect children by removing them from unsafe homes, and an equal duty to protect the family unit even where a parent is the alleged abuser. The Legislature finds that the paramount purpose of the child abuse law is to benefit children. When the child's interests of basic nurture, physical and mental health, and safety conflict with the parents' interests, the interests of the child should prevail.

The Legislature intends to:

- overrule *Tyner v. DSHS* and other cases in which the courts have held that the child abuse investigation statute creates an implied right of action for parents or other caretakers who are alleged abusers;
- codify the portions of the holdings in *M.W. v. DSHS* and *Roberson v. Perez* that liability is limited to the initial placement decision and not the manner in which the investigation was conducted;
- clarify that child abuse investigators have the same witness immunity as any other witness in a court proceeding and that the state shall not be held liable where the Department or child abuse investigators are following court orders; and

- protect the interests of the parents through the judicial review and other procedures established under the child welfare statutes.

The purpose section of the child abuse statute is amended to state that a child's interests of basic nurture, physical and mental health, and safety should prevail over conflicting interests of a parent and that the safety of the child is the Department's paramount concern when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

A new provision is added to the child abuse statute relating to a governmental entity's duty and potential liability relating to an investigation of child abuse or neglect. Governmental entities, and their officers, agents, employees, and volunteers, are not liable to alleged perpetrators of abuse or neglect for acts or omissions in the investigation of reports of child abuse or neglect. The duty to conduct a reasonable investigation of child abuse or neglect runs only to the child who is the subject of the referral and is limited to the duty to act reasonably when making a placement decision. The Department and its employees must comply with orders of the court and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, caseworkers are entitled to the same witness immunity as would be provided to any other witness.

Nothing in the child abuse investigation chapter creates a cause of action or right of review for an alleged abuser beyond the specific rights granted in the chapter relating to notice and the right to seek administrative or judicial review of an agency decision.

Appropriation: None.

Fiscal Note: Requested on February 1, 2011.

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