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## Early Learning & Human Services Committee

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### ESSB 6555

**Brief Description:** Providing for family assessments in cases involving child abuse or neglect.

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

#### Brief Summary of Engrossed Substitute Bill

- Requires the Department of Social and Health Services (DSHS) to implement a Family Assessment Track (FAT) within Child Protective Services (CPS) by December 1, 2013.
- Specifies that the DSHS may not be held civilly liable in using the FAT unless the response choice was made with reckless disregard.
- Directs the Washington State Institute for Public Policy to evaluate the FAT; directs the DSHS to conduct client satisfaction surveys.
- Modifies the process to appeal CPS investigative findings, and specifies items to be included notification to alleged perpetrators.

**Hearing Date:** 2/20/12

**Staff:** Megan Palchak (786-7120).

#### **Background:**

##### Recent Child Abuse and Neglect Statistics.

Washington's Department of Social and Health Services (DSHS), Children's Administration (CA) estimates that in 2011, its Child Protective Services (CPS) division received 77,139 reports of child maltreatment (most allege neglect), investigated 27,199 of those reports, and determined that 4,878 reports contained founded allegations. Approximately 66 percent of founded reports were regarding neglect, 25 percent were regarding physical abuse, and 9 percent were regarding

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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.*

sexual abuse. In 2011 approximately 82 percent of CPS investigations resulted in no finding of child abuse or neglect. In 2010 approximately 70 percent of neglect reports the DSHS responded to were regarding families who had previously been reported to the DSHS.

#### Child Abuse Prevention and Treatment Act Reauthorization Act of 2010.

The Child Abuse Prevention and Treatment Act (CAPTA) is the sole federal child welfare program focusing only on preventing and responding to allegations of child abuse and neglect; the CAPTA was reauthorized in 2010 through 2015 (Public Law 111-320). Public Law 111-320 encourages states to review their laws, policies, practices, and procedures regarding neglect to ensure children are protected. It also encourages CPS to utilize "differential response" which is described as "a state or community-determined formal response that assesses the needs of the child or family without requiring a determination of risk or occurrence of maltreatment. Such response occurs in addition to the traditional investigatory response." There are no federal regulations regarding the practice of differential response.

#### Defining Differential Response.

According to the United States Department of Health and Human Services, definitions and approaches to differential response vary. Differential response systems may be referred to as "alternative response," "multiple track," or another term. Minnesota has a mature differential response system which is referred to as "family assessment response." The National Quality Improvement Center on Differential Response in Child Protective Services describes the core elements of differential response as follows:

- two or more discrete responses to screened in and accepted reports of maltreatment;
- assignment to response pathway is determined by an array of factors;
- original response assignments can be changed;
- families assigned to non-investigation pathways are able to accept or refuse to participate in the non-investigation pathway or choose the traditional investigation pathway;
- after assessment in the non-investigation pathway, services are voluntary as long as child safety is not compromised;
- discrete responses are established by codification in statute, policy, or protocols;
- no substantiation of alleged maltreatment (services are offered without a formal determination that maltreatment has occurred); and
- use of the central registry depends on the type of response.

#### Child Protective Services in Washington.

##### *Definition of Child Protective Services.*

Child protective services are defined as services provided by the DSHS designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home.

##### *CPS Response to Report of Child Abuse or Neglect.*

Under DSHS administrative rules, when responding to reports of alleged child abuse or neglect, CPS:

- must assess all reports that meet the definition of child abuse or neglect using a risk assessment process to determine level of risk and response time;
- must provide an in-person response to alleged victims and must attempt an in-person response to the alleged perpetrator of child abuse and neglect in referrals assessed at moderate to high risk;
- may refer reports assessed at low to moderately low risk to an alternative response system;
- may interview a child, outside the presence of the parent, without prior parental notification or consent;
- must make reasonable efforts to have a third party present at the interview so long as the third party does not jeopardize the investigation, unless the child objects;
- may photograph the alleged child victim to document the physical condition of the child; and
- attempt to complete investigations within 45 days. In no case shall the investigation extend beyond 90 days unless the investigation is being conducted under local protocol, established pursuant to chapter, and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary.

#### *Duty to Investigate.*

The DSHS is required to investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that present an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodian or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of non-accidental injuries that are clearly not the result of a lack of care or supervision by the child's parents, legal custodian, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the DSHS must notify the appropriate law enforcement agency. Investigations may be conducted regardless of the location of the alleged abuse or neglect.

#### *Process to Appeal an Investigative Finding*

A person named as an alleged perpetrator in a founded report of child abuse or neglect must be notified about the investigative finding, and may request review and amendment to the finding. Within 20 days of receiving written notice from the DSHS that the person has been named as a perpetrator in a founded report of abuse or neglect, the person must provide written notice to the DSHS that he or she wishes to contest the finding. If the request is not made within the time period, the person may not seek further review of the finding. However, if the alleged perpetrator seeks DSHS review within specified timeframes, receives notification of the results of the DSHS's review, then the alleged perpetrator has 30 days to request further review via an adjudicative proceeding. If the alleged perpetrator fails to request further review within the 30-day period, then the alleged perpetrator may not challenge the finding further.

#### *Notice of Investigative Finding.*

Under DSHS administrative rules, notification regarding an investigative finding must inform the alleged perpetrator about the legal basis for the findings and sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports. The notice must also contain the following:

- The alleged perpetrator may submit to CPS a written response regarding the CPS finding. If a response is submitted, CPS must file this response in the department's records.
- Information in the department's records may be considered in later investigations or proceedings relating to child protection or child custody.
- Founded CPS findings may be considered in determining:
  - if an alleged perpetrator is qualified to be licensed to care for children or vulnerable adults;
  - if an alleged perpetrator is qualified to be employed by a child care agency or facility; and
  - if an alleged perpetrator may be authorized or funded by the department to provide care or services to children or vulnerable adults.
- The alleged perpetrator's right to challenge a founded CPS finding.

#### Alternative Response System in Washington.

In 1997 the Legislature authorized an alternative response system (ARS). Chapter 386, Laws of 1997 described an ARS as "voluntary family-centered services provided by a contracted entity with the intention to increase the strength and cohesiveness of families that the DSHS determined to present a low risk of child abuse or neglect." From 1998-2005, chapter 386, Laws of 1997 provided that:

- The DSHS was required to: (1) contract for the delivery of services for at least two, but not more than three, models of alternative response; (2) provide for the delivery of services in the least intrusive manner reasonably likely to achieve improved family cohesiveness, prevention of referrals of the family for alleged abuse or neglect, and improvement in the health and safety of children; (3) identify and prioritize risk and protective factors associated with the type of abuse or neglect referrals that are appropriate for services delivered by the ARS; and (4) identify appropriate data to determine and evaluate outcomes of the services delivered by ARS providers. Contracts were to include provisions and funding for data collection.
- Contracted providers were required to: (1) use risk and protective factors to determine which services to deliver; (2) recognize the due process rights of families that receive ARS services; and (3) recognize that services were not intended to be investigative.
- The court was authorized to order the delivery of services through any appropriate public or private provider.

According to the DSHS, "historically, the contracted alternate intervention program in Washington... [had] not achieved ideal outcomes and... had some program design weaknesses. There... [had] been a lack of adequate program and service definition, and engagement rates of families in services... [had been] low." In 2006 the DSHS initiated a redesign of the ARS, and renamed it "Early Family Support Services." The stated goals of the redesign included: implementation of a standardized assessment tool, development of service delivery standards, and integration of promising or evidence-based programs.

#### Consideration of Differential Response in Washington.

In 2008 the DSHS issued a legislative report regarding its consideration of a differential response system. The report described pros and cons associated with implementing differential response, which are summarized below.

Pros:

- Social workers could concentrate on family assessment and case planning rather than the outcome of an investigation.
- Investigative findings may become more consistent, due to a narrower focus.
- Families that are chronically reported to CPS may receive more therapeutic interventions that are motivational in nature.

Cons:

- In order for change to succeed the total agenda must be staged and doable.
- Funding, service levels, and ability to meet the basic needs of families would limit the outcomes of a differential response system.
- The CA would likely not have the ability to respond to families in an assessment track with immediate services to meet their basic living needs and if Washington prioritized services for the most at-risk children, then lower risk families in the assessment track would receive fewer services paid by the DSHS/CA.
- All social work staff must be trained in engaging families and assessing safety and risk factors.
- Implementation of non-contracted differential response system would require further specialization of staff and additional categorization of families.
- Agencies serving vulnerable adults and children would not learn about some potential CPS concerns regarding persons applying to be employed or licensed since CPS investigative findings on some cases involving maltreatment would no longer occur for families diverted to the "assessment track."
- Research did not clearly indicate that referring moderate risk families to differential response will improve outcomes (some states limit an alternate response to low-risk cases).

Cost Effectiveness of Family Assessment Response.

A 2011 cost-benefit analysis performed by the Washington State Institute for Public Policy (WSIPP) concluded that Minnesota's approach to differential response, called "Family Assessment Response," both reduced out-of-home placements and saved taxpayer dollars.

**Summary of Bill:**

Family Assessment Track.

The DSHS must implement the Family Assessment Track (FAT) by December 1, 2013. The DSHS must develop an implementation plan in consultation with stakeholders, including tribes. The DSHS must submit an implementation plan report to the Legislature by December 31, 2012. The FAT is defined as a way of responding to certain reports of child abuse or neglect using a differential response approach to CPS. The FAT is to focus on safety of the child, the integrity and preservation of the family, and is to assess the status of the child and family in terms of risk of abuse and neglect including a parent's or guardian's capacity and willingness to protect the child. No one is named as a perpetrator and no investigative finding is entered into the record as a result of the FAT.

When the DSHS receives a report of child abuse or neglect, the DSHS must use one of two responses for reports that are screened in and accepted for response: an investigation or a family assessment. In making this response, the DSHS must:

- use a method by which to assign cases to investigation or family assessment that are based on an array of factors that may include the presence of imminent danger, level of

- risk, number of previous child abuse or neglect reports, or other presenting case characteristics;
- allow for a change in response assignment based on new information that alters risk or safety level;
  - allow families assigned to the FAT to choose to receive an investigation rather than a family assessment;
  - provide a full investigation if a family refuses the initial family assessment;
  - provide voluntary services to families based upon the results of the initial family assessment; and
  - conduct an investigation in response to allegations that:
    - pose a risk of imminent harm to the child;
    - pose a serious threat of substantial harm to the child;
    - constitute conduct that is a criminal offense and the child is the victim; or
    - the child is an abandoned or adjudicated dependent child.

The DSHS is not liable in using the FAT to respond to an allegation of child abuse or neglect unless the response choice was made with reckless disregard.

For reports that are placed in the FAT, the DSHS must:

- provide the family with a written explanation of the procedure for assessment of the child and family and its purpose;
- complete the family assessment within 45 days of receiving the report. Upon parental agreement, this time period can be extended to 60 days;
- offer services to the family in a manner that makes it clear acceptance of the services is voluntary;
- implement the FAT in a non-arbitrary, non-coercive manner;
- have the parent or guardian sign an agreement to participate in services form before services are initiated that informs the parents of their rights under the FAT, all of their options and the options the DSHS has if parents do not sign the form; and
- upon completion of the family assessment, if the DSHS determines that no services be offered, the case is closed. Within 10 days of the conclusion of the family assessment, the DSHS must meet with the child's parent or guardian to discuss the recommendations for services to address child safety concerns or significant risk of subsequent child maltreatment. If the parent or guardian disagrees with the DSHS's recommendation regarding the provision of services, the DSHS must convene a family team decision-making meeting (FTDM) to discuss the recommendations and objections. The caseworker's supervisor and the area administrator must attend the FTDM.

A family assessment is defined as a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. The assessment does not include a determination as to whether child abuse or neglect occurred but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

The DSHS must develop a family assessment tool which at a minimum must include the following:

- An interview with the child’s parent, guardian, or other adult residing in the child’s home who serves in a parental role. The interview is to focus on ensuring the immediate safety of the child and mitigating future risk of harm to the child in the home environment.
- An interview with other persons suggested by the family or whom the DSHS believes has valuable information.
- An evaluation of the safety of the child and any other children living in the same home. The evaluation may include an interview with or observation of the child.
- In collaboration with the family, identification of family strengths, resources, and service needs and the development of a plan of services that reduces risk of harm and improves or restores the family well-being.

The WSIPP must conduct an evaluation of the implementation of the FAT. The WSIPP is to define the data to be gathered and maintained. At a minimum, the evaluation is to address child safety measures, out-of-home placement rates, re-referral rates and caseload sizes and demographics. The WSIPP's first report is due December 1, 2014, and its final report is due December 1, 2016.

The DSHS must conduct two client satisfaction surveys of families that have been placed in the FAT. The first survey results are to be reported by December 1, 2014, and the second survey results by December 1, 2016.

#### Appeal of a Finding of Child Abuse or Neglect.

A person named as an alleged perpetrator in a founded allegation of child abuse or neglect has the right to seek review and amendment of the finding. Within 30 days of receiving notice from the DSHS that the person has been named as a perpetrator in an allegation of abuse or neglect, the person must provide written notice to the DSHS that he or she wishes to contest the finding. The written notice provided by the DSHS to the perpetrator must contain the following:

- information about the DSHS's investigative finding as it relates to the alleged perpetrator;
- sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded allegation;
- the alleged perpetrator has the right to submit a written response regarding the finding which the DSHS must file in the records;
- that information in the DSHS's records may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect;
- that founded allegations of abuse or neglect may be used in determining:
  - whether the person is qualified to be licensed or approved to care for children or vulnerable adults; or
  - whether the person is qualified to be employed by the DSHS in a position having unsupervised access to children or vulnerable adults; and
- that the alleged perpetrator has the right to challenge the founded allegation of abuse or neglect.

If the request is not made within the time period, the person has no right to agency review or further administrative or court review of the finding, unless the person can show that the DSHS did not comply with the notice requirements of RCW 26.44.100. After receiving notification of the results of the DSHS’s review, the person has 30 days within which to ask for an adjudicative hearing with an administrative law judge. If the request is not made within the 30-day period, the person has no right to further review.

Definition of Case Management.

This act removes service coordination from the definition of case management.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Sections 1-11 regarding the implementation of FAT take effect December 1, 2013.