

SENATE BILL REPORT

SB 5533

As of January 28, 2020

Title: An act relating to certificates of parental improvement.

Brief Description: Concerning certificates of parental improvement.

Sponsors: Senators Braun, Darneille and Zeiger.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/31/19, 2/12/19 [DPS-WM]; 1/23/20.

Ways & Means: 2/26/19, 2/27/19 [DP2S, w/oRec, DNP].

Brief Summary of Proposed Third Substitute Bill

- Directs the Department of Children, Youth and Families (DCYF) to develop and implement a process by which an individual who is the subject of a founded finding of negligent treatment or maltreatment, or an individual whose child was found by a court to be dependent as a result of a finding that the individual neglected their child, may request the secretary of DCYF to issue a certificate of parental improvement (CPI), subject to a number of conditions.
- Prevents DCYF from denying or delaying an applicant a license or approval of unsupervised access to children, or providing child care and early learning services, based solely on a founded finding of negligent treatment or maltreatment or a dependency, when that applicant has a CPI related to that same finding or dependency.
- Specifies a provider is not disqualified to be employed in the care of, or have unsupervised access to vulnerable adults, if a court has issued an order that includes a finding of fact or conclusion of law that the provider has committed abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property of a minor or vulnerable adult if that provider has a received a CPI pertaining to that finding of fact or conclusion of law.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

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.

Majority Report: That Substitute Senate Bill No. 5533 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; O'Ban, Wilson, C. and Zeiger.

Staff: Alison Mendiola (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5533 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Conway, Darneille, Hasegawa, Hunt, Rivers, Schoesler, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Frockt, Vice Chair, Operating, Capital Lead; Carlyle, Keiser, Lias and Palumbo.

Minority Report: Do not pass.

Signed by Senators Pedersen and Van De Wege.

Staff: Maria Hovde (786-7474)

Background: Allegations of Child Abuse and Neglect. Reports of child abuse and neglect are received by Child Protective Services and assessed to determine whether the report meets the legal definition of abuse or neglect and how dangerous the situation is. The Department of Children, Youth and Families (DCYF) investigates all reports of child abuse and neglect that do not screen out. After an investigation is complete, DCYF will make a founded or unfounded determination. A founded determination means that based on available information, it is more likely than not that child abuse or neglect did occur. An unfounded determination means that more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence to determine whether the alleged child abuse occurred.

Dependency. DCYF or any person may file a petition in court to determine if a child should be a dependent of the state due to abuse, neglect, abandonment, or because there is no parent or custodian capable of caring for the child. If the court determines the child is dependent, the court conducts periodic reviews and makes determinations about the child's placement and the parent's progress correcting parental deficiencies.

Volunteering and Background Checks. Individuals who wish to volunteer in assisted living facilities and nursing homes must submit to a background check. If the background check reveals a founded finding of child abuse or neglect involving the individual revealed in the record check, or a court finding that the individual's child was dependent under state law, that individual is denied the opportunity to volunteer.

Summary of Second Substitute Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Third Substitute): Certificate of Parental Improvement. DCYF must develop and implement a process by which individuals with a founded finding of negligent treatment or maltreatment, or an individual whose child was found by a court to be dependent based on a finding that the individual neglected their child, may request the secretary of DCYF to issue a certificate of parental improvement (CPI). The secretary must respond to a CPI request by approving or denying the completed request within 60 days.

Eligibility for a Certificate of Parental Improvement. DCYF may not issue a CPI to an individual if:

1. It has been less than five years since the requester's last founded finding of child abuse or neglect.
2. It has been less than two years since the secretary's denial of an individual's request for a CPI.
3. The requestor has a final founded finding for sexual abuse, sexual exploitation, or physical abuse if the conduct that was the basis for the physical abuse finding involved cutting, burning, interfering with a child's breathing, shaking a child under three, or threatening a child with a deadly weapon.
4. The requestor has any conviction or pending criminal action for:
 - any felony offense involving the physical neglect of a child,
 - any homicide or assault felony offense, as provided for in statute, that involves a physical injury or death of a child;
 - any felony domestic violence offense committed against a family or household member;
 - any felony offense against a child;
 - any of the following felony offenses: (1) any felony defined under any law as a Class A felony or an attempt to commit a Class A felony; (2) criminal solicitation of or criminal conspiracy to commit a class A felony; (3) manslaughter in the first or second degree; (4) indecent liberties if committed by forcible compulsion; (5) kidnapping in the second degree; (6) arson in the second degree; (7) extortion in the first degree; (8) robbery in the second degree; (9) drive-by shooting; (10) vehicular homicide; or
 - any out-of-state, federal, or state conviction for a felony offense in this list.
5. The individual applying for a CPI has already received one CP and is the alleged perpetrator in a subsequent, final founded finding of child abuse or neglect.

Factors to Consider for the Issuance of a Certificate of Parental Improvement. DCYF must consider the following when determining whether to issue a CPI:

- documentation of any founded finding of child abuse or neglect and the underlying documentation the department relied upon to make that finding;
- findings from any civil adjudication proceeding defined in law;
- referral history alleging child abuse or neglect against the requestor;
- the time elapsed since the founded finding of child abuse or neglect;
- whether a court made a finding that the requestor's child was dependent, the time elapsed since that dependency court process was dismissed, and the outcome of the dependency court process including whether the child was returned to the requestor's care;
- any documentation submitted indicating whether the requestor successfully addressed the circumstances that led to a founded finding of negligent treatment or

- maltreatment, including but not limited to a declaration by the requestor signed under the penalty of perjury; recent assessments or evaluations of the requestor; and completion or progress toward completion of recommended court ordered treatment, services, or programs;
- any pending criminal or civil actions against the requestor;
 - results of a Washington state patrol criminal history and federal fingerprint-based background check through the Federal Bureau of Investigation issued prior to granting a CPI;
 - personal and professional references submitted by the requestor from employers, professionals, and agencies familiar with the applicant who can address the requestor's current character;
 - any education, volunteer work, employment history, or community involvement of the requestor, identified by the requestor; and
 - any additional information the secretary deems relevant.

When deciding whether to grant a request for CPI, the secretary must accept the underlying founded finding as valid and may not review the merits of the founded finding.

Denial of a Certificate of Parental Improvement. A person who applies for a CPI has the right to seek review of the secretary's denial. The written notice mailed to the requestor must include the following information in plain language:

- the reason or reasons for the secretary's denial of a CPI following a founded finding of negligent treatment or maltreatment; and
- the applicant has a right to challenge the secretary's decision not to issue a CPI, including a description of the process for requesting a review of the secretary's decision to deny a request.

Within 45 calendar days after DCYF has notified the requestor the request for a CPI is denied, the requestor may request, in writing, for the secretary to review the determination. If a requester does not request a review according to the process provided, the applicant may not further challenge the secretary's decision.

The Department of Children, Youth and Families Process to Review a Denied Application of a Certificate of Parental Improvement. The secretary must review, and if appropriate, change the decision and issue a CPI. The secretary may designate the appropriate staff to conduct this review. The review must be completed within 30 days of the request, and DCYF must notify the requestor of the secretary's decision.

If the secretary does not alter the decision, the requestor may request an adjudicative hearing as governed by the Administrative Procedures Act, and the provisions of this act. The request for an adjudicative proceeding must be filed within 45 calendar days of the date DCYF placed the agency review determination in the mail to the address on the request after receiving notice of DYCF's review determination. If a timely request for a review is not made, the requestor's right to any further review by the secretary, an adjudicative, or judicial review is exhausted.

Reviews and hearings are confidential and not open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective service reports.

The secretary must establish by rule, procedures for reviewing requests for CPI, and request to alter the decision to deny a request for a CPI by administrative rule, including emergency rule-making if necessary.

Determining the Character, Suitability, and Competence of an Individual. DCYF may not deny or delay a license or approval of unsupervised access to children to an individual solely because of a founded finding of negligent treatment or maltreatment by the applicant or solely because the applicant's child was found by a court to be dependent as a result of a finding that the parent neglected the child when that founded finding or court finding is accompanied by a CPI related to the same incident.

Child Care and Access to Early Learning Services to Children. DCYF may not deny or delay a license to provide supervised child care and early learning services to an individual solely because of a founded finding of child abuse or neglect revealed in the background check process or solely because the individual's child was found by a court to be dependent under state law when that founded finding or court finding is accompanied by a CPI related to the same incident.

An Individual with a Certificate of Parental Improvement and Volunteering. Assisted living facilities and nursing homes may not automatically deny a prospective volunteer solely because of a founded finding of child abuse and neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent as a result of a finding that the individual neglected their child when that founded finding of dependency accompanied by a CPI related to the same incident without conducting a review to determine the individual's character, suitability, and competency to volunteers with vulnerable adults.

Long-term Care. A provider of long-term care may not be employed in the care of and have unsupervised access to vulnerable adults if:

- the provider is on the Department of Social and Health Services (DSHS) state registry created by this Act, any subsequent state registry established by DSHS related to vulnerable adults, or any other registry based upon a finding of abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property;
- on or after October 1, 1988, DCYF, or its predecessor agency, made a founded finding of abuse or neglect of a child against the provider;
 - if the provider has received a CPI pertinent to the finding, the provider is not disqualified for this reason;
- a disciplining authority, including the Department of Health, has made a finding of abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property of a minor or vulnerable adult against the provider; or
- a court has issued an order that includes a finding of fact or conclusion of law that the provider has committed abuse, abandonment, neglect, financial exploitation, or misappropriation of resident property of a minor or vulnerable adult;
 - if the provider has received a CPI pertaining to the finding of fact or conclusion of law, the provider is not disqualified for this reason.

"Provider" means:

- an individual provider as defined in RCW 74.39A.240;
- an employee, licensee, or contractor of any of the following: A home care agency licensed under chapter 70.127 RCW; a nursing home under chapter 18.51 RCW; an assisted living facility under chapter 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a certified resident services and supports agency licensed or certified under chapter 71A.12 RCW; an adult family home under chapter 70.128 RCW; or any long-term care facility certified to provide medicaid or medicare services; and
- any contractor of DSHS who may have unsupervised access to vulnerable adults.

DSHS may not consider any final founded finding of negligent treatment or maltreatment of a child that is accompanied by a CPI or dependency as a result of a finding of neglect that is accompanied by CPI when evaluating an applicant or employee's character, competency, and suitability pursuant to any background check authorized or required by state law.

"Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including, but not limited to, conduct prohibited by statute. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

Appropriation: None.

Fiscal Note: Requested on January 22, 2020.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services, Reentry & Rehabilitation) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: A person tried to volunteer at an assisted living facility, but the background check revealed an old founded finding of child abuse and there was no process to address this. Expungement exists for criminal records, but not for founded findings of child abuse or neglect. It would open doors for lots of parents who have changed. This impacts parents who cannot volunteer in their kids' classes or go on field trips. Also, this prevents a child from being placed with relatives, even if they have been rehabilitated. Given that the family assessment response process did not exist a few years ago—an alternative to an investigation of child abuse and neglect—there are likely many old findings that would not result in a finding of child abuse or neglect today. While this is a great step, it

does not address the barriers people face with employment. This process should be extended to working with children or vulnerable adults.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator John Braun, Prime Sponsor; Mark Fullington, Community and Family Services Foundation; Tanya Morrow, Catholic Community Services; Shrounda Selivanoff, Parent Ally; Jason Bragg, Parent Ally; Laurie Lippold, Partners for Our Children; D'Adre Cunningham, Washington Defender Association; Patrick Dowd, Office of the Family and Children's Ombuds; Karen Monroe, citizen; Amelia Watson, Washington State Office of Public Defense Parent Representation Program.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): PRO: Jack Auaf, Washington State Handlers Association.

Staff Summary of Public Testimony (Human Services, Reentry & Rehabilitation): PRO: This substitute reflects improvement made to the underlying bill. This bill reflects a compromise between DCYF and parents who are seeking employment while still protecting children. An old child welfare finding is not assessment of risk to the public or children. Furthermore there is a disparate impact of founded findings of child abuse and neglect against communities of color. The same community who are seeking employment in child care and with vulnerable adults. While these are often lower-paid positions they make a huge difference for low-income people. The Legislature needs to take a closer look at founded findings- people lose their jobs and there's no a reasonable or rational approach. The system is supposed to help you but currently there's no way to recognize you've changed. Some people don't even know they have a founded finding until they seek employment or apply to be a caregiver for a family member.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Senator John Braun, Prime Sponsor; Jason Bragg, Parent; Scott Crain, Northwest Justice Project; Ana Garcia; tammie lambert; Gary Preble.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): PRO: Laurie Lippold, Partners for Our Children; Allison Krutsinger, Department of Children, Youth and Families.

Staff Summary of Public Testimony on First Substitute (Ways & Means) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: This bill opens up many additional opportunities for parents. Parents who have navigated their child's issues are readily equipped to help others in the system correct their deficiencies. A person's past should not define who they are in the present. People who have lived experiences often provide the best support to other families experiencing similar challenges. About two-thirds of founded allegations are from neglect rather than abuse. Many individuals dealing with a founded finding today would likely have been referred to the Family Assessment Response program if that program were in existence at the time of their involvement in the child welfare system. There are probably ways to reduce this fiscal note and we are happy to work with you to do this.

Persons Testifying (Ways & Means): PRO: Jill May, Washington Association for Children & Families; Laurie Lippold, Partners for Our Children; Jason Bragg, Social Service Specialist, Office of Public Defense.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.