

SENATE BILL REPORT

ESSB 5500

As Passed Senate, March 9, 2001

Title: An act relating to programs and proceedings for children under the BECCA and HOPE acts.

Brief Description: Revising programs and proceedings for children under the BECCA and HOPE acts.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Long).

Brief History:

Committee Activity: Human Services & Corrections: 2/2/01, 2/22/01 [DPS].

Passed Senate: 3/9/01, 46-3.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5500 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Carlson, Franklin, Hewitt, Kastama, Long and Stevens.

Staff: Tony Rugel (786-7754)

Background: In the past several years, the Legislature has enacted provisions referred to as the "BECCA Bills." These bills were named after a young girl who was an unfortunate victim of street violence. The bills were passed to provide parents and children with more opportunities to achieve reconciliation and stability in their relationships while, at the same time, assuring opportunities for treatment services and educational success.

In 1999, the HOPE Act passed. The HOPE Act provides placement opportunities and services to street youth.

The implementation process of these two acts has resulted in legal interpretations and procedural complexities, which have initiated discussion regarding further statutory changes to clarify specific provisions.

First, under BECCA, there are three categories of petitions that may be filed: truancy; at risk youth; and child in need of services. Courts hearing these matters have reported the petition process is burdensome on parents and the court, when the issues raised in one petition are more appropriately addressed in a different type of petition.

Further, the court has seen a number of youth appear in these matters with a specific concern such as school attendance, but the problems that are causing the poor attendance are

unknown. The particular needs and risks of the child have not been assessed. The court has little information available to order appropriate conditions under the petition.

With regard to facilities, secure crisis residential facilities have encountered fire and building code barriers in construction regulations, which prevent the facilities from being secure. For example, some residential structures must have limited delays on locked doors opening when engaged, rather than continuous locking systems that are wired to the fire system.

Contempt proceedings under BECCA have been challenged in court, resulting in appellate court opinions interpreting the civil contempt provisions to require due process protections in the form of purge conditions. A purge condition means a child must have the "keys to the jailhouse door in his or her pocket." The child must be able to meet a condition of release, such as writing a paper. Further, case law has interpreted the existing statutory authorization for detention up to seven days to be applicable to the entire contempt hearing, and the judge is not authorized to "stack" the number of days in detention for each condition of the court's order that has been violated.

Providers under the HOPE Act have been concerned that they do not have the same immunity protections available to them when they serve a BECCA youth because the HOPE statutes do not have an immunity provision, which is in the BECCA statutes. The immunity provision enables a provider to provide shelter to a youth under certain conditions without risk of liability for negligence.

Summary of Bill: In court matters governed by the BECCA laws, a parent may by motion convert the matter from a truancy case to an at risk youth case, invoking the court's authority to decide issues beyond school attendance. The child's school attendance remains an issue in the at risk youth petition, because at risk youth is redefined to include juveniles who in conjunction with other issues fails to comply with the compulsory school attendance laws.

The court is authorized, within available resources, to order a risk and needs assessment of the child. The court is authorized to order conditions based upon the outcome of the assessment.

In at risk youth cases and child in need of services cases the court may hold a hearing to review the matter at any time throughout the duration of the proceeding.

Contempt proceedings under the BECCA laws are no longer characterized as remedial. The court may in its discretion pursue a criminal contempt with all of the appropriate due process protections set forth in the contempt statutes.

The court in BECCA matters is authorized to continue the contempt sanction beyond the seven day statutory limitation in certain types of cases to no more than 21 days. The court can impose a civil fine up to \$100.

Persons are given immunity for receiving and sheltering a child under the provisions of the HOPE Act in cases where the person is in compliance with the law and acts in good faith.

Appropriation: None.

Fiscal Note: Requested on January 24, 2001.

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

Testimony For: The bill assists by eliminating procedural barriers to these court cases. Immunity is beneficial for those service providers in HOPE facilities.

Testimony Against: Defense attorneys express concerns that necessary school personnel would not appear in at-risk youth matters, which would create evidence problems relative to school attendance issues. Detention may not be the appropriate method of dealing with compliance by this population of kids.

Testified: PRO: Paul Barry, Children's Alliance.