

SENATE BILL REPORT

SB 5995

As Reported By Senate Committee On:
Human Services & Corrections, February 24, 2005

Title: An act relating to placement of children in shelter care.

Brief Description: Recognizing a parent's preference in the placement of a child in shelter care.

Sponsors: Senator Hargrove.

Brief History:

Committee Activity: Human Services & Corrections: 2/22/05, 2/24/05 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5995 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Brandland, Carrell and McAuliffe.

Staff: Kiki Keizer (786-7430)

Background: Shelter care is temporary physical care in a licensed facility or a facility that is not required to be licensed under the law.

In general, the Department of Social and Health Services (DSHS) licenses agencies that receive children for control, care, or maintenance outside their own homes. Agencies in this context include both persons and associations or facilities. There are exceptions to the licensure requirement, such as persons who take care of children for less than 24 hours or certain relatives.

The minimum requirements for licensure include factors such as the character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children; the safety, cleanliness, and general adequacy of the premises; and the provision of necessary care, including food, clothing, supervision, and discipline. The DSHS is authorized to investigate any person who might be responsible for caring for a child, including relatives by blood or marriage, except for parents. However, if a child is placed in shelter care with a relative who appears suitable and competent to provide care, the criminal background check required by the secretary need not be completed before placement but must be completed as soon as possible after placement.

A child taken into state custody must immediately be placed in shelter care. The child could be taken into custody pursuant to a court order in which a court finds that a child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A child could also be taken into custody without a court order if a law enforcement officer finds probable cause to believe that the child is abused and neglected and the child would be injured

or could not be taken into custody if it were necessary to first obtain a court order. A law enforcement officer could also take a child into custody in a case involving custodial interference, which arises when a relative of a child takes the child from a parent, guardian, institution, agency, or other person who has lawful custody of the child.

In the absence of a court order, a child may stay in shelter care for 72 hours, excluding weekends and holidays. After 72 hours, a shelter care hearing is held. The court must return the child home unless the court makes certain findings set out in the law. The court can order the stay in shelter care to extend beyond 72 hours, if it makes the necessary findings.

If a child must ultimately be placed in foster care, the law requires the DSHS to follow the wishes of the natural parent regarding the child's placement. Preferences such as family constellation, sibling relationships, ethnicity, and religion must be considered when matching children to foster homes.

Summary of Substitute Bill: The bill requires priority placement for a child in shelter care to be with any person preferred by the parent or, if the parent does not indicate a preference, with an agency that is licensed or that is not required to be licensed (such as a blood relative, stepparent, or certain extended family members).

At the shelter care hearing, 72 hours after the child has been taken into custody, if the court determines that it cannot release the child to his or her parent, the court must order continued placement with the person preferred by the parent, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized. If the child was not initially placed with a person preferred by the parent, the DSHS must make reasonable efforts to locate a person preferred by the parent or a relative.

The DSHS may issue the person preferred by the parent an "initial license," valid for 90 days if certain conditions, such as passing background checks, are met. The person preferred by the parent must apply for foster care license within 72 hours of the child's placement with the person preferred by the parent. If in course of its investigation, the DSHS discovers that the person preferred by the parent is ineligible for licensing, the DSHS may place the child with a relative. The DSHS is immune from civil liability for damages arising from placement with the person preferred by the parent, unless a DSHS employee acted with gross negligence or in bad faith.

Substitute Bill Compared to Original Bill: The DSHS may issue the person preferred by the parent an "initial license," valid for 90 days if certain conditions, such as passing background checks, are met. The person preferred by the parent must apply for foster care license within 72 hours of the child's placement with the person preferred by the parent. If in course of its investigation, the DSHS discovers that the person preferred by the parent is ineligible for licensing, the DSHS may place the child with a relative. The DSHS is immune from civil liability for damages arising from placement with the person preferred by the parent, unless a DSHS employee acted with gross negligence or in bad faith.

The section of the bill concerning a fact-finding hearing is deleted because the person preferred by the parent would be licensed by that stage of proceedings, in order for the DSHS to ensure that background check and home study conditions are satisfied and in order for the DSHS to be able to do home visits and ensure compliance with court orders.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: The legislature has passed laws establishing preferences for child placement with relatives. However, there have been situations in which children have been placed with relatives who live far away instead of being placed closer to home with persons that the parents trust. The legislature still wants to ensure the child's safety and appropriate placements. However, it may make sense to allow the parents to identify someone with whom they are comfortable, particularly when placements are short-term.

Testimony Against: None.

With Concerns: Children who are taken into state custody often have special needs. Persons who are unrelated to these children may not have the level of commitment necessary to address these needs.

In general, persons who are not related to a child that is to be placed in shelter care or foster care must be licensed. Licensing allows the DSHS to check on the welfare of children and to monitor compliance with court orders. There may not be sufficient time to do the background checks and home studies that are needed for licensing before a child's placement in shelter care. The DSHS could be exposed to tort liability if children are harmed while in the care of unlicensed individuals. There may also be situations in which the parents don't agree on placement.

Who Testified: PRO: Senator Jim Hargrove, prime sponsor. With Concerns: Uma Ahluwalia, Department of Social and Health Services, Children's Administration.