

# SENATE BILL REPORT

## SB 6470

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As of February 17, 2014

**Title:** An act relating to child abuse investigations.

**Brief Description:** Concerning child abuse investigations.

**Sponsors:** Senators Cleveland, Keiser, Frockt and Kohl-Welles.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/06/14.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Joan Miller (786-7784)

**Background:** Except as provided under the Family Assessment Response program, when a report concerning the possible occurrence of abuse or neglect is received, the law enforcement agency or the Department of Social and Health Services (DSHS) must investigate and provide Child Protective Services (CPS) with a report, and when necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order. DSHS or the law enforcement agency investigating such a report is authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

In 1973 the Legislature established the Crime Victims' Compensation Fund (CVCF) to cover victims' medical bills and other costs associated with the offender's crime. To be eligible for compensation, the victim must sustain bodily injury or severe emotional stress resulting from a crime classified as a gross misdemeanor or felony. A report must be filed with law enforcement within one year of the crime, and the victim must file a timely application with the CVCF.

State law requires the CVCF to pay the costs of sexual assault examinations when they are performed to gather evidence for possible prosecution. Sexual assault victims are not

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required to file an application with the CVCF in order to receive this benefit. An application is required only if the sexual assault victim requires follow-up treatment.

**Summary of Bill:** DSHS or a law enforcement agency investigating a CPS report must immediately photograph any suspicious physical injuries. The purpose of the photographs is to preserve evidence of the child's condition at the time of the investigation. The law enforcement agency or DSHS must also have a designated medical professional conduct a child abuse medical assessment within 48 hours or as soon as is practically possible.

If, after reasonable effort, the law enforcement agency or DSHS cannot locate a designated medical professional to conduct the assessment within 48 hours, then the child must be evaluated by an available physician or nurse practitioner. The physician or nurse practitioner must then make all photographs, clinical notes, diagnostic and testing results, and other relevant materials available to the designated medical professional within 72 hours following the evaluation.

Regardless of whether the child has been previously photographed or assessed, the requirement to photograph injuries and conduct a child abuse assessment applies each time a suspicious physical injury is observed during a new allegation of abuse or if the injury was not previously observed by the person conducting the investigation.

The prosecuting attorney of each county, in collaboration with various agencies and stakeholders, must identify at least one designated medical professional to conduct child abuse medical assessments. If, after reasonable effort, one cannot be identified, a written plan must be developed that outlines the necessary steps, recruitment, and training needed to make a designated medical professional available to the children of the county.

Through the CVCF, the state must pay any costs incurred by a hospital, child abuse clinic, or other emergency medical facility for a child abuse medical assessment, when the assessment is performed for the purpose of gathering evidence for a suspected criminal investigation.

The terms child abuse medical assessment, designated medical professional, and suspicious physical injury are defined.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2014.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: My community is fortunate to have a children's justice center, which is a multidisciplinary team protecting the rights of victims and investigating child physical and sexual abuse. It is through the work of the children's justice center that this problem first came to my attention. Currently in our state, child sexual abuse exams are eligible for reimbursement through the CVCF. However, child physical abuse exams are not eligible for this same reimbursement. It seems unfair to reimburse for one

type of victimization and not the other. This bill will address that disparity. In terms of any future court proceedings, child physical abuse exams are just as necessary as sexual abuse exams. The reason that sexual abuse exams are covered by the CVCF is to ensure that there is good court evidence available and to avoid putting the burden of payment on the victim. All child abuse exams should be paid for by the CVCF, which is separate from general fund dollars. In cases of suspected abuse, it is in the best interests of infants and children to receive timely medical examinations. Early identification by a designated trained medical professional can assure that a child is not further traumatized by an inadequately handled exam and can prevent the child from being reinjured. Prompt response such as within 48 hours allows for photo documentation of the medical findings. I think it is important to point out that this bill, as I understand it, is not under the CPS response but rather addresses suspicious physical injuries that may be indicative of a possible crime against the child. In my 30 years of experience, I have never seen such a dramatic increase in serious injuries of children, including infants and preverbal children. A similar bill was successfully implemented in Oregon three years ago after a child died from a severe beating. Although there were reports of abuse, there were no photographs or medical exams, which are critical to addressing these situations and preventing further injuries to the child.

CON: We are fully supportive of the intent of this bill to provide abuse victims with full access to the CVCF. But we are concerned about some of the language that becomes very prescriptive as it relates to investigative practice. Our concerns are that when you provide very specific timeframes there may be some unintended consequences. In short, this is a bad bill. It makes subtle changes to the law that are not necessary. I have concerns with the language "suspicious physical injury" because you can head over to any playground and find suspicious marks on a number of children, which could have resulted from a variety of things other than abuse.

OTHER: The positive of this bill remedies the inequity of paying for sexual abuse exams but not physical abuse exams. That problem could be fixed without causing a big fiscal or budget problem. The intent of this bill to provide more quality resources for physical abuse exams is also very welcome. But we have two concerns. First, the bill speaks to medical exams for investigative purposes, but we have always been very careful to not have the investigation dictate medical evaluations and treatment. In fact, at that time, the criminal investigation is secondary to the medical considerations. Second, there are often statements made during an exam, particularly by a child, that falls under the hearsay exception, which applies when a person seeks medical treatment. If we start couching these exams as being under the guise of an investigation, we run the risk losing any statements made because the hearsay exception would no longer apply, and the statements would not be admissible in court. We support the intent of this bill, and we support quality resources for medical exams. But we have some logistical questions around the bill when it comes to providing training for medical staff. We think it is great for communities to come together to provide a plan for getting those designated medical professionals, but we have questions about payment and sustainability because we need to make sure that a professional stays in place. There is also language in the bill that discusses photographic evidence, but there is no language that discusses who would have access to those photos and how those photos might be distributed.

**Persons Testifying:** PRO: Senator Cleveland, prime sponsor; Lonnie Johns-Brown, Center for Children & Youth Justice; Lisa Lyons, Arthur D. Curtis Children's Justice Center, Legacy Health System; Mary Blanchette, Children's Justice Center.

CON: Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Lisa Wahl, Gary Preble, citizens.

OTHER: Tom McBride, WA Assn. of Prosecuting Attorneys; Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs; John Merrell, Children's Healthcare Is a Legal Duty.