

SENATE BILL REPORT

2ESSB 5890

As Amended by House, June 30, 2017

Title: An act relating to foster care and adoption support.

Brief Description: Concerning foster care and adoption support.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Braun and Rolfes).

Brief History:

Committee Activity: Ways & Means: 3/16/17, 3/20/17 [DPS, w/oRec].

Floor Activity:

Passed Senate: 4/10/17, 41-6.

Third Special Session: Passed Senate: 6/29/17, 49-0.

Passed House: 6/30/17, 93-0.

Brief Summary of Second Engrossed Substitute Bill

- Expands respite care for foster parents to include short-term care provided by case aides who provide temporary assistance to foster parents as needed to support the parental efforts of foster parents, subject to funding appropriated specifically for this purpose.
- Requires the Washington State Institute for Public Policy to assess the impact of this short-term care on the retention of foster homes, the number of placements a foster child receives, and the return on investment to the state—a preliminary report is due December 1, 2018, with a final report due June 30, 2020, subject to funding appropriated specifically for this purpose.
- Requires the Department of Social and Health Services (DSHS), in consultation with stakeholders, to identify a system of support services to be provided to foster parents to assist in their efforts with foster children to be implemented statewide and to submit a plan to the Legislature no later than January 15, 2018, that includes estimated costs to implement these support services and recommendations for implementing them in a phased-in manner.

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.

- Establishes a process whereby foster homes that had a license and have been in good standing with DSHS within the last five years can obtain a provisional expedited license while awaiting license renewal.
- Requires DSHS to establish a Case Review Panel to review all foster care cases where, after the effective date of this legislation, permanency is not achieved within 15 months after being placed in foster care, within existing appropriation levels.
- Increases the cap for adoption support maintenance payments for children five years of age and older.
- Extends eligibility in the College Bound Scholarship Program to include individuals who were adopted between the ages of 14 and 18 and allows foster youth and individuals adopted between the ages of 14 and 18 to remain eligible for the scholarship if they have received a high school equivalency certificate.
- Repeals the income eligibility rules for nonparental caregivers receiving a Temporary Assistance for Needy Families grant on behalf of a child who is living with the caregiver.
- Creates the Child Welfare System Improvement Account in the State Treasury to be used for foster home licensing, achieving permanency for children, support and assistance to foster parents, and improving and increasing placement options.
- Repeals the Child and Family Reinvestment Account on June 30, 2017, and transfers residual balances to the state General Fund on July 1, 2017.
- Removes requirement that a family participating in the Family Assessment Response must sign a written agreement in order to receive services.
- Requires DSHS, with technical consultation from the Caseload Forecast Council and associated work groups, to review the forecasts of licensed foster care to ensure all youth in licensed foster care are included in the forecast and that maintenance level costs, not including the costs associated with behavioral rehabilitation services are accurately calculated. A report detailing the findings and recommendations are due no later than December 1, 2017.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5890 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Bailey, Becker, Fain, Miloscia, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: That it be referred without recommendation.

Signed by Senators Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Billig, Carlyle, Conway, Darneille, Hasegawa, Keiser and Pedersen.

Staff: Maria Hovde (786-7474)

Background: Foster Care Respite Care. The DSHS offers a program of respite care to provide temporary, short-term relief to foster parents who care for foster children with emotional, mental, or physical handicaps. Respite care is designed to minimize disruption to the foster child.

Dependency Review/Permanency Planning Hearings. Current law requires that the status of all children in foster care is to be reviewed by the court at least every six months. The purpose of the hearing is to review the progress of the parties and determine whether court supervision should continue.

A permanency planning hearing is to review the permanency plan for a child in foster care, to inquire into the welfare of the child and progress of the case, and to reach decisions regarding the permanent placement of the child. Current law requires that a permanency planning hearing must be held 12 months after a child has been placed in foster care in all cases where the child has remained in foster care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered.

Adoption Support Maintenance Payments. Statute requires that DSHS, when establishing maintenance payments for children who are adopted, consider the size of the family, including the adoptive child; the usual living expenses of the family; the special needs of any family member including education needs; the family income; the family resources and plan for savings; the medical and hospitalization needs of the family; the family's means of purchasing or otherwise receiving such care; and any other expenses likely to be needed by the child to be adopted. Currently, adoption support maintenance payments are capped at no more than 80 percent of the foster care maintenance payment for that child had the child remained in a foster family home during the same period.

College Bound Scholarship Program (CBSP). The CBSP was established in 2007 and provides financial aid to cover the remaining cost of tuition at the rates of public institutions of higher education after subtracting other forms of aid and a \$500 book allowance. Students must sign up in the seventh or eighth grade, graduate from high school with a C or better average, be without a felony conviction, and successfully apply to a state higher education institution.

To be eligible to sign up for the CBSP, students must either qualify for free or reduced lunch or be in foster care. Students in foster care must be in grades seven through twelve or be between the ages of 18 and 21 and have not graduated from high school. In order to remain eligible for the CBSP when they graduate from high school, students must have a family income below 65 percent of the median family income and they must successfully enroll in postsecondary education.

Shared Leave. In 1989, the Legislature established a leave sharing program for state and school district employees. The leave sharing program allows employees who have exhausted their accrued leave to use additional paid leave donated by their colleagues under certain qualifying circumstances. In order to qualify for the leave program, the employee must be likely to go on leave-without-pay status or termination of employment as a result of a qualifying circumstance. The amount of shared leave an employee may receive is determined by the agency head and may not exceed the requested amount, up to 522 days unless extraordinary circumstances apply.

Child and Family Reinvestment Account (CFRA). The CFRA was created in 2012 to improve outcomes related to: safely reducing entry into the foster care system and preventing reentry, safely increasing reunifications, achieving permanency for children unable to be reunified, and improving outcomes for youth who will age out of the foster care system. Revenues to the CFRA consist of savings to the state General Fund resulting from reductions in foster care caseloads and per capita costs and any other public or private funds appropriated to or deposited into the account.

Washington State Institute for Public Policy (WSIPP). The Legislature created WSIPP in 1983 to conduct non-partisan research at the direction of the Legislature or the WSIPP's Board of Directors. The WSIPP produces reports on a variety of topics of interest to the state and estimates benefit-cost analyses for a variety of state programs.

Temporary Assistance for Needy Families (TANF). TANF is a federal block grant that provides temporary cash assistance, subsidized childcare, and work programs for families. States use TANF block grants to operate their own programs. State programs differ, but operate in accordance with the following purposes set forth in federal law:

- to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- to encourage the formation and maintenance of two-parent families.

In 2011, legislation was enacted that required the DSHS to establish income eligibility rules for nonparental caregivers receiving a TANF grant on behalf of a child, other than a foster child, who is living with the caregiver. A caregiver with an income above 300 percent of the federal poverty level (FPL) is not eligible for child-only TANF benefits. Nonparental caregivers with incomes above 200 percent but less than 300 percent of the FPL may receive a reduced TANF grant according to a sliding scale.

Office of the Family and Children's Ombuds (OFCO). In 1996, the Legislature established OFCO. OFCO investigates complaints about agency actions or inactions, specifically complaints that involve a child at risk of abuse, neglect, or other harm or a child or parent involved with child protection or child welfare services. OFCO collaborates with DSHS and the Children's Administration to conduct child fatality or near-fatality reviews when the cause of the fatality is suspected to involve child abuse or neglect of a minor in the care of

the DSHS or a supervising agency. OFCO prepares an annual report regarding its work and includes recommendations.

Family Assessment Response. In 2012, the Legislature passed legislation requiring the DSHS to implement a differential response system for responding to allegations of child abuse and neglect with low to moderate risk of child maltreatment called family assessment response (FAR). Upon receiving a report of child abuse or neglect that screens in for a response, the DSHS must either refer the case for investigation or FAR. The DSHS has a method by which to assign cases to investigation or FAR. Cases must be referred for investigation when the assessment determines that there is a risk of imminent harm to the child, a serious threat of substantial harm to the child, the conduct constitutes criminal activity, the child is abandoned, the child is dependent, or in a facility licensed by the DSHS or the Department of Early Learning. Currently, parents must sign an agreement to participate in FAR services before services begin.

Caseload Forecast Council (CFC). The CFC was created in 1997 to oversee the preparation of the official state caseload forecasts which include:

- the number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;
- the number of students who are eligible for the Washington College Bound Scholarship Program and are expected to attend an institution of higher education;
- the number of children who are eligible to participate in, and the number of children actually served by, the Early Childhood Education and Assistance Program; and
- the number of youth participating in the extended foster care program.

The CFC also prepares courtesy caseload forecasts for the TANF and Working Connections Child Care programs.

Summary of Second Engrossed Substitute Bill: Foster Care Respite Care. Subject to funding appropriated specifically for this purpose, respite care is expanded to include short-term care provided by case aides who provide temporary assistance to foster parents as needed with the overall goal of supporting the parental efforts of the foster parents except that this assistance must not include overnight assistance. DSHS is required to contract with nonprofit community-based organizations (CBO) in each region to establish a statewide pool of individuals to provide this respite care. These individuals must be hired by the CBO and must have the appropriate training, background checks, and qualifications as determined by DSHS. At the request of the foster parent or as offered by a CBO, short-term care must be available to all licensed foster parents in the state as funding is available and must be phased in by geographic region. If the requests for short-term care exceed the funding available, the CBO must have discretion to determine the assignment of case aides. The CBO must report all short-term care provided to DSHS and costs associated with the case aides providing this short-term care must not be included in the forecast. The competitive procurement process, and contract provision is expressly mandated by the Legislature.

Subject to funding appropriated specifically for this purpose, WSIPP must prepare an outcome evaluation of this short-term care. The evaluation will, to the maximum extent possible, assess the impact of this short-term care service on the retention of foster homes and the number of placements a foster child receives as well as the return on investment to the state. A preliminary report is due to the appropriate committees of the Legislature and the Governor by December 1, 2018, that describes the initial implementation of these short-term care services and the families utilizing these services. A final report must be submitted by June 30, 2020. DSHS must provide to WSIPP, at no cost, all data necessary to discharge this duty.

Support Services. No later than December 31, 2017, DSHS, in consultation with stakeholders, including child placing agencies, foster parents, foster care advocates, and biological parents, shall identify a system of support services to be provided to foster parents to assist foster parents in their efforts with foster children and a plan to implement these support services statewide, which may include contracts with CBOs. Support services are defined for this purpose to include, but are not limited to, counseling, educational assistance, and hands-on assistance for children with high-risk behaviors.

No later than January 15, 2018, DSHS must submit a final plan, which must include estimated costs to implement these support services and recommendations for implementing these support services in a phased-in manner to the appropriate committees of the Legislature.

Foster Home Licensing. DSHS shall design and implement an expedited foster licensing process. The expedited foster licensing process shall be available to individuals who:

- were licensed within the last five years;
- were not the subject of an adverse licensing action or a voluntary relinquishment;
- seek licensure for the same residence that was previously licensed provided that any changes to family constellation since the previous license is limited to individuals leaving the family constellation; and
- apply to the same agency for which the individual was previously licensed, with the understanding that the agency must be agreeable to supervise the home.

DSHS shall make every effort to ensure that individuals qualifying for and seeking an expedited license are able to become licensed within 40 days of DSHS receiving the individual's application; although, DSHS must only issue a foster license after receiving a completed fingerprint-based background check, and DSHS may delay issuance of an expedited license solely based on awaiting the results of a background check. A criminal background check will be required for all persons aged 16 and older and DSHS may require a criminal background check for persons who are younger than 16 in situations where it may be warranted to ensure the safety of youth in foster care.

DSHS may issue a provisional expedited license before completing a home study, but shall complete the home study as soon as possible after issuing a provision expedited license. DSHS and its officers, agents, employees, and volunteers are not liable for injuries caused by the expedited licensing process.

Case Review Panel (Panel). Within existing appropriation levels, DSHS is required to establish a Panel for the purpose of reviewing foster care cases where permanency has not been achieved within 15 months after being placed in foster care. The Panel must be comprised of, at a minimum, a lead social services specialist and either the Family and Children's Ombuds or another external organization with child welfare experience.

Beginning September 1, 2018, the Panel must review all foster care cases where, after the effective date of this legislation, a child reaches 15 months in foster care and has not achieved permanency. This review must occur by the child's 16th month in foster care. At each case review, the Panel must develop a plan of action, including recommended next steps for DSHS to take, to achieve permanency.

DSHS is encouraged to convene the Panel regularly to review other foster care cases as needed to ensure stability and permanency are achieved and the length of stay for children in foster care is reduced.

DSHS is given the authority to purchase legal representation for parents of children who are at risk of being dependent, or who are dependent, to establish or modify a parenting plan when it is necessary for the child's safety, permanence, or well-being. This authority does not create an entitlement to legal representation purchased by DSHS and does not create judicial authority to order DSHS to purchase legal representation.

Adoption Support Maintenance Payments. Effective July 1, 2017, adoption support maintenance payments must be no more than the following for a child had the child remained in a foster family home during the same period:

- for a child under the age of 5, no more than 80 percent of the foster care maintenance payment;
- for a child aged 5 through 9, no more than 90 percent of the foster care maintenance payment; and
- for a child aged 10 through 18, no more than 95 percent of the foster care maintenance payment.

To encourage adoption of children between the ages of 14 and 18, and in particular those children who are hard to place for adoption, DSHS is authorized to include as part of any new negotiated agreement executed after the effective date of this legislation continued eligibility for the CBSP.

College Bound Scholarship Program. Eligibility for the CBSP is expanded to include foster youth and individuals who were adopted between the ages of 14 and 18 with a negotiated adoption agreement who have received a high school equivalency certificate.

Foster Parent Shared Leave Pool. The Foster Parent Shared Leave Pool (pool) is created and will be administered by DSHS, in consultation with the Office of Financial Management, to allow state employees to donate leave to be used by any state employee who is a licensed foster parent to care for or prepare to accept a foster child into their home. Participation in the pool is voluntary, any leave paid out of the pool must not exceed the level of the employee's state monthly salary, and leave under the pool may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

Foster Parent Recognition. Within existing appropriation levels, the Office of the Governor (Office) must regularly acknowledge the contributions of foster parents to the state of Washington with, at a minimum, a letter signed by the Governor. DSHS must provide to the Office all data necessary to discharge this duty.

Child Welfare System Improvement Account (CWSIA). The CWSIA is created in the State Treasury. Monies in the account may be spent only after appropriation and are solely for foster home licensing; achieving permanency for children; support and assistance provided to foster parents in order to improve foster home retention and stability of placements; improving and increasing placement options for youth in foster care; and preventing out-of-home placement. Revenues in CWSIA consist of legislative appropriations and any other public or private funds appropriated to or deposited in the account.

Child and Family Reinvestment Account. The Child and Family Reinvestment Account is repealed and any residual balance of funds remaining must be transferred to the state General Fund. The sunset review of the Child and Family Reinvestment Account is also repealed.

Temporary Assistance for Needy Families. The income eligibility rules for nonparental caregivers receiving a TANF grant on behalf of a child, other than a foster child, who is living with the caregiver are repealed effective June 30, 2017.

Statutory References. References to recodified sections of the Revised Code of Washington are corrected.

Conflict with State and Federal Requirements. If any provision of the act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

If any part of the act is found to be in conflict with the federal Indian Child Welfare Act of 1978 or federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements of the Indian Child Welfare Act of 1978 and federal requirements that are a necessary condition to the receipt of federal funds by the state.

Family Assessment Response. Parents are not required to sign an agreement to participate in FAR services but the parents must agree to participate in services.

Caseload Forecast. DSHS is required, with technical consultation from the CFC and associated technical workgroups, to review the forecasts of licensed foster care to ensure all youth in licensed foster care are included in the caseload forecast and that maintenance level costs associated with these youth, not including costs associated with behavioral rehabilitation services, are accurately calculated. DSHS is required to submit a report detailing their findings and any recommendations to the Governor and the appropriate committees of the Legislature no later than December 1, 2017.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: We have a crisis in keeping and recruiting foster homes. We don't have enough homes for children and that is unacceptable. Foster parents have become discouraged and once they are discouraged enough they will leave the system. Foster families feel they have a lack of voice and respect in the system and experience an overall lack of support for the difficult work they do. Respite care provides the help foster families need. The need for foster parents to have respite support is critical and this could also lead to a reduction in the multiple placements some children experience. We need to encourage the adoption of children and particularly the older children. Increasing adoption support will help families with the support needed to care for these kids. It also eases the financial cost of moving foster families to adopted families by making those children eligible for CBSP. Eliminating means testing for kinship care providers eases a financial burden and encourages family members to raise these children if they cannot be raised by their biological parents.

OTHER: We do not want to eliminate the Child and Family Reinvestment Account. Family Assessment Response has been a really good option for Child Protective Services and the hope was that we would see a reduction in foster care as a result. Although we have not seen this reduction, it is probably due to a variety of reasons. Nationwide foster care caseloads are increasing and the increase in heroin use may also be a big contributor to increases in the caseload. Respite case aides is a significant step in supporting foster homes. While respite care is available currently in theory, the onus falls on the foster parents to arrange it on their own. Providing additional respite care will prevent children from escalating out of regular foster care and into the Behavioral Rehabilitative System and experiencing multiple placements. This will also go a long way toward maintaining and recruiting foster parents. The respite care in this bill creates an entirely new service delivery model with all of the associated costs and risks when we already have the infrastructure to deliver these services. The problem is that we are not funding these services. Although the intent of the review panels have a lot of merit, additional work may be needed in how this is implemented. Currently, 75 percent of kids are beyond 12 months. Elimination of means testing for kinship caregivers is a good addition. The language regarding continuances may be too restrictive as written but is conceptually a good idea.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor; Jeff Clare, Olive Crest Program Director South Sound.

OTHER: Laurie Lippold, Partners for Our Children; Patrick Dowd, Washington State Office of the Family & Children's Ombuds; Dennis Eagle, WA Federation of State Employees.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Replaces the term short-term care with the term short-term support, which includes case aides who provide temporary assistance to foster parents as needed.
- Provides that contingent on House Bill 1661 or Senate Bill 5498 (Department of Children, Youth, and Families) being signed into law, the Office of Innovation, Alignment, and Accountability will complete a plan to implement a system of foster parent support services. If neither Senate Bill 5498 nor House Bill 1661 are signed into law, the Department of Social and Health Services will complete the plan.
- Modifies the case review panels for cases involving dependent children so that they involve cases where permanency is not achieved within 18 instead of 15 months. These reviews must occur by the child's 19th instead of 16th month in out-of-home care.
- Makes a technical correction to refer to the section that repeals the child and family reinvestment account.
- Makes an annual appropriation of \$648,000 from the General Fund to the Office of Civil Legal Aid to contract for legal representation for foster children in two counties at the initial shelter care hearing in dependency proceedings.
- Appropriates \$75,000 from the General Fund for Fiscal Year 2019 to the Office of Civil Legal Aid to contract with the Washington State Center for Court Research for an assessment of differential outcomes in dependency proceedings prior to termination of parental rights.