

SENATE BILL REPORT

ESHB 2510

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2012

Title: An act relating to limiting government liability during preshelter care investigations of child abuse or neglect.

Brief Description: Limiting government liability during preshelter care investigations of child abuse or neglect.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Kagi, Walsh, Pedersen, Orwall, Jinkins, Dickerson, Ryu, Van De Wege, Darneille and Roberts).

Brief History: Passed House: 2/14/12, 75-23.

Committee Activity: Human Services & Corrections: 2/23/12 [DP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Harper, McAuliffe and Padden.

Staff: Jennifer Strus (786-7316)

Background: Under the state's child abuse statutes, the Department of Social and Health Services (DSHS) is responsible for investigating and responding to allegations of child abuse or neglect. In some cases of alleged abuse or neglect, a child may be immediately removed from his or her parent or guardian and taken into protective custody.

A court can order law enforcement or Child Protective Services to take a child into custody where the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A child may be taken into custody without a court order when law enforcement has probable cause to believe that the child has been abused or 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 child can also be detained and taken into custody without a court order where a hospital administrator has reasonable cause to believe that allowing the child to return home would present an imminent danger to the child's safety.

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.

A shelter care hearing must be held within 72 hours of a child being taken into custody and placed under state care, excluding Saturdays, Sundays, and holidays. At the shelter care hearing, the court will determine whether the child can safely be returned home while the dependency is being adjudicated, or whether there is further need for an out-of-home placement of the child.

Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In *Tyner v. DSHS*, the Washington Supreme Court found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court based this holding in part on legislative intent statements in the child abuse statutes describing the importance of the family unit and the parent-child bond. There are three types of negligent investigation claims recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home.

Witness immunity is a common law doctrine that provides witnesses in judicial proceedings with immunity from suit based on their testimony. The purpose of witness immunity is to preserve the integrity of the judicial process by encouraging full and frank disclosure of all pertinent information within the witness's knowledge. The rule is based on the safeguards in judicial proceedings that help to ensure reliable testimony, such as the witness's oath, the hazards of cross examination, and the threat of prosecution for perjury.

Summary of Bill: Governmental entities, and their officers, agents, employees, and volunteers, are not liable for acts or omissions in emergent placement investigations of child abuse or neglect unless the act or omission constitutes gross negligence.

Emergent placement investigations are those conducted before a shelter care hearing is held. The liability of governmental entities to parents, custodians, or guardians accused of abuse or neglect is limited as provided in the bill, consistent with the paramount concern of DSHS to protect the child's health and safety interest of basic nurture, health, and safety, and the requirement that the child's interests prevail over conflicting legal interests of a parent, custodian, or guardian.

DSHS and its employees must comply with orders of the court, including shelter care and other dependency orders and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, DSHS employees are entitled to the same witness immunity as would be provided to any other witness.

Appropriation: None.

Fiscal Note: Available.

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: This is a narrow targeted bill to deal with the dual responsibility CPS workers have to both children and their parents during a child abuse or neglect investigation. This dual responsibility needs to be clarified so that social workers focus on the child's safety during the first 72 hours before the shelter care hearing. CPS workers face various challenges when conducting an investigation under trying circumstances. Their first job is to assess the child's safety in the family home. This is difficult sometimes – especially when the current law requires that they balance child safety with the rights of the parents. The bill is designed to change an anomaly in state law created by the *Tyner* decision. This bill tips the balance on the side of erring on behalf of the child's safety in conducting an investigation within the first 72 hours before the shelter care hearing.

Persons Testifying: PRO: Representative Kagi, prime sponsor; Larry Shannon, WA State Assn. for Justice; Laurie Lippold, Children's Home Society; Frank O'Dell, WFSE; Rene Tomisser, Attorney General's Office.