

HOUSE BILL REPORT

ESHB 1782

As Passed House:

March 11, 2009

Title: An act relating to encouraging early and consistent engagement of parents in children's dependency matters.

Brief Description: Concerning parent participation in dependency matters.

Sponsors: House Committee on Early Learning & Children's Services (originally sponsored by Representatives Goodman, Roberts, Walsh, Dickerson, Darneille, Kagi and Nelson).

Brief History:

Committee Activity:

Early Learning & Children's Services: 2/10/09, 2/20/09 [DPS].

Floor Activity

Passed House: 3/11/09, 96-0.

Brief Summary of Engrossed Substitute Bill

- Requires additional language be included in the standard notice to parents regarding shelter care hearings and the child dependency process.
- Directs the Department of Social and Health Services to attach a standard reminder note to all individual services and safety plans developed for dependency review hearings.
- Directs the dependency court to consider the impact of placement changes on the child's ability to form secure attachments.
- Permits the dependency court to consider a parent's failure to have contact with a child for an extended period of time when the court is analyzing the likelihood conditions will be remedied so that the child may return to the parent's care in the near future.
- Provides that a parent's actual inability to have visitation with a child due to mitigating circumstances, including but not limited to a parent's incarceration or service in the military, is not in and of itself a failure to have contact with a child.

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.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kagi, Chair; Roberts, Vice Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Angel, Goodman and Seaquist.

Staff: Sydney Forrester (786-7120)

Background:

When a shelter care hearing is scheduled in a child's dependency case, a standard notice must be provided to the child's parent, guardian, or legal custodian. The notice must be understandable and take into consideration the parent's, guardian's, or custodian's primary language, level of education, and cultural issues. The shelter care notice must include specific information about:

- the date, time, and location of the hearing;
- legal rights, including the right to legal representation; and
- a description of orders the court may enter if the child is placed in out-of-home care.

Federal and state laws require the filing of a petition to terminate the parental rights (TPR petition) of the parent of a child who has been in out-of-home care when certain criteria are met relating to the length of time the child has been in foster care, the circumstances requiring the foster care placement, and the progress made towards reunification. Unless an exception applies, state law requires a TPR petition to allege specific elements to be proved at trial, one of which relates to the likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. In analyzing this determination, the court may consider:

- a parent's dependence on alcohol or drugs which renders the parent incapable of providing care for and protecting the child for extended periods of time, and the parent's unwillingness to receive and complete treatment or multiple failed treatment attempts; and
- a parent's chronic or severe psychological incapacity or mental deficiency which renders the parent incapable of providing care for and protecting the child for extended periods of time, and the parent's unwillingness to receive and complete treatment or the lack of available treatment that can render the parent capable of providing for the child's needs.

Summary of Engrossed Substitute Bill:

The requirements for the shelter care notice to parents are expanded to include:

- a description of the dependency process, including that a permanent plan of care for the child will be developed if the court orders the child removed from home;
- a statement encouraging the parents to notify their attorneys and the court regarding their wishes for the child's placement, any services the parents believe are needed, and their wishes regarding visitation with their child; and
- a statement reminding parents that shelter care hearings, fact-finding hearings, and dependency review hearings are legal processes with potentially serious

consequences and that failure to respond, participate in case planning and visitation, or comply with court orders may lead to the modification of a parenting plan, entry of a third-party custody order, or the eventual permanent loss of parental rights.

The Department of Social and Health Services (DSHS) is required to attach a single-page standard reminder to all individual services and safety plans prepared for dependency review hearings. The standard reminder must inform parents regarding:

- the importance of complying with court orders and participating in visitation and case planning, and maintaining contact with a child in out-of-home care; and
- the potential legal consequences of the long-term failure to comply with services, participate in the child's case plan, or maintain contact with a child in out-of-home care.

During the TPR process, when the court is analyzing the likelihood that conditions will be remedied so that the child can be returned to the parent in the near future, the court also may consider the failure of a parent to have contact with a child for an extended period of time after the filing of the dependency petition when two circumstances are present:

- the parent was provided an opportunity to have a relationship with the child by the department or the court; and
- the parent received documented notice of the potential consequences of this failure.

A parent's actual inability to have visitation with a child due to mitigating circumstances, such as a parent's incarceration or service in the military, do not in and of themselves constitute failure to have contact with a child.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 20, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support of original bill) Increasing efforts to motivate parents to engage early and consistently in the dependency process will benefit children. We need to inject urgency into the process before the petition for termination of parental rights is filed. Reminding parents of the consequences of long-term failure to have contact with a child is important. Some, usually non-custodial fathers, believe that in a child dependency case it is best to let the child's mother have first shot at being able to reunify with the child. But, when the mother is not successful, many months or years may have passed while the child has been in out-of-home care and is bonding to the foster parents. When the other parent comes forward at the eleventh hour of a dependency, seldom does it result in anything more than causing the children tremendous trauma and anxiety about where they are going to live. The child experiences confusion when told the new plan is for her to live with a biological parent she has never known.

This bill will save children from years of heartache while the court changes the permanent plan in response to the late-comer parent who refused to engage in the child's case earlier. Children, especially young children, are in the process of bonding with their caregivers during the years a parent may voluntarily have no contact with a child. When faced with a petition for termination of parental rights, the parent may suddenly decide to get involved, but in most cases the opportunity for bonding with the child has already passed. The child experiences confusion and anxiety when told she will be leaving the only home she has ever known, often resulting in negatively impacting the child's ability to function at home, in school, or in child care. Children are always seeking permanency and they naturally will begin bonding to their nurturing caregivers, regardless of a biological connection. Motivating both of the child's parents to engage in the dependency case early will promote better outcomes and informed decision-making about the child's best interests.

The added language in shelter care hearing notices and afterward moves the system in the right direction. From a child's perspective, especially young children, a year or two is a lifetime. The more open-ended and uncertain a child's future is, the greater the damage is to their normal and healthy development. The one thing the child wants and needs most is an unshakeable sense of belonging with the knowledge that it won't change. The sooner birth parents realize the importance of engaging in decision-making on the child's behalf, the better it is for the child.

(With concerns on original bill) The practice standards for attorneys representing parents in dependency cases is to encourage parents to engage early in the child case. The notice should be carefully written so as not to discourage a parent unintentionally. Each case is unique. Some parents who receive a shelter care notice are not abusive or neglectful and a dependency order is never entered. The current language may be overly harsh for these parents and may be confusing or discouraging to other parents.

(Opposed) None.

Persons Testifying: (In support of original bill) Representative Goodman, prime sponsor; Gary Malkasian and Robert Adams, Foster Care Justice Alliance; and Paul Guppy.

(With concerns on original bill) Joanne Moore, Office of Public Defense.

Persons Signed In To Testify But Not Testifying: None.