
**Early Learning & Children's
Services Committee**

HB 1624

Brief Description: Reinstating parental rights for adolescents who are in state care and have not been adopted and providing immunity for department of social and health services representatives.

Sponsors: Representatives Kagi, Walsh, Appleton, Roberts and Haigh.

Brief Summary of Bill

- Allows a dependent child over the age of twelve to petition to have the parental rights of his or her parent reinstated and adds an immunity clause for Department of Social and Health Services workers.

Hearing Date: 2/9/07

Staff: Sonja Hallum (786-7092).

Background:

Dependency Background

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the state may investigate the allegations and initiate a dependency proceeding in juvenile court. If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

Whenever the court orders a dependent child to be removed from the home, the court will enter a dispositional plan which will include the obligations of the parties including the parents, the supervising agency or Department of Social and Health Services (Department), and the child. The dispositional order will contain an order for the placement of the child either within the home or outside of the home. If the child is placed outside the home, he or she may be placed with a relative or in non-relative foster care.

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.

Within 60 days of assuming responsibility for the child, the Department is required to provide the court with a permanency plan for the child. The permanency plan will contain the desired goal for the child which may include a plan to return the child home, adoption, long-term placement, or guardianship, including a dependency guardianship. The court must hold the permanency planning hearing when a child has been in out-of-home care for nine months. The hearing must take place within 12 months of the current placement.

The status of all dependent children must be reviewed by the court every six months. During the review the court will examine the progress of the parents in meeting the requirements of the dispositional plan. At this hearing the court may return the child to the home if the parent has made sufficient progress.

If the parent fails to make progress in curing the parental deficiencies which led to the dependency, or if one of the statutory aggravating factors exist, a termination petition may be filed. Federal law requires that after a child has been in foster care for fifteen of the past twenty-two months, the state must file a petition to terminate parental rights unless the child is being cared for by relatives, there is a compelling reason why termination would not be in the best interest of the child, or the state has failed to offer the necessary services to the parent.

If the court finds the statutory grounds for termination are met, the court will terminate the parental rights and the parent will no longer have rights, privileges, or obligations toward the child.

Governmental Liability

At common law everyone is generally required to use reasonable care when his or her actions create a foreseeable risk of harm to others. At common law and under the state Constitution government may generally remain immune from tort law based on negligence. The Legislature, however, has waived this governmental immunity and provided that generally government is liable for its tortious conduct "to the same extent as if it were a private person or corporation."

Despite this general legislative policy of holding government liable to the same extent as private persons, the Legislature and the courts have both imposed limitations on government liability. Many of these limitations have been created in recognition that some government functions, at least, are unlike anything a private person or corporation does or could do. The Legislature, for instance, has statutorily provided some measure of civil immunity for specific acts ranging from the acts of police dog handlers to the discretionary acts of elected and appointed government officials.

The courts have also provided for governmental immunity in cases where the government is engaged in a governmental function not provided by the private sector, under what is called the "public duty doctrine." Governmental functions are those that are for the benefit of the public generally and include regulatory programs, police and fire protection, correctional programs, and social welfare programs. The courts have also created several exceptions to the public duty doctrine. Under current statutes and common law doctrines, government has been held responsible for its negligent acts in some situations involving harm done by or to persons who are under government supervision or who are receiving government assistance or protection.

Summary of Bill:

A dependent child who is at least twelve years old may petition the court to reinstate the previously terminated parental rights of his or her parent. In order to file the petition, three years must have passed since the parental rights were terminated and the child must not have been adopted.

Once the petition is filed, notice will be given to the parents and the court will hold a hearing. The court will reinstate parental rights if the court finds the following by clear and convincing evidence:

1. The parental deficiencies which led to the termination of parental rights have been addressed to a degree that assures the court that the reinstatement of parental rights will not present a risk to the child's health, welfare, or safety;
2. The child is no longer likely to be adopted; and
3. That reinstatement of parental rights is in the child's best interest.

If the court reinstates the parental rights, the child will be placed in the custody of the parent. The case will continue for at least one year and the Department will provide transition services to the family. The court must conduct at least two review hearings during the year to determine the status and well-being of the child.

An immunity clause is added indicating that the state is not liable when a Department employee or contractor selects one of two or more alternative courses of action even though the course of action chosen results in a poor outcome if the person exercised reasonable care and skill in arriving at the judgment to follow the particular course of action.

Appropriation: None.

Fiscal Note: Requested on January 24, 2007.

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