

# HOUSE BILL ANALYSIS

## HB 2152

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**Title:** An act relating to the voluntary termination of the parent and child relationship by the parent.

**Brief Description:** Providing for voluntary termination of the parent and child relationship by the parent.

**Sponsors:** Representative Sherstad.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Edie Adams (786-7180).

**Background:** Under both common law and statutory law, a parent is obligated to support the parent's child until the child reaches the age of majority or becomes emancipated. A parent's obligation to support a child will end prior to majority or emancipation only if the parent and child relationship is terminated.

The parent and child relationship may be terminated against the will of the parent if the child is found to be a dependent child. In addition, the parent and child relationship may be terminated against the parent's will in adoption cases, if the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for parental obligations and is withholding consent to adoption contrary to the child's best interests.

A parent may voluntarily relinquish a child for adoption to the Department of Social and Health Services (DSHS) or to an adoption agency by filing a petition with the court. The court may approve the petition for relinquishment if it is in the best interests of the child. A petition for relinquishment of a child must be accompanied by the consent of either the adoption agency or the DSHS to whom the child is being relinquished.

Statutory law establishes several crimes for parents who either abandon or fail to support a child or family member. A person is guilty of the crime of family nonsupport if the person is able to provide support and willfully omits to provide necessary food, clothing, shelter, or medical attendance to a child or a spouse. The crime of family nonsupport is a gross misdemeanor offense. As interpreted by the state supreme court, the family nonsupport statute prohibits a parent from barring the child from the parent's home unless the parent has made alternative arrangements for the shelter and care of the child.

A person may be guilty of family abandonment if the person has a dependent child and deserts the child in any manner with intent to abandon the child. The crime of family abandonment is a class C felony. Finally, a parent is guilty of the crime of abandonment of a dependent person if the parent recklessly abandons a dependent child and either causes or creates an imminent and substantial risk of bodily harm to the child. There are three degrees of the crime of abandonment of a dependent person, depending on the degree or risk of harm that results to the child. The first-degree offense is a class B felony, the second-degree offense is a class C felony, and the third-degree offense is a gross misdemeanor.

**Summary of Bill:** A procedure is established to allow a parent to petition the court for an order to voluntarily terminate the parent and child relationship with a delinquent, incorrigible, or truant child.

A "delinquent child" is a child who has violated a state, local, or federal law defining a crime.

A "truant child" is a child who is habitually absent from school without permission and who refuses to comply with the demand of the parent or guardian to attend school, or a child who has been suspended or expelled from school.

An "incorrigible child" is a child who is beyond the control of the parent or guardian by reason of the child's conduct, and who habitually engages in behavior without permission of the parent or legal guardian, and who refuses to comply with the demands of the parent or guardian to cease engaging in the behavior. Evidence of incorrigibility includes: failure to comply with the requirements of the parent or legal guardian; failure to cease the unlawful use of drugs, alcohol, or tobacco; failure to cease association with persons who engage in unlawful behavior or frequenting a place where unlawful activity occurs; and failure to cease violating curfew laws or being in a public place at night without being on lawful business.

The court must grant a parent's petition for the termination of the parent and child relationship if the court finds:

- By clear, cogent, and convincing evidence that: (1) the child is a delinquent child, an incorrigible child, or a truant child; and (2) the parent has made good faith and ongoing attempts to control the child or be reconciled with the child and those efforts have failed; and
- By a preponderance of the evidence that: (1) future attempts to control the child or be reconciled with the child would be futile; or (2) the parent has previously petitioned the court, the court has ordered the child to cease to engage in delinquent, incorrigible, or truant behavior and to comply with the parent's requests, and the child has failed to comply.

The fact that a parent did not obtain paid or professional counseling services or government-provided counseling services may not be considered in determining whether the parent gave his or her implied or express consent to the child's behavior.

Notice of the proceeding to voluntarily terminate a parent and child relationship must be served on the parent petitioning for the termination, the child's other parent, the child, and the DSHS. A guardian ad litem must be appointed for the child, and the court must provide the child with court-appointed counsel upon request by the child.

If the court grants the parent's petition and orders the termination of the parent and child relationship, the court shall order custody of the child to the nonpetitioning, noncustodial parent, if that parent requests custody of the child.

If the court does not award custody to the nonpetitioning, noncustodial parent, the court must award custody of the child to the DSHS who shall be appointed legal guardian of the child and is responsible for support of the child until further order of the court. The order appointing the DSHS as the child's legal guardian must include an order authorizing the DSHS to place the child with prospective adoptive parents.

An order terminating the parent and child relationship divests the parent and child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except past-due child support obligations owed by the parent, which must be paid to the DSHS.

The voluntary termination of the parent and child relationship by one parent does not affect the parent and child relationship of the child's other parent.

**Fiscal Note:** Not requested.

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

Office of Program Research