

HOUSE BILL REPORT

ESHB 1407

As Passed Legislature

Title: An act relating to adoption.

Brief Description: Changing adoption provisions.

Sponsors: By House Committee on Judiciary (Originally sponsored by Representatives Lambert, Benson, Dickerson, Sheahan, Tokuda, Hurst, G. Chandler, Mulliken, Boldt, Koster, Schindler, Ogden, Dunn and Kessler).

Brief History:

Committee Activity:

Judiciary: 2/5/99, 3/2/99 [DPS].

Floor Activity:

Passed House: 3/10/99, 97-0.

Senate Amended.

Passed Senate: 4/12/99, 48-0.

House Concurred.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows an adoption to take place without the consent of a parent if the parent has been convicted of rape or incest and the child was the victim or the result of the offense.
- Provides that the Department of Social and Health Services (DSHS) must follow the placement wishes of parents who voluntarily give up their parental rights unless the proposed adoptive parents are unqualified, or the adoption is not in the child's best interest; if the DSHS has filed a petition seeking termination of the parent and child relationship, it must consider the placement wishes of the parents.
- Adds conviction of the parent of a sex offense or incest when the child is born of the offense to the list of factors a court must consider when determining whether aggravating circumstances exist that would allow the court to order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family.
- Requires that the aggravating circumstances allowing the court to order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family must be proven by clear, cogent, and convincing evidence.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Jim Morishima (786-7191).

Background:

In an adoption, the legal parent-child relationship is created between persons who are not biologically related. Any person can be adopted, although a child 14 years of age or older must consent to an adoption. Any person who is legally competent and 18 years of age or older can become an adoptive parent. In all adoption matters, the best interests of the child are paramount.

Before an adoption can take place, the biological parents must give up their parental rights to control and have custody of their child. This can be done voluntarily or involuntarily by court order. Also, the biological parents must give their free and knowing consent to the adoption. The biological parents can revoke their consent until the consent is approved by the court. The consent of either parent is not required if a court of competent jurisdiction has terminated the parent's relationship with the child.

If all the statutory provisions are met and the court has found that the placement is in the best interests of the child, the court must enter a decree of adoption. In the cases where the adopted child is a Native American, the adoptive parents must be within the placement preferences of the federal law relating to the placement of Native American children before the court can issue a decree of adoption.

In the context of a dependency hearing, before the court can order the filing of a petition to terminate a parent and child relationship, reasonable efforts to unify the family must be made. However, if aggravating circumstances exist, a court can order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family.

Summary of Bill:

The consent of a biological parent to a proposed adoption is not required if the parent was found guilty of rape or incest where the child was the victim, and the court finds that the proposed adoption is in the child's best interest. Also, the consent of a biological parent to a proposed adoption is not required if the parent was found guilty of rape or incest where the child was born of the offense, and the court finds that the proposed adoption is in the child's best interest. This does not effect the parent's right to notice of the adoption as required by law.

If an alleged father, birth parent, or parent has voluntarily terminated his or her parental rights and has indicated his or her intention to make a voluntary adoption plan for the child, the Department of Social and Health Services (DSHS) must follow the wishes of the alleged father, birth parent, or parent as to the placement of the child. The DSHS does not have to follow the wishes of the alleged father, birth parent, or parent if the prospective adoptive parents do not meet state statutory adoption qualifications, or if the court finds that the adoption is not in the best interest of the child. If the DSHS has filed a petition seeking termination of a parent and child relationship it must give consideration to the placement wishes of an alleged father, birth parent, or parent.

Conviction of the parent of a sex offense or incest when the child is born of the offense is a factor a court must consider when determining whether aggravating

circumstances exist that would allow the court to order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family. All of the factors must be proved by clear, cogent, and convincing evidence.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) The permission of a convicted rapist should not be necessary in an adoption proceeding. Giving force to the preferences of parents who voluntarily surrender their parental rights would lead to quick resolution in many adoption proceedings. Allowing parental input also would encourage parents in dependency proceedings to choose adoption as an option. Allowing parental input is consistent with foster care proceedings in which parental preferences are already considered.

Testimony Against: None.

Testified: Representative Lambert, prime sponsor; Mark Demaray, attorney; and Laurie Lippold, Children's Home Society of Washington.