

# HOUSE BILL REPORT

## ESHB 1407

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### As Amended by the Senate

**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.

### 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 must follow the placement wishes of biological parents who voluntarily give up their parental rights unless the proposed adoptive parents are unqualified, the adoption is not in the child's best interest, or a petition seeking termination of the parent and child relationship has been filed.
- 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.

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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.

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**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.

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

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.

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#### **EFFECT OF SENATE AMENDMENT(S):**

- The Senate amendment clarifies that dispensing with the consent of a parent to an adoption does not effect the parent's right to notice of the adoption as required by law.
- The Senate amendment adds alleged fathers and parents who voluntarily surrender their parental rights to the list of persons whose placement wishes the DSHS must follow. The original bill only applies to birth parents who voluntarily surrender their parental rights.
- The Senate amendment requires the DSHS to give consideration to the placement wishes of alleged fathers, parents, or birth parents who voluntarily surrender their parental rights after it has filed a petition seeking the termination of the parent and child relationship. The original bill removes the requirement that the DSHS follow the parents' placement wishes, once a petition seeking the termination of the parent and child relationship has been filed (by any party, not just the DSHS); the original bill neither prohibits nor requires the DSHS to give consideration to the parents' placement wishes once the petition has been filed.
- The Senate amendment requires that the aggravating factors that would allow a court to order the filing of a petition to terminate a parent and child relationship without reasonable efforts to unify the family 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.