

# HOUSE BILL REPORT

## ESHB 1624

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### As Amended by the Senate

**Title:** An act relating to child welfare.

**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:** By House Committee on Early Learning & Children's Services (originally sponsored by Representatives Kagi, Walsh, Appleton, Roberts and Haigh).

**Brief History:**

**Committee Activity:**

Early Learning & Children's Services: 2/9/07, 2/15/07 [DPS].

**Floor Activity:**

Passed House: 3/12/07, 98-0.

Senate Amended.

Passed Senate: 4/9/07, 44-0.

#### Brief Summary of Engrossed Substitute Bill

- Allows a dependent child over the age of 12 to petition to have the previously terminated parental rights of his or her parent reinstated and adds an immunity clause for Department of Social and Health Services workers.
- Clarifies the purpose and responsibilities of shelter care, review and permanency hearings.
- Requires the court to review the permanency plan if a child is removed from a parent due to abuse or neglect a second time during the same dependency.
- Directs the Department of Social and Health Services to consult with licensed foster parents and to submit a report to the Legislature regarding tiered certification of foster parent licensing.

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### HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Hinkle, Pettigrew and Roberts.

**Staff:** Sonja Hallum (786-7092).

**Background:**

Dependency and Termination of Parental Rights 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 appropriate. If the child has been removed from the home of the parent and placed into state care, the initial hearing in the case is a shelter care hearing to determine the need for further out-of-home placement.

The next hearing in a dependency case is the fact-finding hearing in which the court will determine whether the statutory requirements for finding the child dependent have been met. 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 the 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.

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 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 15 of the past 22 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.

## Foster Parents

The Department licenses about 6,000 foster homes statewide to provide for the care of children taken into the custody of the Department as a result of child abuse or neglect. Foster parents must have a regular source of income to support their families, but financial assistance is provided to help with the costs of the foster child's needs. Monthly reimbursement amounts are provided based on the child's age and needs, with reimbursement rates ranging between about \$375 and \$800 per child.

Nine different foster parent associations are organized throughout the state. In May 2006, the Foster Parents Association of Washington State and the Washington Federation of State Employees (WFSE) announced their intent to develop a union to represent foster parents. The WFSE has established a foster care division and both entities have been meeting since the summer of 2006.

## Court Improvement Project

The national Court Improvement Project (CIP) was established by Congress in 1993. The purpose of the CIP was to require states to assess their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. The U.S. Department of Health and Human Services was charged with administering the national CIP through each state Supreme Court.

In Washington, the CIP assessment was completed in 1996 by the National Center for State Courts. The reauthorization of CIP requires state courts to conduct a reassessment to update their earlier assessment findings. Washington's reassessment was completed in 2005.

The CIP reassessment found that "Washington State statutes and local court rules could be strengthened to better support court oversight, to clearly articulate the role of the court with respect to child welfare cases, and to clearly distinguish the purpose of different hearing types (especially review hearings vs. permanency planning hearings). The statutes do not make distinction with respect to the purpose, scope, and requirements of different hearing types." *Washington State CIP Re-Assessment Final Report, National Council of Juvenile and State Court Judges, 2005.*

## Governmental Liability

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. The courts have also provided for governmental immunity in some cases.

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.

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## **Summary of Engrossed Substitute Bill:**

### **Reinstatement of Parental Rights**

A dependent child who is at least 12 years old may petition the court to reinstate the previously terminated parental rights of his or her parent. The child will be provided counsel prior to the filing of the petition. In order to file the petition, three years must have passed since the parental rights were terminated, the child must not have been adopted, and the child's permanent plan must be adoption.

Once the petition is filed, notice will be given to the parents, Department, child's attorney, foster parent, and Tribe. The parents are entitled to counsel if they appear in court and are indigent. The court will hold a hearing and will conditionally grant the petition reinstating 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 parent is currently able to care for the child such that placement with the parent will not present a risk to the child's health, welfare, or safety;
- (3) the child is no longer likely to be adopted; and
- (4) that reinstatement of parental rights is in the child's best interest.

If the court conditionally 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 develop a permanency plan for the child reflecting the plan for reunification. The Department must 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.

If the child is successfully placed with the parent for a period of one year, the court order reinstating parental rights will remain in effect. However, if the child must be removed from the parent due to abuse or neglect allegations, the court must dismiss the petition for reinstatement of parental rights.

The reinstatement of parental rights is a separate action from the termination of parental rights and does not vacate the termination of parental rights order that was previously entered. The order reinstates the parental rights to the child.

### **Immunity**

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.

### **Substantive Changes in Hearings**

#### Shelter Care Hearings

The purpose of the shelter care hearing is to determine whether the child can be safely returned home while the adjudication of the dependency is pending.

The court must notify the parents at the beginning of the shelter care hearing of their rights, including the right to counsel. The court must also notify the parents of the nature of the shelter care hearing and the proceedings that will follow the shelter care hearing.

The court is required to make an inquiry into the case at the shelter care hearing, even if the parent decides to waive his or her right to a hearing. The court will look at the need for placing the child outside the home, where the child is placed, and what services the parties may need at this point in the case. The court must consider the health, welfare, and safety of the child as paramount during its inquiry. If the child is not released to the parent, the child may not be placed with a relative or non-relative if the placement may hinder reunification with the parent. The relative must also agree to care for the child, facilitate visitation with siblings, and cooperate with the background checks. Placement with the party is contingent upon their compliance with the court orders related to the care and supervision of the child.

Several areas are clarified including the time the shelter care hearing must be commenced when a request for a hearing is made, and that the Department must submit a recommendation for the need for further shelter care when the Department is the petitioner.

#### Permanency Hearings

The purpose of the permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and to reach decisions regarding the permanent placement of the child.

If a child is removed from a parent due to abuse or neglect allegations, returned to the home of the parent, and the child is subsequently removed due to allegations of abuse or neglect, the court is required to hold a permanency planning hearing to review the case. The court must decide what appropriate action to take including whether to change the permanency plan or require that a termination petition be filed. The court must use the best interest of the child as the primary consideration in deciding the appropriate action to take. The hearing must be held within 30 days of when the child was removed from the home.

#### Review Hearings

The purpose of the review hearing is to review the progress of the parties and determine whether court supervision should continue.

The foster parent who is currently caring for the child must be given notice of the review hearing. At the review hearing, if the child is not returned home, the court is required to inquire into the case and determine what efforts have been made in terms of services for the parents, what changes may be needed, whether there is a continuing need for placement, and whether visitation is occurring, as well as making any changes needed to meet the needs of the current status of the case.

### **Reorganization**

Many of the changes in the bill are to existing law do not involve the addition of new language, but are a reorganization of existing language. The bill reorganizes existing statutes to put like issues together within the same statutes.

### **Foster Parents**

The duties of the Department are expanded to include quarterly consultations with licensed foster parents and foster parent associations at the regional and statewide levels. Consultation is required regarding the following topics:

- (1) foster parent recruitment and retention;
- (2) foster parent training; and
- (3) performance of the DSHS regarding the administration of a coordinated plan of services to protect children.

The DSHS also must consult with licensed foster parents and child welfare professionals from the public and private sectors and report back to the Legislature by January 1, 2008 regarding the need for and feasibility of creating a tiered classification for foster parent licensing.

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

The Senate amendment makes the following changes to the ESHB 1624:

#### Reinstatement of Parental Rights:

The child may be any age to file the petition for reinstatement of parental rights;The court holds 2 hearings;If the court grants the petition, the case is dismissed; however, services are to be offered to the family during the transition;The immunity provision is for any acts or omissions in providing only services related to the reinstatement of parental rights;Parents are not granted counsel if indigent and the parental child support obligation is removed if the reinstatement is granted.

#### Changes in Dependency Statutes:

The Senate amendment makes numerous changes to this area of the bill, including the following:

Eliminates the provision requiring the court to determine whether the waiver of the shelter care hearing was knowing and voluntary and the requirement for the court to engage in asking

the questions under the statute if the parent waives the right to the shelter care hearing;Limits evaluations that may be ordered by the court at shelter care to those that are agreed upon by the parties;Allows the court, in a fact-finding hearing, to consider the history of past involvement of CPS or law enforcement with the family;Provides that the child should be kept in the same school when placed out of home, unless it is not in the best interests of the child. (The wording "unless practical" is removed.);Eliminates the requirement that the court hold a permanency hearing within 30 days of a second removal from home due to abuse or neglect; andEliminates amendatory language authorizing the DSHS to evaluate a child's educational and developmental status.

Consultation with Foster Parents:

The Department of Social and Health Services is required to consult with licensed foster parents; andRequires a report to the Legislature regarding tiered certification of foster parent licensing.

Records of Child Abuse or Neglect:

Adds provisions regarding retention and destruction of records of unfounded or inconclusive allegations of child abuse or neglect;Prevents the DSHS from destroying records of unfounded or inconclusive allegations of child abuse or neglect if a prior or subsequent founded report involving the child, a sibling or half-sibling, or parent, guardian, or legal custodian is received before the records are destroyed; andRequires the DSHS to provide certain information to foster parents, if known, about a foster child and that child's family.

False Reporting of Child Abuse or Neglect:

Requires CPS to prepare a statement, warning against false allegations of child abuse or neglect; andRequires CPS to send a letter to a person CPS determines to have made a false report of child abuse or neglect informing them that if they submit a subsequent false report of abuse or neglect it will be referred to law enforcement.

**Appropriation:** None.

**Fiscal Note:** Available. Fiscal note for substitute bill requested on February 15, 2007.

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

**Staff Summary of Public Testimony:**

(In support of original bill) There have been some circumstances where children have been placed in care and have not thrived. We have seen children who have no permanency and no hope for adoption. There are also children who parent's parental rights were terminated, yet they continue to run away to be with them and the parents have moved on and can now care for the children. In some circumstances it may be appropriate for the child to return to them. The Attorney General is concerned that this opens up the liability for the state. That is why the immunity clause is in the bill. Children who want to go to a parent who wants them home, and can take care of them, should have a legal process to allow that to happen. The bill provides another avenue in select cases for the approximately 250 children who are legally

free and age out of the foster care system each year. The attorney needs to be provided sooner to help the child file the petition. Parents should be appointed counsel.

(Neutral) We support giving youth who are at least 12 years or older the right to petition. This bill gives youth a better voice in their lives and is critical to the system. This is where we fail youth. The age should not be limited to children over the age of 12. There are kids much younger who deserve to go back home. The dependency does not need to continue for another year. The Department needs to get out of the lives of these families. The immunity is reasonable, but should not cover damages the children receive while in foster care.

(With concerns on original bill) We have concerns with some of the language.

(Opposed) None.

**Persons Testifying:** (In support of original bill) Dave Wood, Elaine Wolcott-Ehrhart, and Bianca L. Tillett, Washington Families United; Patrick Dowd, Office of Public Defense; and Laurie Lippold, Children's Home Society of Washington.

(Neutral) Mary Meinig, Office of the Family and Children's Ombudsman.

(With concerns on original bill) Ross Dawson, Children's Administration.

**Persons Signed In To Testify But Not Testifying:** None.