

# HOUSE BILL REPORT

## ESSB 6792

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### As Passed House - Amended:

March 12, 2008

**Title:** An act relating to dependency matters.

**Brief Description:** Concerning dependency matters.

**Sponsors:** By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Stevens).

### Brief History:

#### Committee Activity:

Early Learning & Children's Services: 2/21/08, 2/26/08 [DPA];

Appropriations: 3/3/08 [DPA(APP w/o ELCS)].

#### Floor Activity:

Passed House - Amended: 3/6/08, 93-0.

Senate Refused to Concede.

House Amended.

Passed House: 3/12/08, 97-0

### Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Establishes a standard of proof and makes certain procedural changes and clarifications for petitions to reinstate parental rights.
- Creates limited immunity from liability for services provided in reinstatement of parental rights cases.
- Adds references in child abuse and neglect hearing provisions relating to child safety, placement with a non-abusing parent, and restraining orders entered against an alleged abuser.
- Establishes a schedule of monthly visits for children in foster care and requires accredited supervising agencies to conduct visits for the cases they supervise.

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*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.*

- Exempts from state bid process requirements the contracting for monthly visits with certain children.
- Establishes a process for the sharing of information between the Department of Social and Health Services and the Department of Licensing to facilitate youth in foster care obtaining a state identification card.
- Clarifies and changes provisions relating to street youth, HOPE centers, and responsible living skills programs.
- Establishes a pilot program granting rights to children ages 12 years and older who are the subject of dependency proceedings.
- Requires guardians ad litem or other court-appointed advocates to meet with or observe a child at least once before making recommendations to the court regarding the child's best interests report to the court any preferences or views expressed by the child with regard to issues pending before the court.

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

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Kagi, Chair; Roberts, Vice Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Goodman, Hinkle and Pettigrew.

**Staff:** Sydney Forrester (786-7120).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Early Learning & Children's Services. Signed by 34 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDonald, McIntire, Morrell, Pettigrew, Priest, Ross, Schmick, Schual-Berke, Seaquist, Sullivan and Walsh.

**Staff:** Kelci Karl-Robinson (786-7109).

**Background:**

*Reinstatement of Parental Rights*

The Legislature in 2007 enacted Engrossed Substitute House Bill 1624 allowing a dependent child to 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, or for cases that are appealed, three years must have passed since exhaustion of any right to appeal the termination order; the child must not have achieved permanency; and the child must be over the age of 12 years, unless there is good cause to permit a child under age 12 to file the petition. The child must be provided counsel prior to the filing of the petition.

After a petition is filed, the court must hold a threshold hearing to determine whether the parent has an interest in reinstating parental rights and whether the parent appears fit to care for the child. If the court finds, based on the threshold hearing, that it appears the best interests of the child may be served by reinstatement of parental rights, the court will order a hearing on the merits of the petition.

If the court finds, based on the evidence presented at the hearing on the merits, that reinstatement of parental rights is in the child's best interests, the court must conditionally grant the petition and continue the case for six months. During the six-month period, the child must be placed in the custody of the parent, and the Department of Social and Health Services (DSHS) must develop a permanency plan for reunification and provide transition services to the family. If the child is successfully placed with the parent for six months, the order reinstating parental rights remains in effect and the dependency is dismissed.

The standard of proof for the court's findings in the hearing on the merits of the petition is clear and convincing evidence. For the court's findings in the threshold hearing, no standard of proof was specified in the legislation enacted in 2007. In addition, although the statute contemplates a child under age 12 filing a petition with good cause shown, no explicit process is provided for the court to recognize and hear such a petition. Similarly, although the statute specifies that the order reinstating parental rights becomes permanent following a successful six-month placement with the parent, there is no requirement for a final order and little clarity regarding the full effect of an order reinstating parental rights. Finally, there is no immunity from liability for negligence when the DSHS is providing services under the reinstatement of parental right chapter.

#### *Shelter Care Hearings*

Shelter care hearings are conducted within 72 hours of the DSHS or law enforcement taking physical custody of a child due to allegations of abuse or neglect. During the shelter care hearing, the court must determine whether the child can safely be returned home while the dependency is being adjudicated. In making this determination, one of the issues the court must analyze is whether an order expelling the allegedly abusive parent from the home will allow the child to safely remain in the home, if returned.

#### *Monitoring and Supervision of Child Placements*

**State Law:** State law requires the DSHS to monitor out-of-home placements on a timely and routine basis to assure the safety, well-being, and quality of care being provided to children in foster care is consistent with legislative intent. Policies by the DSHS direct caseworkers to conduct monthly visits with children in out-of-home care and in-home dependencies. Accredited child placing agencies (CPA) with responsibility for supervising a child's placement also are required to conduct monthly visits as a condition of accreditation.

**GMAP:** The Governor, through the Government Measurement, Accountability, and Performance (GMAP) process, has prioritized monthly visits for children in in-home dependencies, with a projected phase-in for monthly visits to all children in out-of-home placements.

**Braam:** The 2006 Braam Implementation Plan (Plan) developed jointly by the Braam Oversight Panel, the DSHS, and attorneys for the Braam plaintiff class, the percentage of children in out-of-home care who receive a private and individual face-to-face visit from their caseworker at least every 30 days is required to increase significantly by region and statewide. The Plan calls for incremental improvements to baseline data such that by the 2011 monitoring report, there will have been a 95 percent increase from the baseline.

**Federal Law:** Federal statutes require the DSHS to conduct health and safety checks with children in dependencies at least every 90 days. A recent amendment to federal law requires states adopt a plan by June 1, 2008, to ensure that, by October 1, 2011, at least 90 percent of children in foster care are visited by their caseworker at least monthly.

#### Washington State Identification Cards

State identification cards, known as *identicards*, are issued by the Department of Licensing (DOL) and require the applicant to provide proof of residency in the state and proof of identity. Youth under age 18 must have authorization and some form of in-person verification regarding identity from a parent or guardian to obtain an identicard.

At the 2007 Annual Foster Youth Leadership Summit, youth described encountering significant hurdles in obtaining an identicard as a result of being in state custody. Photo identification frequently is required for a number of reasons, including but not limited to, travel; opening a bank account; taking the GED; employment; housing; voting; obtaining a library card; enrolling in post-secondary institutions; admission to join certain organizations; and being able to provide identification if requested by law enforcement.

#### HOPE Centers and Responsible Living Skills Programs

HOPE Centers are licensed by the DSHS and provide temporary residential and other services to street youth. A "street youth" is defined as a person under age 18 who lives outdoors or in another unsafe location not intended for occupancy and who is not residing with his or her parent or at his or her legally authorized residence. Street youth may remain in a HOPE center for 30 days while services are arranged and a placement is coordinated.

Responsible Living Skills Programs (RLSP) are provided by agencies licensed by the DSHS to provide transitional living services that emphasize the achievement of independent living skills competency. These programs may be offered in a group home setting or in a typical foster home setting. To be eligible for placement in an RLSP, the minor must be dependent and must have lived in a HOPE Center or in a secure crisis residential center.

#### Notice and Rights in Dependency Proceedings

Upon the filing of a dependency petition, state law requires a copy of the summons and petition be sent to children ages 12 years and older who are the subject of such petitions.

Parents, guardians, and custodians of children also are summoned, and the court may include an order for the child to be brought to the fact-finding hearing on the dependency petition.

Under federal and state law, foster parents, although not considered parties to dependency proceedings, also have rights to notice and to be heard in dependency matters. The Department of Social and Health Services (DSHS) is required to provide foster parents with notice of all hearings regarding children in their care. All parties to dependency proceedings are entitled to be represented by counsel and to be heard in all proceedings. Parents, guardians, and custodians who are found to be indigent are entitled to counsel at public expense.

#### Guardians Ad Litem

For children in dependencies, the court is required to appoint a guardian ad litem (GAL) unless good cause exists not to do so. This requirement is considered satisfied for children who are represented by independent counsel. The court may appoint an attorney to represent the child if the child is age 12 years or older and requests independent counsel, or if the court or the GAL determined the child should be represented by counsel.

Statewide there is considerable variability regarding both GAL programs and whether children in dependencies are represented by independent counsel. Some GALs are also licensed attorneys, although their role as GAL differs from that of independent counsel. Counties without a sufficient number of contracted or available GALs may appoint lay volunteers to serve as special advocates for children in dependencies. In some counties all children are represented by independent counsel in dependency matters, and these children may or may not also have an appointed GAL or volunteer advocate. The GALs and volunteer advocates are charged with investigating relevant information and making recommendations to the court regarding the child's best interests.

#### Children's Rights and Participation in Dependency Proceedings

Other than the initial requirement for a child over the age of 12 to receive a summons and petition when a dependency is initiated, there is no requirement for the child to receive further notice of dependency proceedings. Similarly there is no express right granted to a child to be heard in dependency proceedings.

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### **Summary of Amended Bill:**

#### Reinstatement of Parental Rights

The required time lapse following a termination order prior to petitioning for reinstatement is three years, regardless of whether the order is appealed. The court may hear a petition filed by a child younger than 12 upon the child's motion or upon the court's own motion. The standard of proof by which the court will make its findings in a threshold hearing on a petition to reinstate parental rights is a preponderance of the evidence. If, after a hearing on the merits, the court grants the petition, a temporary order reinstating parental rights must be entered. If the child has been placed with the parent for six months and the placement has been successful, the court must hold a final hearing and enter a permanent order dismissing the

dependency restoring the parent's parental rights, powers, privileges, immunities, duties, and obligations, and dismissing the dependency.

A parent whose rights are reinstated is not liable for the costs of services provided to the child during the time parental rights were terminated. A limit on liability is provided when the state, the DSHS, and its employees are providing services in petitions for reinstatement and no cause of action accrues for the original termination when a parent's rights are subsequently reinstated by a court.

#### *Shelter Care Hearings*

At the shelter care hearing, uncertainty by a parent or potential placement caregiver that the alleged abuser has in fact abused the child cannot be the sole basis upon which the child is placed in out-of-home care, nor can it be the sole basis upon which to preclude placement with either a relative or a suitable person so long as the potential caregiver is willing to and does comply with the statutory requirement to assist in enforcement of the order.

#### *Monitoring and Supervision of Child Placements*

The DSHS must monitor out-of-home placements and conduct face-to-face meetings with children in out-of-home care and their caregivers by conducting monthly face-to-face visits with the child and with the child's caregiver. Within existing funds, when a child's case is managed by an accredited CPA, the CPA must conduct the monthly face-to-face visits and provide the DSHS with a written report of the visit within 15 days of the visit. The DSHS must still conduct the federally-required health and safety visits with the child and the child's caregiver on a quarterly basis when not conducting the monthly visits.

#### *Washington State Identicons for Youth in Foster Care*

A process is established for the sharing of information between the DSHS and the DOL in order to facilitate youth in foster care obtaining a state identification card. The DSHS may submit the required proof of residency and identify for a youth in foster care and a picture of the youth directly to the DOL. The foster youth will be provided a copy of the information submitted to hand carry to the DOL when applying in person for an identicon.

#### *HOPE Centers and Responsible Living Skills Programs*

Eligibility for placement in a HOPE Center is expanded to include minors who, without placement in a HOPE Center, will continue to participate in increasingly risky behavior. Minors also may self-refer to a HOPE Center. Payment for a HOPE Center bed is not contingent upon prior approval by the DSHS.

If a youth's caseworker determines that placement in an RLSP would be the most appropriate placement given the minor's current circumstances, prior residence in a HOPE Center or secure crisis residential center (CRC) is not required in order to provide the minor an RLSP placement.

#### *Children's Rights and Participation in Dependency Proceedings*

A pilot program is established in four Washington counties: Spokane, King, Thurston, and Benton-Franklin. The pilot shall be administered by the DSHS and the Administrative Office of the Courts (AOC) and shall be structured as follows:

- (1) For children ages 12 years and older who are the subjects of dependency proceedings, the following rights are established: (a) the right to receive notice of hearings;
  - (b) the right to be present at hearings; and
  - (c) the right to be heard personally. These rights cannot be limited or denied unless the court makes a written finding that denial or limitation is in the child's best interests and necessary to protect the child's health, safety, or welfare.
- (2) Prior to hearings, the child's GAL or attorney must determine if the child wishes to attend the hearing. If the child wishes to attend, the attorney and GAL must coordinate with the child's caregiver and the DSHS or other supervising agency to arrange for transportation.
- (3) If the child exercises his or her right to be present, the court may interview the child in chambers to determine the child's wishes regarding issues before the court. The interview can be at the request of the child, the GAL or volunteer, the child's attorney, or at the court's discretion.

The DSHS and the AOC shall brief the Legislature regarding the pilot by January 31, 2009, and shall provide a final report by December 1, 2010. To the extent finding is available, the DSHS and the AOC shall collaborate with appropriate entities to compile pertinent information regarding the pilot, including comments from youth, attorneys, court personnel, and guardians ad litem.

#### Guardians Ad Litem

Prior to making recommendations to the court regarding the child's best interests, a GAL or volunteer advocate must meet with, interview, or observe the child at least once. The GAL or volunteer also must report to the court any preferences or wishes expressed by the child regarding issues to be decided by the court.

#### Dependency Case Processing

When a child has been in out-of-home care for 15 of the most recent 22 months after filing of the dependency petition, the court must require the filing of a petition to terminate parental rights, unless the court finds that filing the petition is not appropriate. If the court makes such a finding, it must be reviewed at all subsequent motion and review hearings pertaining to the child. Examples of good cause exceptions include the following: (1) the child is being cared for by a relative; (2) the DSHS has not provided necessary services according to the case plan; or (3) the DSHS has documented a compelling reason why filing a termination petition is not in the child's best interests.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed, except for section 6, governing 30-day visits to children in dependencies,

which takes effect December 31, 2008. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:** (Early Learning & Children's Services)

(In support) The original bill allowed for the court to order evaluations for parents at the shelter care hearing if the court found there was a reasonable connection between the abuse or neglect and substance abuse. This was a very good idea and should be expanded to allow for mental health evaluations. Where appropriate, ordering evaluation for parents early allows services to be provided sooner and encourages parents to engage earlier in the steps necessary for reunification.

Eligibility for access to HOPE Center beds does include more than just youth living on the street, but some HOPE Center staff have interpreted the law to mean that only youth on the streets can access a bed. One of the underlying reasons for adopting the original act was the prevention of homelessness among youth and the resulting threat to their well-being. Clarifying that youth may access a HOPE Center bed whenever they are in any unsafe living situation makes sense, especially since we are funding these beds which sometimes are remaining empty. There is still the safeguard for notification to a parent, the DSHS, or law enforcement, but the result is that if an outreach worker can connect an at-risk youth with a HOPE Center bed, it is much more likely the youth will get connected to needed services.

De-linking the requirement for residence in a HOPE Center bed with eligibility for a Responsible Living Skills Program (RLSP) placement is another important step forward. Older youth in foster care, who may be facing a change in placement may prefer the skills-based approach of an RLSP placement as opposed to trying to bond with yet another foster family. Some teens heading toward independence from foster care can focus on their own goals and plan for independent living more effectively in an RLSP placement. When the youth and his or her social worker agree the RLSP placement is appropriate, it doesn't make sense to require the youth to have spent time in a HOPE Center or a secure crisis residential center in order to be eligible for the RLSP.

(With concerns) The DSHS has concerns only with Section 5 and wants to ensure that the resources match up with the requirements for phasing in the 30-day visits to children and their caregivers.

(Opposed) None.

**Staff Summary of Public Testimony:** (Appropriations)

(In support) There are multiple policy items in this bill that need to be implemented in order to improve outcomes for children and families. The fiscal impact will be addressed through the amendment.

(Opposed) None.

**Persons Testifying:** (Early Learning & Children's Services) (In support) Jim Theofelis, Mockingbird Society; and Laurie Lippold, Children's Home Society.

(With concerns) David Del Villar Fox, Children's Administration - Department of Social & Health Services.

**Persons Testifying:** (Appropriations) Laurie Lippold, Children's Home Society.

**Persons Signed In To Testify But Not Testifying:** (Early Learning & Children's Services) None.

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