

# SENATE BILL REPORT

## SHB 1284

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As of April 9, 2013

**Title:** An act relating to the rights of parents who are incarcerated or in residential substance abuse treatment.

**Brief Description:** Concerning the rights of parents who are incarcerated or in residential substance abuse treatment.

**Sponsors:** House Committee on Early Learning & Human Services (originally sponsored by Representatives Roberts, Walsh, Kagi, Sawyer, Goodman, Freeman, Farrell, Appleton, Ryu, Reykdal, Santos and Habib).

**Brief History:** Passed House: 3/04/13, 96-1.

**Committee Activity:** Human Services & Corrections: 3/14/13, 4/01/13 [DPA-WM].  
Ways & Means: 4/08/13.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jenny Greenlee (786-7711)

**Background:** A child may be placed in shelter care by a court if the court determines, following a petition by the Department of Social and Health Services (DSHS), that the child is a dependent child, and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A shelter care hearing must be held within 72 hours for the purpose of determining whether the child can be immediately and safely returned home, followed by a fact-finding hearing at a later date to determine the issues raised in the petition.

At least 30 days prior to the fact-finding hearing, DSHS must convene a case conference to develop and specify in a written service agreement the expectations of DSHS and the parent

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regarding voluntary services for the parent. These expectations must correlate with the court's findings at the shelter care hearing and set forth specific services to be provided to the parent.

If the child is found to be dependent, the court must issue a disposition order directing the service plan for the parents and the child, a visitation plan, and eventually a permanent plan. The court's order sets the benchmarks and expectations for the parties. If the court determines that reunifying the family is not in the best interests of the child, the child may be placed with a relative, foster family, group home, or in another suitable place.

The court, under certain circumstances, may order the filing of a petition for the termination of parental rights. The court may exercise this discretion if it finds that aggravated circumstances exist. A party to the dependency action may also file a petition for the termination of parental rights.

If a child has been in out-of-home care for 15 of the most recent 22 months, the court must order DSHS to file a petition for termination of parental rights, unless the court finds a good cause exception. Good cause may exist if:

- DSHS failed to provide the child's family with services that DSHS and the court have determined are necessary for the child's safe return home; or
- DSHS documented compelling reasons why filing a petition to terminate parental rights would not be in the child's best interest.

**Summary of Bill (Recommended Amendments):** DSHS must provide a parent who is unable to participate in a dependency case conference due to incarceration an option to participate via teleconference or videoconference.

A permanency plan adopted by DSHS must address how the parent who is incarcerated will participate, and include, where possible, treatment that reflects the resources available to the parent at the facility. The permanency plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.

Good cause exceptions are provided to DSHS's requirement to file a petition for termination of parental rights if the child was in out-of-home care for 15 of the last 22 months when the parent was unavailable due to incarceration and the parent maintained a meaningful role in the child's life. Factors are provided to assist the court in determining whether the parent has maintained a meaningful role in the child's life.

In considering a petition for termination of parental rights, the court must consider whether a parent who is incarcerated maintains a meaningful role in a child's life, the efforts of DSHS, and the constraints imposed by incarceration. When a parent who maintains a meaningful role in a child's life is sentenced to long-term incarceration, DSHS must seek a permanent placement such as guardianship that allows the parent to maintain a meaningful role in the child's life, instead of seeking termination of parental rights.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** Removes references to parents participating in residential substance abuse treatment programs.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony (Human Services & Corrections):** PRO: It is very important to facilitate the continuation of parent-child relationships. The substitute bill keeps the best interests of the child in mind. A majority of women in prison are mothers and were primary caregivers for their children before involvement with the criminal justice system. This bill allows the courts to make individualized and case-specific decisions; it does not prevent permanency which is in the best interests of the child. The bill does not assume that children will always benefit from continuing relationships where abuse or other aggravating circumstances are present. Drug use is not child abuse. Treatment programs are effective and increase reunification by 14 percent. I was in jail and terrified without information about my child. I went to residential treatment instead of prison, and never received visitation. I was given one chance upon release, turned my life around, and was reunified with my daughter. People can change and families can reunite. Some families are not given the time to prove themselves as I was. I would not be a productive member of society today if I did not have the opportunity to reunite with my daughter. This bill would help parents with successful reentry to society, because family integrity and stability reduces recidivism. It would also help children and promote fairness and due process.

CON: I support the goals of this bill, but oppose specific language and provisions. Do not roll back the 15-month deadline for termination and permanency. Aggravating circumstances in the statute should remain barriers to reunification. Long-term guardianship may not be appropriate in all cases involving incarcerated parents.

OTHER: We thank the sponsor for working with DSHS to resolve legal concerns with the original bill. The courts already have the authority to address many of the issues identified in this bill. The bill does not specifically address circumstances when the parent is incarcerated based on abuse of the child.

**Persons Testifying (Human Services & Corrections):** PRO: Representative Roberts, prime sponsor; Lillian Hewko, Legal Voice; Alise Hegle, King County Superior Court Parents for Parents; Shayne Rochester, Snohomish County Parents Advocacy Committee; Nadine Miller, WA Parent Advocacy Network; Shankar Narayan, American Civil Liberties Union-WA.

CON: Gary Malkasian, Foster Care Justice Alliance.

OTHER: Randy Hart, DSHS.

**Staff Summary of Public Testimony (Ways & Means):** PRO: This bill costs so little and potentially generates savings. This bill will reduce recidivism and protect the healthy development of children of incarcerated parents. This bill helps avoid unnecessary

terminations, which are the most litigated and costly terminations. After federal laws put in place timelines for permanency, terminations increased 108 percent for incarcerated parents. This bill will actually reduce unnecessary court costs. Many children who become legally free wait for permanent placement in adoptive homes. This bill will help create permanent options and decrease the loss experienced by these families.

**Persons Testifying (Ways & Means):** PRO: Lillian Hewko, Legal Voice.