

# HOUSE BILL REPORT

## HB 1591

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**As Reported by House Committee On:**  
Human Services, Youth, & Early Learning

**Title:** An act relating to open adoption agreements.

**Brief Description:** Concerning open adoption agreements.

**Sponsors:** Representatives Orwall, Taylor, Goodman, Stearns and Lekanoff.

**Brief History:**

**Committee Activity:**

Human Services, Youth, & Early Learning: 2/8/23, 2/15/23 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Administrative Office of the Courts to engage with a broad group of stakeholders to discuss certain issues related to open adoption agreements (agreements).
- Requires that, by October 1, 2023, the Department of Children, Youth, and Families (DCYF) contract for the development of training for foster parents regarding the benefits of and best practices as it relates to including biological parents and relatives, including siblings, in the lives of children which certain prospective adoptive parents must complete.
- Requires that the DCYF identify culturally appropriate mental health and other related services that are designed to support people after being adopted and provide information on obtaining those services to any adopted child who was in the custody of the DCYF.
- Provides detail on the information that must be included in an agreement entered into for a child who was dependent and how that agreement may be modified or enforced.

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**HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING**

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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 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 8 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Callan, Goodman, Ortiz-Self and Walsh.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Couture, Assistant Ranking Minority Member; Dent and Rule.

**Staff:** Luke Wickham (786-7146).

**Background:**

*Child Welfare (Dependency) Court Proceedings.*

Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known.

When a child is taken into custody based on a risk of imminent harm to the child, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved. If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency.

The fact-finding hearing must be held within 75 days after the filing of the petition, unless exceptional reasons for a continuance are found. If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

The DCYF must develop a permanency plan within 60 days from the date that the DCYF assumes responsibility for the child which must identify primary outcome goals for the case. The DCYF must submit this permanency plan to the parties and the court at least 14 days before a permanency planning court hearing. A permanency planning hearing must be held in all cases where the child has remained in out-of-home care for at least nine months, but no later than 12 months following out-of-home placement.

Under certain circumstances after a child has been removed from the custody of a parent for at least six months pursuant to a finding of dependency, a petition may be filed seeking termination of parental rights proving by clear, cogent, and convincing evidence that the:

- child is dependent;
- court entered a dispositional order;
- child was removed from the parent for a period of at least six months;

- services ordered under the dependency court order and all necessary services, reasonably available, capable of correcting parental deficiencies have been expressly and understandably offered or provided; and
- continuation of the parent relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

The court may also terminate a parent's rights under certain circumstances if the whereabouts of the child's parent are unknown or if the parent has been convicted of certain crimes. If a court terminates a parent's rights, all rights, powers privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent are severed and terminated, and the parent has no standing to appear at any future legal proceedings involving the child.

#### *Open Adoption Agreements.*

Child adoptees, adoptive parents, siblings of child adoptees, and birth parents may enter into agreements regarding communication or contact. These agreements are often referred to as open adoption agreements (agreements). These agreements are not legally enforceable unless the terms of the agreement are set forth in a written court order.

Courts may not approve agreements unless the terms are approved in writing by the prospective adoptive parents, a birth parent whose parental rights have not previously been terminated, and a representative of the DCYF or child-placing agency if the child or siblings of the child are in the custody of the DCYF or a child-placing agency.

Failure to comply with an agreement is not grounds for setting aside an adoption decree.

Agreements may be enforced by a civil action, and the prevailing party may be awarded a reasonable amount of attorney's fees. Courts may not modify agreements unless it finds that the modification is necessary to serve the best interests of the child adoptee and that:

- the modification is agreed to by the adoptive parent and the birth parent; or
- exceptional circumstances have arisen since the agreed order was entered that justify modification.

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

Biological parents are authorized to appear in proceedings to enforce or modify an open adoption agreement (agreement) following an order terminating the parent's rights.

Agreements that do not include the name of a party must include the name of an agent used for the purpose of receiving court notices.

The court must file the agreement under the cause number in which parental rights are terminated and direct the petitioner to file the agreement in any subsequent adoption

proceeding involving the child. Parties to an agreement have access to the agreement entered in their case through the court clerk in the county in which the agreement was entered.

Failure to comply with the terms of an agreement does not constitute grounds for setting aside an adoption decree or revocation of a written consent to an adoption.

The Administrative Office of the Courts (AOC) must develop mandatory pattern court forms to allow birth parents who have had their parental rights terminated to access agreements and for the enforcement or modification of agreements.

A petitioner seeking to modify or enforce an open adoption agreement must:

- set forth facts in an affidavit supporting the petition; and
- serve notice of the filing to the party to the open adoption agreement to whom the petitioner is seeking the enforcement action against.

If, based on the petition and affidavits, the court finds that it is more likely than not that the requested relief will be granted, the court shall hold a hearing on the petition.

Any party to an open adoption may take an action to modify the terms of an agreement based on consent by the parties to the agreement or through a filing in juvenile court demonstrating that:

- modification is necessary to ensure the child's health, safety, or welfare; or
- exceptional circumstances have arisen since the agreed order was entered to justify modification of the order.

Any party to an agreement may take an action to enforce the agreement, and a prevailing party may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. If the court does hold a hearing on the petition to enforce the agreement, the court shall order make-up visits or other contact if a party to the agreement demonstrates by a preponderance of the evidence that the terms of the plan were not followed, unless the court finds by clear, cogent, and convincing evidence that such make-up visitation or other contact is likely to cause serious physical or emotional damage to the child.

By October 1, 2023, the Department of Children, Youth, and Families (DCYF) must contract for the development of training for prospective adoptive parents regarding the benefits of and best practices related to including biological parents and relatives, including siblings, in the lives of children. After that, prospective adoptive parents must complete the training as soon as practicable following a court order identifying adoption as a primary or concurrent goal, and must complete the training before adopting a child who was dependent. Child welfare workers must complete this training as well.

The DCYF must identify the types of culturally appropriate mental health and other related

services that are designed to support people after being adopted and provide information on obtaining those services to any adopted child who was in the custody of the DCYF.

The AOC is required to engage with a broad group of stakeholders to discuss certain issues related to agreements, along with any other issues identified by the stakeholder group and provide a report to the Legislature and the Governor by December 1, 2023, describing recommendations for addressing those issues.

The term "open adoption agreement" is defined as a written agreement between a birth parent, prospective adoptive or adoptive parent, and a child, and in cases governed by the state Indian Child Welfare Act, the child's tribe, that establishes enforceable conditions regarding the amount of communication or contact, which may include in-person contact, if any, involving the adoption of a child who was subject to a dependency between the individuals agreeing to such visitation or contact.

### **Substitute Bill Compared to Original Bill:**

The substitute bill modifies the definition of "open adoption agreement" to specify that these agreements establish enforceable conditions regarding the amount of communication with or contact, which may include in-person contact, if any, involving the adoption of a child who was subject to a dependency.

The substitute bill removes the requirement that an open adoption agreement (agreement) becomes enforceable on the date the court enters an agreement.

The substitute bill adds discussion of the appropriate time for agreements to become enforceable and mechanisms for informing the parties that the agreement is enforceable to the issues that must be discussed by the Administrative Office of the Courts when it engages with a broad group of stakeholders as required in the underlying bill.

The substitute bill specifies that the changes related to agreements only apply to agreements involving a child who was subject to a dependency.

The substitute bill expands the requirement that a court make a finding that a petition is more likely than not to grant the requested relief before holding a hearing on applying the petitions to modify an agreement, and not just petitions to enforce agreements.

The substitute bill modifies the standard that a court uses in determining whether to modify an agreement, requiring a petitioner to demonstrate that: (1) modification is necessary to ensure the child's health, safety, or welfare; or (2) exceptional circumstances have arisen since the agreed order was entered to justify modification.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill contains multiple effective dates. Please see the bill.

**Staff Summary of Public Testimony:**

(In support) Children who have been adopted have an intrinsic sense that they are different. They experience grief and loss over parents they did or did not know because adoption is a lifelong process. Adoption related issues never completely go away.

This bill includes training to help prospective adoptive families learn how to work with biological families. This bill provides support for adoptees to have appropriate therapy.

This bill requires agreement of the parties including the adoptive family and the child for contact following adoption.

The legal system should live up to its promises. When children, prospective adoptive parents, biological parents, and the Attorney General's Office agree to contact post-adoption, it should mean something. When a parent faces a trial on terminating their parental rights, they are faced with an impossible choice. If they take the case to trial, the parent risks never having contact with their child again for the rest of their life. So, many parents who could prevail at a termination trial instead accept an open adoption agreement (agreement) because the thought of never having contact with the child again for the rest of their lives is unbearable. So there is an agreement and an agreed order that is entered by the court.

What does the parent really have at that point? Ultimately, after the order is received, the parents are plunged into further uncertainty.

It is not clear under current law when that order becomes enforceable—is it immediately enforceable, or is it enforceable after the adoption is finalized? The parent will not know that the biological parent will not know when the adoption is finalized because they are no longer party to the case.

The biological parent will never know when an agreement will take effect because they often take effect when the adoption is finalized. Then there is usually a provision that says that if these agreements are not enforced within a year, they are null and void.

That kind of uncertainty is built into the existing system. When a party to these agreements wants to enforce an agreement, it is not clear what court they go to—the court where it was entered, or the court where the child lives. It is not clear whether it is a type five adoption case or a type seven dependency case.

For these reasons, many of these agreements do not get enforced. The current law says, and decades ago, this Legislature passed a law that said these may be enforceable and modified by civil action, but there is in fact no process for people to do that.

This bill would resolve inconsistencies in the law and clear up this process and allow parents to exercise their rights that they were supposed to obtain in exchange for giving up their right to a termination trial and their fundamental right to parent their children.

With the cultural support and mental health support that is provided in this bill, adoptees are more likely to be supported and understood.

Parents sometimes are scared to go to trial because of the possibility of losing contact with their children. This supports parents and kids so that no one falls through the cracks.

Kids should remain home if it is safe. Sometimes that does not happen and kids are placed outside their parent's home. Despite families being separated and parental rights being terminated, relationships with biological parents should remain. Because adoption is a lifelong process, it is important that trust is built between parties when relationships are maintained.

This bill allows another level of protection for children to have access to their roots. Agreements allow people to have connection with their family,

If a safe space is provided for this connection to occur, the harm that children experience when they are separated from family will be decreased.

(Opposed) None.

**Persons Testifying:** Representative Tina Orwall, prime sponsor; Shaquita Bell; CS Wright; Gregory Luce, Adoptee Rights Law Center PLLC; Ashley Albert, Intuned Consulting LLC; Carla Arnold, Youthnet; and Tara Urs, King County Department of Public Defense.

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