

# HOUSE BILL REPORT

## HB 1912

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### As Reported by House Committee On:

Early Learning & Children's Services

Appropriations

**Title:** An act relating to improving court hearings in dependency proceedings.

**Brief Description:** Improving court hearings in dependency proceedings.

**Sponsors:** Representatives Kagi, Haler, Eickmeyer, Appleton, O'Brien, Roberts, Hinkle, Upthegrove, Pettigrew, Lantz, Darneille, Hunt, Moeller, Schual-Berke, Kenney, Wood and Ormsby.

### Brief History:

#### Committee Activity:

Early Learning & Children's Services: 2/16/07, 2/22/07 [DPS];

Appropriations: 3/1/07, 3/3/07 [DPS(ELCS)].

#### Brief Summary of Substitute Bill

- 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.

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

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Hinkle and Pettigrew.

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

#### Background:

Dependency and Termination of Parental Rights Background

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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.*

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 the dependency will be 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 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 court must hold the permanency planning hearing when a child has been in out-of-home care for nine months. The hearing must take place within 12 months of the current placement.

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. 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.

### 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.

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## **Summary of Substitute Bill:**

### **Substantive Changes**

The draft clarifies the purpose and responsibilities of shelter care, review and permanency hearings.

#### **Shelter Care Hearings**

The bill adds language to state the purpose of the shelter care hearing to be the determination of 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 bill adds to the reasons the child may not be placed with a relative or non-relative to prohibit the placement 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.

The bill clarifies several areas 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 bill adds language clarifying the permanency planning process and states that 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

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

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

The substitute bill removes the requirement that if a child is not in custody, the court must hold a hearing within seventy-two hours of receiving a request for a shelter care hearing from the child's parent, guardian, or custodian, excluding Saturdays, Sundays, and holidays.

The substitute makes several clarifications including:

- that the court's determination of whether an additional court order is needed is for the purpose of moving the case toward permanency rather than toward successful completion;
- the court in a shelter care hearing must not only inquire as to whether the Indian Child Welfare Act (Act) applies, but also whether there has been compliance with the Act; and
- the reference to "sustaining" is removed.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** 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) This bill came from recommendations in the extensive Court Improvement Project Report recommendation regarding improvement of the child welfare system and the court in particular. This bill was brought forward after understanding the complexity of these court hearings, the importance of having a clear understanding of what is the purpose of each hearing, the need to give courts clear direction of what questions should be asked. Many of the practices in the bill are consistent with best practices. So often the focus is on the Department of Social and Health Services in these cases. However, the courts play a very important role in these cases. This bill will help guide judges and enable them to keep the hearings moving as they should along the way. The bill requires the judges to inquire further into cases. It is particularly useful when there are rotations and new judges are on the bench to allow these judges to rely on the letter of the law. It puts a judicial highlight on cases in which a child is repeatedly returned home and then abused. In the Raphael Gomez case, all the orders were agreed orders.

(In support with concerns on original bill) The language regarding shelter care hearings is confusing when the child is not in state custody. Notice should be proper notice. There needs to be a requirement to comply with the Indian Child Welfare Act.

(Neutral) HB 1912 is all about achieving permanency for children as soon as possible. We have seen the results of a failure to address permanency in a meaningful way in both the Sirta Sotelo and Zy'Nyia Nobles cases.

**Persons Testifying:** (In support of original bill) Representative Kagi, prime sponsor; Bectona Crandall, M.S.W., Skagit County; Linda Katz, M.S.W., King County Superior Court, Court Appointed Special Advocacy; Janis Avery, Treehouse; Stella Hawkins Farias, Washington Families United; and Laurie Lippold, Children's Home Society of Washington.

(In support with concerns on original bill) Jana Heyd, Washington Defender's Association and Society of Counsel; and Joanne Moore and Patrick Dowd, Washington State Office of Public Defense.

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

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

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**HOUSE COMMITTEE ON APPROPRIATIONS**

**Majority Report:** The substitute bill by Committee on Early Learning & Children's Services be substituted therefor and the substitute bill do pass. 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, Buri, Chandler, Cody, Conway, Darneille, Dunn, Ericks, Fromhold, Grant, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Kretz, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist, P. Sullivan and Walsh.

**Staff:** Alex MacBain (786-7288).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Early Learning & Children's Services:**

No new changes were recommended.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The bill makes welcome changes to clarify and reorganize the statutes related to dependency proceedings. The bill makes sure that in statute the focus stays on the best interest of the children. The bill will improve dependency proceedings and outcomes for children. The bill clarifies the purpose of the required court hearings and ensures that child welfare cases move through the process as expeditiously and successfully as possible; this will be good for children and families.

(Opposed) None.

**Persons Testifying:** Martha Harden Cesar, Superior Court Judges' Association; and Laurie Lippold, Children's Home Society of Washington.

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