

# SENATE BILL REPORT

## SB 5460

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As Reported by Senate Committee On:  
Human Services & Corrections, February 19, 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:** Senators Darneille, Rivers, Harper, Mullet, Kohl-Welles, Kline, Billig and Hobbs.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/11/13, 2/19/13 [DPS-WM, w/oRec].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 5460 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden.

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

**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. The law provides for a shelter care hearing to 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 regarding voluntary services for the parent. These expectations must correlate with the

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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 other 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 has 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 has documented compelling reasons why filing a petition to terminate parental rights would not be in the child's best interest.

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

In considering a petition seeking termination of parental rights, a court must consider a parent's constraints related to current or prior incarceration when determining whether a parent has failed to complete court-ordered treatment.

A permanency plan adopted by DSHS must address the special circumstances of a parent who is incarcerated. DSHS must notify such a parent in writing of the parent's legal rights and obligations and of services available in the community that may aid in the development of a meaningful relationship between the parent and child, including services for reentry and family support.

DSHS may not file a discretionary petition to terminate a parent-child relationship of a parent who is incarcerated if the incarceration is the primary reason that the child is dependent, and there is no independent reason for termination. DSHS must gather information that would demonstrate whether or not an incarcerated parent has made efforts to maintain a meaningful role in the child's life.

Expanded criteria are provided for good cause exceptions to the requirement for DSHS to file a mandatory petition for parental rights if the child has been in out-of-home care for 15 of the last 22 months, when the parent is unavailable due to incarceration but the parent has maintained a meaningful role in the child's life. A detailed list of factors are provided to assist in this assessment.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute):** References to participation in a residential substance abuse program are removed from the bill.

**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 on Original Bill:** PRO: A great number of children are taken into permanency against the will of parents who are incarcerated. There are ways for incarcerated parents to maintain relationships with their children and have hope of reconciliation. Family reunification is linked to lower recidivism for the parents and less emotional problems for the children. Reunification is a critical issue for women in prison, over 80 percent of whom are mothers. The best interests of the child will remain paramount. This bill will save funds by avoiding unnecessary termination, creating permanency, and reducing the chance for intergenerational incarceration. Please give the courts authority to delay the termination of parental rights. I was reunified with my father after his release from prison and this was very fortunate for our whole family.

OTHER: We appreciate the intent of this bill, but have concerns about the language. We want to make sure the parent's legal rights do not supersede the child's rights and best interest.

**Persons Testifying:** PRO: Senator Darneille, prime sponsor; Lillian Hewko, Legal Voice; Nadine Miller, WA State Parent Advocacy Network; Shayne Rochester, veteran parent; Destiny Kensinger, citizen; Nadine Miller, WA State Parent Advocacy Network.

OTHER: David Del Villar Fox, DSHS Children's Administration.