

# HOUSE BILL ANALYSIS

## HB 1034

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**Title:** An act relating to the restoration of parents' rights.

**Brief Description:** Restoring parents' rights.

**Sponsors:** Representatives Mulliken, Backlund, McMorris, Koster, Johnson, Thompson, Boldt, Sheahan, Sherstad, Smith and Mielke.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Staff:** Edie Adams (786-7180).

**Background:**

#### CHEMICAL DEPENDENCY TREATMENT

A minor 13 years of age or older may consent to the furnishing of outpatient chemical dependency treatment without obtaining parental consent. The treatment provider must notify the parent of the minor's request for treatment if the minor signs a written release authorizing notice to the parent or if the provider determines that the minor lacks the capacity to make a rational choice concerning treatment. A minor may not be admitted into inpatient treatment without parental permission unless the minor is a child in need of services. A parent is not liable for the costs of treatment unless the parent consented to the treatment.

A minor may apply for voluntary treatment directly to an approved treatment program in some circumstances. A minor who is 14 years of age or older and who is voluntarily admitted into an inpatient treatment program must be discharged upon the minor's request. A parent of a minor less than 14 years of age must make the request for discharge from a voluntary inpatient treatment program.

A parent may admit a minor child under the age of 18 years old for inpatient treatment without the consent of the child.

#### MENTAL HEALTH TREATMENT

A minor 13 years of age or older may consent to outpatient mental health treatment without the prior written consent of the child's parent or legal guardian. Parental authorization is required for a minor under age 13.

A minor of any age may be voluntarily admitted for inpatient mental health treatment upon application of the minor's parent without the minor's consent if in the judgement of a mental health professional there is reason to believe the minor is in need of inpatient treatment.

A minor 13 years of age or older may admit himself or herself for inpatient treatment without parental consent if the mental health professional agrees to the admittance and provided that notice of the minor's admission is given to the minor's parent within 24 hours. The minor must be released to the parent at the parent's request unless the facility files a petition with the court to allow the minor to remain in inpatient treatment. The parent is entitled to be represented at the hearing. The facility must prove that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

A minor 13 years of age or older who is voluntarily admitted may give written notice of intent to leave a treatment facility at any time. The minor must be released within 24 hours unless the facility or a parent files a petition for detention. Any minor under the age of 13 must be discharged upon the written request of the minor's parent.

## **RUNAWAYS**

A person who provides shelter to a minor without legal authorization and who knows at the time that the minor is away from home without permission must promptly report (within 8 hours) the location of the child to the parent, law enforcement, or the Department of Social & Health Services (DSHS). The report may be made by telephone. Upon receiving a report, the DSHS must make a good faith attempt to notify the parent that a report has been received and offer services designed to reunify the family.

## **SUSPENSION OR REVOCATION OF A MINOR'S DRIVER'S LICENSE**

The Department of Licensing (DOL) may or must suspend, revoke, restrict, or condition a juvenile's driver's license for a variety of offenses. If the DOL proposes to suspend, revoke, restrict, or condition a minor's driving privilege, the DOL may require parental attendance at the hearing. However, the DOL is not required to notify the parent or guardian of a minor when the DOL suspends, revokes, restricts, or conditions the minor's driving privilege.

## **NOTICE OF A JUVENILE’S ARREST, DETENTION, OR SANCTION/ PARTICIPATION IN DIVERSION AGREEMENTS**

When a juvenile is arrested and detained for an alleged criminal offense, the juvenile is entitled to a detention hearing. If the parents are available, the court must consult with the parents regarding continued detention of the juvenile.

If the prosecutor files a charge against a juvenile, the court clerk must issue a summons to the juvenile and the parents commanding them to appear at the next hearing.

Diversion is a disposition option available to some juvenile offenders that allows the juvenile offender to be diverted— from formal prosecution procedures and sanctions of the juvenile court to a community diversion unit.— A diversion agreement is a contract between a juvenile offender and the diversion unit. The diversion agreement may impose sanctions of community service, restitution, counseling, or educational/informational sessions. The diversion unit must notify and consult with the parents to determine how much restitution the juvenile can pay and how many hours of community service the juvenile can perform.

### **PARENT LIABILITY FOR DAMAGES CAUSED BY MINOR CHILD**

Statutory and common law impose liability upon a parent for damages caused by the parent’s minor child in certain circumstances.

#### **Statutory law:**

- A parent is liable for up to \$5,000 in damages if the parent’s minor child willfully and maliciously damages property or inflicts bodily injury. The parent is only liable if the child resides with the parent.
- A parent is liable for losses and willful damage to school property caused by the parent’s minor child.
- A parent of a minor child who shoplifts or receives food or lodging without paying is liable for up to \$500 towards the value of the stolen goods, a penalty of up to \$200, and reasonable attorneys’ fees and court costs.

#### **Common law:**

- **Negligent Supervision Doctrine:** A parent may be liable for a child’s intentional tort if: (1) the child has a dangerous proclivity; (2) the parent knows or should have known of the child’s dangerous proclivity; and (3) the parent fails to exercise reasonable care in controlling that proclivity.

- **Negligent Entrustment Doctrine:** A parent may be liable for the willful misconduct of a child if the parent negligently entrusted the child to a person unable to adequately supervise the child. In addition, a parent may be liable for negligently entrusting the child with a dangerous instrumentality, such as a gun or a motor vehicle, which the child uses to inflict injury or cause property damage.
- **Family Purpose Doctrine:** A parent may be liable when a child operates the parent's motor vehicle and causes property damage or personal injury if the parent allowed the child to operate the vehicle, the operation was for a family purpose, and the operation of the vehicle was within a permissible use.
- **Contractual Obligations:** A parent is generally not liable at common law for the contractual obligations of a child. A parent is required to reimburse a person who provides food or shelter to a child.

Criminal statutes do not require a parent of a minor child who commits a criminal offense to pay for the child's crime or restitution to the crime victim.

## **SCHOOL INSTRUCTIONAL MATERIALS/SURVEYS, TESTS, AND QUESTIONNAIRES**

School districts are required to adopt policies ensuring that a parent has access to a child's classroom and school sponsored activities to allow the parent to observe class procedure, teaching material, and class conduct. The parental access must not disrupt the classroom procedure or learning activity.

AIDS prevention education must be taught in the public schools at least once each year beginning no later than the fifth grade. The AIDS education program is developed by each school district in consultation with teachers, administrators, parents, health care organizations, and other community members. The school district must conduct a presentation of the AIDS education program curriculum and materials for parents during weekend or evening hours at least one month prior to teaching the course. The district must notify parents of the presentation and that the material will be available for inspection. A student may not participate in the AIDS education program if the student's parent attended a presentation of the program and objects in writing to the student's participation.

Rules adopted by the State Board of Education provide that each school district may decide whether or not to present a program on sex education or human sexuality. If a district decides to offer a sex education or human sexuality program, the district must involve parents and community groups in developing the program contents. A parent or legal guardian who does not want his or her child to participate in the sex education or human sexuality instruction may have the child excused by filing a written request with the school district.

Other statutes direct or allow schools to provide information to students on certain topics, including: substance abuse; good health, including methods to prevent exposure to and transmission of sexually transmitted diseases; violence prevention; conflict resolution and mediation; and life skills tests.

## **STUDENT COUNSELING SERVICES**

Schools may provide counseling services to students under several statutory provisions:

- Counseling may be provided to students under the learning assistance grant program by instructional support staff, such as school counselors, school psychologists, school nurses, and school social workers.
- Drug and alcohol abuse counseling may be provided to students under the substance abuse awareness grant program. Substance abuse intervention under the program may also include assessment and referral for treatment, referral to peer support groups, aftercare, and development and supervision of student mentor programs.
- A student may receive crisis counseling and reporting as part of a child abuse and neglect prevention program. The program is voluntary. A parent must be given notice of the program and may refuse to have his or her child participate in the program.

Last session the Legislature passed a requirement that when a school district employee contacts a chemical dependency or mental health inpatient treatment provider for the purpose of referring a student to inpatient treatment, the school district employee must notify the parent within 48 hours.

## **HEALTH CARE**

Generally, only a parent may give effective consent to treatment of a minor child under common law. Statutory law specifies that a parent is authorized to give informed consent for a minor under the age of 18. Various exceptions to this rule exist in case law and in statute. In some cases, the minor must also consent to treatment. In others, the minor may obtain treatment without parental consent. In addition, the state may compel treatment without the consent of the minor or the parent (immunizations, school screening for sight and deafness or scoliosis, newborn testing, communicable diseases, parental neglect).

## **INVASIVE MEDICAL PROCEDURES**

Parental consent is generally required before a minor may obtain medical care.

A minor does not have to obtain a parent's consent to obtain an abortion. In State v. Koome, 84 Wn.2d 901 (1975), the Washington Supreme Court held that a requirement of parental consent for a minor to obtain an abortion is unconstitutional. The court explicitly noted the possibility that parental notice might be permissible. In 1991, Washington voters approved Initiative 120, which provides that the state may not interfere with a woman's fundamental right to choose or refuse to have an abortion. The initiative prohibits interference with a woman's right to choose prior to viability.— Regulation of abortion is allowed only if the regulation is: (1) medically necessary to protect the life or health of the woman; (2) consistent with established medical practice; and (3) the least restrictive alternative.

In Planned Parenthood v. Casey, 112 S. Ct. 2791 (1992), the United States Supreme Court upheld a state statute that required, among other things, parental consent for an unemancipated minor to have an abortion. Under Casey, the constitutionality of a state law regulating abortion is judged by whether or not the law is an undue burden— on a woman's right. State regulation of abortion may not have a primary purpose of placing a substantial obstacle in the way of a woman seeking an abortion.

## **SEXUALLY TRANSMITTED DISEASE/HIV TESTS AND TREATMENT**

No person may disclose or be compelled to disclose the identity of any person tested or treated for the human immunodeficiency virus (HIV) or the results of an HIV test. In addition no person may disclose a positive test result or treatment for a sexually transmitted disease. There is an exception to this general rule that allows disclosure of the information to the person tested or that person's legal representative, or to a person the legal representative designates to receive the information. A legal representative and a designee of a legal representative are not entitled to that information if the person tested is a competent minor over the age of 14.

A minor 14 years of age or older may consent to the furnishing of hospital, medical, or surgical care related to the diagnosis and treatment of a sexually transmitted disease without the consent of the minor's parent or guardian. A parent who does not consent to the treatment is not responsible for the cost of the treatment.

### **Summary of Bill:**

## **CHEMICAL DEPENDENCY TREATMENT**

A minor under the age of 18 may not receive inpatient or outpatient treatment for drug or alcohol abuse without prior written consent of the minor's parent or legal guardian. If the parent or legal guardian is unable or unavailable to give consent, the minor may petition the superior court for a waiver of the consent requirement.

### **MENTAL HEALTH TREATMENT**

A minor under the age of 18 may not receive outpatient mental health treatment without the consent of the minor's parent or legal guardian. If the parent or legal guardian is unable or unavailable to give consent, the minor may petition the superior court for a waiver of the consent requirement.

The ability of a minor 13 years of age or older to voluntarily admit himself or herself to inpatient mental health treatment without parental consent is removed. A minor of any age must be discharged immediately upon request by the parent or legal guardian. The ability of a voluntarily admitted minor 13 years of age or older to give notice of intent to leave the treatment facility is removed.

### **RUNAWAYS**

Current law is restated with several modifications in a new section. The modifications are: (1) removes the DSHS as an entity the person may notify; (2) removes the requirement that the DSHS must notify a parent upon receiving a report of a runaway child and provide family reunification services; and (3) provides that a person who fails to report a runaway to the parent or law enforcement is guilty of a misdemeanor.

**NOTE:** These modifications are made in a new section without amending current law. Technically, it is advisable to amend or repeal current law.

### **SUSPENSION OR REVOCATION OF A MINOR'S DRIVER'S LICENSE**

The Department of Licensing must provide written notice to the parent or legal guardian of a juvenile whose driver's license is suspended or revoked.

### **NOTICE OF A JUVENILE'S ARREST, DETENTION, OR SANCTION/ PARTICIPATION IN DIVERSION AGREEMENTS**

The state and its political subdivisions are required to provide written notice to a parent or legal guardian of a minor or dependent child if the minor or dependent child is arrested, detained, or penalized.

A parent or legal guardian of a juvenile who is alleged or found to have committed an offense, traffic infraction, or violation is subject to the jurisdiction of the court for purposes of participating in a diversion agreement for the juvenile.

### **PARENT LIABILITY FOR DAMAGES CAUSED BY MINOR CHILD**

A parent or legal guardian is liable for monetary damages or penalties awarded by a court in any civil or criminal matter that are incurred by or result from the conduct of an unemancipated minor or dependent child. Liability includes actual damages and reasonable attorneys' fees and costs unless restricted by law.

**NOTE:** Technically, it is advisable to amend or repeal current statutes regarding parental liability and expressly overrule common law.

### **SCHOOL INSTRUCTIONAL MATERIALS/SURVEYS, TESTS, AND QUESTIONNAIRES**

A public school must make available all classroom instructional materials to a parent or legal guardian of a student upon request. Materials physically located in the school must be made available during school hours within five working days of the request. Materials located within the district must be made available within 14 working days of the request. Employees may not encourage a student to withhold materials or other information concerning classroom activities, tests, discussions, or programs from his or her parents.

A student may not attend or participate in a class or program concerning suicide, euthanasia, or human sexuality, including sex education, sexually transmitted diseases, contraception, or sexual orientation, unless the school has a signed confirmation from the parent indicating that the parent received notice of the class contents and approves of his or her child's participation in the class. The school need only notify the parent once per year of the planned classes. **NOTE:** Technically, it is advisable to amend current law covering these issues.

A public school must provide advance written notice to the parent or legal guardian of a student before the school may conduct a student test, questionnaire, survey, analysis, or evaluation that requests disclosure of information about the student's or parents' personal religious or political affiliations, psychological problems, sexual behavior or attitudes, critical appraisals of family members, or privileged information arising out of confidential relationships. The notice to the parent or legal guardian



must provide complete disclosure of the subject matter and nature of the test, survey, or questionnaire.

A student may not participate in a test, survey, evaluation, or questionnaire without the prior written consent of the student's parent or legal guardian. All materials used in conducting the test, survey, evaluation, or questionnaire must be available for inspection by the parent or legal guardian at least 10 days before their administration.

## **STUDENT COUNSELING SERVICES**

School personnel may not counsel a student regarding social, emotional, mental health, or personal issues without prior written consent from the student's parent or legal guardian, except when: (1) the student is engaging in physically or verbally violent actions against himself or herself or against others; or (2) the student shows visible signs of physical or sexual abuse. The school must immediately notify the parent or guardian when counseling services have been provided to a violent student. The school may not continue the counseling services without the parent's written consent.

A school employee may not engage in a counseling technique that is beyond the employee's scope of certification.

All records regarding counseling services provided to a student must be made available to the student's parent or guardian upon demand. The records may not be released to anyone other than the parent, the student if over age 18, or an emancipated minor student, unless the parent consents to release of the records to another person. The records must be delivered to the parent or guardian when the student graduates or transfers, and the school may not retain a copy of the records.

**NOTE:** Technically, it is advisable to amend current law regarding the provision of counseling services.

## **HEALTH CARE**

Medical care may not be provided to an unemancipated minor unless the health care provider obtains prior signed consent of the minor's parent or legal guardian. An exception to the parental consent requirement is created for a medical emergency to avert the death of the minor or a serious risk of substantial and irreversible impairment of a major bodily function.

A parent or legal guardian of an unemancipated minor has the right to be notified and present when the minor is receiving health care, unless there is a court order prohibiting the parent or guardian from contact with the child. In addition, a physician may exclude a parent or guardian if the presence of the parent or guardian

threatens the success of a medical procedure, treatment, diagnosis, or examination that involves the physical touching of the minor.

Health care– means any mental or physical health service, including medical care. Medical care– means any medical procedure, treatment, diagnosis, or examination that involves the physical touching of the child or any consultation performed by a licensed health care provider. Physician– means a person licensed to practice medicine or osteopathy.

## **INVASIVE MEDICAL PROCEDURES**

An invasive medical procedure may not be performed on a minor unless the physician obtains the signed consent of the minor’s parent or legal guardian. An exception to the consent requirement is provided in cases of emergency where immediate performance of the invasive medical procedure is needed to avert the minor’s death or the serious risk of substantial and irreversible impairment of a major bodily function.

If the procedure is an abortion, a minor child may petition the superior court for a waiver of the parental consent requirement. The court must appoint a guardian ad litem for the minor, inform the minor that she has a right to court-appointed counsel, and provide counsel to the minor upon request. The hearing must be held within 48 hours of the filing of the petition, and all aspects of the proceeding must be confidential.

The court may waive the requirement for parental consent for an abortion if it finds by clear and convincing evidence that the minor is sufficiently mature or able to decide whether to have an abortion, or if the court finds that there is evidence of a pattern of physical or sexual abuse by a parent or guardian, or that notification of the parent or guardian is not in the best interest of the minor.

## **SEXUALLY TRANSMITTED DISEASE/HIV TESTS AND TREATMENT**

Test results and treatment for HIV or another sexually transmitted disease may be disclosed to the legal representative of a minor under the age of 18, or to a person the legal representative designates to receive the information.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

Office of Program Research