

HOUSE BILL REPORT

ESB 5379

As Reported by House Committee On:
Children & Family Services

Title: An act relating to dependency petition hearings.

Brief Description: Revising rules for public access to dependency hearings.

Sponsors: Senators Stevens, Hargrove, Carlson, Regala, Parlette, McAuliffe and Winsley.

Brief History:

Committee Activity:

Children & Family Services: 3/31/03, 4/2/03 [DPA].

Brief Summary of Engrossed Bill
(As Amended by House Committee)

- Requires that all dependency and termination of parental rights proceedings be open to the public unless the court determines the hearing should be closed based on the interests of the child.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Kagi, Chair; Darneille, Vice Chair; Boldt, Ranking Minority Member; Bailey, Dickerson, Miloscia, Pettigrew and Shabro.

Staff: Sonja Hallum (786-7092).

Background:

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the Department of Social and Health Services (Department) may investigate the allegations and, if warranted, file a dependency petition with the court (dependency). If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

The court may order the parent to engage in services to correct the parental deficiencies which lead to the finding of dependency. If the parent fails to correct the parental

deficiencies, the Department may file a petition requesting termination of parental rights (termination). If the court finds the state has proven the statutory requirements, the court may terminate the parent's rights to the child. The parent then has no further rights to the child than would any other non-related person.

Dependency and termination hearings have traditionally been closed to the public. States have been increasingly moving towards opening these hearings to the public. The states which have opted to open their dependency and termination proceedings to the public vary on the extent of the openness of the hearings and the access allowed to the documents from the hearings.

There is no federal law specifically requiring that dependency or termination proceedings be either open or closed to the public. There are, however, federal provisions which provide funding to the states for the services such as foster care, social security, and other social services. These federal funding provisions require states to follow certain conditions in order to obtain the funding. One of the requirements is the maintenance of confidentiality regarding issues related to the funding provisions. Some of these issues may be the same as those addressed in dependency or termination hearings.

Summary of Amended Bill:

The public will not be excluded from any dependency and termination hearings unless the judge finds that excluding the public is in the best interests of the child. Either parent may request the hearing be closed to the public and the court may exclude the public if it is in the best interests of the child. The dependency and termination hearings may be heard in conjunction with other business of the court.

If the judge finds it is in the best interest of the child to close the hearing to the public, the following people may attend the hearings:

- a. The child's relatives and foster parents may attend the hearing unless the judge finds it is not in the best interest of the child.
- b. Any person may attend the hearing at the request of the parent unless the judge finds it is not in the best interest of the child.

The court may seal the court record if the judge determines it is in the best interests of the child and any electronic recording of the proceedings may not be released or opened for public inspection.

Amended Bill Compared to Original Bill:

The original bill required that the dependency and termination hearings be open to the public unless the court finds that there is reasonable cause to believe that the health,

safety, or welfare of the child would be jeopardized by conducting a public hearing. The amended bill requires the hearing to be open to the public unless the judge determines that it is in the best interest of the child to close the hearing.

The original bill stated that both parents may request that the court exclude the public, subject to the court's discretion. The bill as amended allows either parent to request the hearing to be closed and the judge may exclude the public if it is in the best interest of the child.

Under the original bill, if the hearing was closed to the public no one could attend the hearing other than the court personnel and the parties. The amended bill allows additional persons to attend the closed hearings.

The amended bill states that the court may seal the court record if the judge determines it is in the best interest of the child.

The amended bill also adds a section that prohibits the release of any electronic record of the proceedings to the public.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (Original bill) It is important to allow parents to request that the court close the hearings. The standards of "health, safety, or welfare" and "best interests of the child" will be interpreted the same. It is good public policy to open the hearings. It is good to have the child's relatives and foster parents be allowed to stay in the hearing. About half the states in this country have moved toward some sort of openness in these types of hearings. In these states the concerns people are raising do not seem to have played out. The public scrutiny will allow more accountability in the proceedings. The closed nature of the proceedings is not good for children. Washington should join with the other states that have opened their hearings. The record of the hearings may be more important than the hearing itself.

Testimony Against: (Original bill) The bill will have significant impact. There is a difference in the language between the Senate bill and the House bill. A judge will see the standard of "health, safety, or welfare" as a higher standard than "best interest of the child." Supportive family members should be allowed to attend the hearings; however, sometimes there is an abusive family member and the child is too afraid to speak up in front of the member. Often children in this situation are too afraid to express their fears

and will not express that they do not want a person in the courtroom. There is some possibility the federal government might seek sanctions from the state for a conflict with the federal provisions. There is ambiguity in the Senate bill. The House bill is drafted more clearly.

Testified: (In support) Senator Stevens, prime sponsor; Laurie Lippold, Children's Home Society; and Rowland Thompson, Allied Daily Newspapers of Washington.

(Against) Kimberly Ambrose, University of Washington Child Advocacy Clinic and Washington Defenders Association.

(Against with concerns) Julie Walters, Washington State Association of Court Appointed Special Attorneys.