

# HOUSE BILL REPORT

## HB 1624

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**As Reported by House Committee On:**  
Early Learning & Children's Services

**Title:** An act relating to child welfare.

**Brief Description:** Reinstating parental rights for adolescents who are in state care and have not been adopted and providing immunity for department of social and health services representatives.

**Sponsors:** Representatives Kagi, Walsh, Appleton, Roberts and Haigh.

**Brief History:**

**Committee Activity:**

Early Learning & Children's Services: 2/9/07, 2/15/07 [DPS].

### Brief Summary of Substitute Bill

- Allows a dependent child over the age of 12 to petition to have the parental rights of his or her parent reinstated and adds an immunity clause for Department of Social and Health Services Children's Administration workers.

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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 7 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Appleton, Hinkle, Pettigrew and Roberts.

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

#### **Background:**

##### Dependency Background

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 the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

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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.*

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. Federal law requires that after a child has been in foster care for 15 of the past 22 months, the state must file a petition to terminate parental rights unless the child is being cared for by relatives, there is a compelling reason why termination would not be in the best interest of the child, or the state has failed to offer the necessary services to the parent.

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.

### Governmental Liability

At common law everyone is generally required to use reasonable care when his or her actions create a foreseeable risk of harm to others. At common law and under the State Constitution, government may generally remain immune from tort law based on negligence. The Legislature, however, has waived this governmental immunity and provided that generally, government is liable for its tortious conduct "to the same extent as if it were a private person or corporation."

Despite this general legislative policy of holding government liable to the same extent as private persons, the Legislature and the courts have both imposed limitations on government liability. Many of these limitations have been created in recognition that some government functions, at least, are unlike anything a private person or corporation does or could do. The Legislature, for instance, has statutorily provided some measure of civil immunity for specific acts ranging from the acts of police dog handlers to the discretionary acts of elected and appointed government officials.

The courts have also provided for governmental immunity in cases where the government is engaged in a governmental function not provided by the private sector, under what is called the "public duty doctrine." Governmental functions are those that are for the benefit of the public generally and include regulatory programs, police and fire protection, correctional programs, and social welfare programs. The courts have also created several exceptions to the public duty doctrine. Under current statutes and common law doctrines, government has been held responsible for its negligent acts in some situations involving harm done by or to persons who are under government supervision or who are receiving government assistance or protection.

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

A dependent child who is at least 12 years old may petition the court to reinstate the previously terminated parental rights of his or her parent. The child will be provided counsel prior to the filing of the petition. In order to file the petition, three years must have passed since the parental rights were terminated, the child must not have been adopted, and the child's permanent plan must be adoption.

Once the petition is filed, notice will be given to the parents, Department, child's attorney, foster parent, and Tribe. The parents are entitled to counsel if they appear in court and are indigent. The court will hold a hearing and will conditionally grant the petition reinstating parental rights if the court finds the following by clear and convincing evidence:

- (1) the parental deficiencies which led to the termination of parental rights have been addressed to a degree that assures the court that the reinstatement of parental rights will not present a risk to the child's health, welfare, or safety;
- (2) the parent is currently able to care for the child such that placement with the parent will not present a risk to the child's health, welfare, or safety;
- (3) the child is no longer likely to be adopted; and
- (4) that reinstatement of parental rights is in the child's best interest.

If the court conditionally reinstates the parental rights, the child will be placed in the custody of the parent. The case will continue for at least one year and the Department will develop a permanency plan for the child reflecting the plan for reunification. The Department must provide transition services to the family. The court must conduct at least two review hearings during the year to determine the status and well-being of the child.

If the child is successfully placed with the parent for a period of one year, the court order reinstating parental rights will remain in effect. However, if the child must be removed from the parent due to abuse or neglect allegations, the court must dismiss the petition for reinstatement of parental rights.

The reinstatement of parental rights is a separate action from the termination of parental rights and does not vacate the termination of parental rights order that was previously entered. The order reinstates the parental rights to the child.

An immunity clause is added indicating that the state is not liable when a Children's Administration employee of the Department or contractor who is involved in the delivery of child welfare services or child protective services selects one of two or more alternative courses of action even though the course of action chosen results in a poor outcome if the person exercised reasonable care and skill in arriving at the judgment to follow the particular course of action.

**Substitute Bill Compared to Original Bill:**

The substitute bill changes the following provisions relating to the filing of the petition:

- The child need only be a dependent to be permitted to file the petition, rather than a dependent who is also in state care.
- The statutory reference to termination of parental rights by the court is removed to allow parental rights to be reinstated regardless of whether the termination was initially accomplished through a disputed process in which the court terminates the parental rights or if the parent relinquishes his or her rights.
- The child's permanent plan must be adoption.
- The child's signature is not required if the court finds there is good cause for the child not to sign the petition.

The substitute requires the court also find that the parent is currently able to care for the child before the court may conditionally grant the petition.

The substitute changes the process for granting the petition to require the petition to be granted conditionally for one year.

The substitute requires notice of the hearing to be given to the foster parent, an attorney to be appointed to the parent at the hearing and for the child before filing the petition, and clarifies the reinstatement of parental rights is a separate action from the termination proceeding.

The immunity provision is narrowed to only apply to Children's Administration.

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**Appropriation:** None.

**Fiscal Note:** Available. Fiscal note for substitute bill requested on February 15, 2007.

**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) There have been some circumstances where children have been placed in care and have not thrived. We have seen children who have no permanency and no hope for adoption. There are also children who parent's parental rights were terminated, yet they continue to run away to be with them and the parents have moved on and can now care for the children. In some circumstances it may be appropriate for the child to return to them. The Attorney General is concerned that this opens up the liability for the state. That is why

the immunity clause is in the bill. Children who want to go to a parent who wants them home, and can take care of them, should have a legal process to allow that to happen. The bill provides another avenue in select cases for the approximately 250 children who are legally free and age out of the foster care system each year. The attorney needs to be provided sooner to help the child file the petition. Parents should be appointed counsel.

(Neutral) We support giving youth who are at least 12 years or older the right to petition. This bill gives youth a better voice in their lives and is critical to the system. This is where we fail youth. The age should not be limited to children over the age of 12. There are kids much younger who deserve to go back home. The dependency does not need to continue for another year. The Department needs to get out of the lives of these families. The immunity is reasonable, but should not cover damages the children receive while in foster care.

(With concerns on original bill) We have concerns with some of the language.

(Opposed) None.

**Persons Testifying:** (In support of original bill) Dave Wood, Elaine Wolcott-Ehrhart, and Bianca L. Tillett, Washington Families United; Patrick Dowd, Office of Public Defense; and Laurie Lippold, Children's Home Society of Washington.

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

(With concerns on original bill) Ross Dawson, Children's Administration.

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