
**Early Learning & Children's
Services Committee**

ESSB 5452

Brief Description: Providing for reunification after termination of parental rights.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senator Rockefeller).

Brief Summary of Engrossed Substitute Bill

- Allows a dependent child to petition to have the parental rights of his or her parent reinstated.

Hearing Date: 3/29/07

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.

Within 60 days of assuming responsibility for the child, the Department of Social and Health Services (DSHS) 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.

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 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, 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. 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.

Summary of Bill:

A dependent child may petition the court to reinstate the previously terminated parental rights of his or her parent. In order to file the petition, the following conditions must be met:

- the child must be a dependent;
- the parents' rights to the child were terminated;
- the permanent plan for the child has not been achieved within three years of the entry of the order for termination of parental rights; and
- the petition must be signed by the child.

If three years has not passed since the order terminating parental rights was entered, the child may petition for reinstatement of parental rights if child and the DSHS or supervising agency stipulate that the child is not likely to achieve his or her permanent plan;

A child seeking to petition for reinstatement of parental rights will be provided counsel at no cost to the child.

Once the petition is filed, the court will give notice to the DSHS, child and the child's attorney and will order DSHS to give notice of the hearing to the former parents and foster parents or caregiver, and the child's Tribe if applicable.

The court will hold an initial hearing to determine the parent's apparent fitness and interest in reinstating parental rights. If it appears to be in the best interest of the child to reinstate parental rights, an additional hearing will be held.

At the second hearing, the court will reinstate parental rights if the court finds the following by clear and convincing evidence:

- the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan; and
- reinstatement of parental rights is in the best interest of the child.

In considering whether reinstatement of parental rights is in the best interests of the child, the court may consider whether the parent is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings, the age and maturity of the child, the child's ability to express his or her preferences, whether reinstatement of parental rights will present a risk to the child's health, welfare or safety, and any other material changes that may warrant the granting of the petition.

The court will grant the petition and dismiss the dependency if the court finds that returning the child to the legal custody of the parents is in the best interests of the child and will not present a risk to the child's health, welfare, or safety.

If the court grants the petition and dismisses the dependency, the court must order the DSHS to provide services to the necessary to ensure the child's health, welfare, and safety, including a home study, as the child transitions back into the parent's legal custody.

If parental rights are reinstated, a parent is not liable for any child support owed to the DSHS for the time from the date of termination of parental rights to the date parental rights were reinstated.

The state, the DSHS and its employees are not liable for civil damages from any act or omission in the provision of services, unless the act or omission constitutes gross negligence.

Appropriation: None.

Fiscal Note: Not Requested.

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