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

ESSB 6792

Brief Description: Concerning dependency matters.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove and Stevens).

Brief Summary of Engrossed Substitute Bill

- Establishes a standard of proof and makes certain procedural changes and clarifications for petitions to reinstate parental rights.
- Creates limited immunity from liability for services provided in reinstatement of parental rights cases.
- Adds references in shelter care hearing provisions and child abuse and neglect proceedings relating to child safety and restraining orders entered against an alleged abuser.
- Establishes a schedule of monthly visits for children in foster care and requires accredited supervising agencies to conduct visits for the cases they supervise.
- Clarifies and changes provisions relating to street youth, HOPE centers, and responsible living skills programs.

Hearing Date: 2/21/08

Staff: Sydney Forrester (786-7120).

Background:

Reinstatement of Parental Rights

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.

The Legislature in 2007 enacted Engrossed Substitute House Bill 1624 allowing a dependent child to petition the court to reinstate the previously terminated parental rights of his or her parent. In order to file the petition, three years must have passed since the parental rights were terminated, or for cases that are appealed, three years must have passed since exhaustion of any right to appeal the termination order; the child must not have achieved permanency; and the child must be over the age of 12 years, unless there is good cause to permit a child under age 12 to file the petition. The child must be provided counsel prior to the filing of the petition.

After a petition is filed, the court must hold a threshold hearing to determine whether the parent has an interest in reinstating parental rights and whether the parent appears fit to care for the child. If the court finds, based on the threshold hearing, that it appears the best interests of the child may be served by reinstatement of parental rights, the court will order a hearing on the merits of the petition.

If the court finds, based on the evidence presented at the hearing on the merits, that reinstatement of parental rights is in the child's best interests, the court must conditionally grant the petition and continue the case for six months. During the six-month period, the child must be placed in the custody of the parent, and the Department of Social and Health Services (DSHS) must develop a permanency plan for reunification and provide transition services to the family. If the child is successfully placed with the parent for six months, the order reinstating parental rights remains in effect and the dependency is dismissed.

The standard of proof for the court's findings in the hearing on the merits of the petition is clear and convincing evidence. For the court's findings in the threshold hearing, no standard of proof was specified in the legislation enacted in 2007. In addition, although the statute contemplates a child under age 12 filing a petition with good cause shown, no explicit process is provided for the court to recognize and hear such a petition. Similarly, although the statute specifies that the order reinstating parental rights becomes permanent following a successful six-month placement with the parent, there is no requirement for a final order and little clarity regarding the full effect of an order reinstating parental rights. Finally, there is no immunity from liability for negligence when the DSHS is providing services under the reinstatement of parental right chapter.

Shelter Care Hearings

Shelter care hearings are conducted within 72 hours of the DSHS or law enforcement taking physical custody of a child due to allegations of abuse or neglect. During the shelter care hearing, the court must determine whether the child can safely be returned home while the dependency is being adjudicated. In making this determination, one of the issues the court must analyze is whether an order expelling the allegedly abusive parent from the home will allow the child to safely remain in the home, if returned.

The court must release the child to the parent or guardian unless the court finds there is reasonable cause to believe:

- (1) reasonable efforts were made to prevent or eliminate the need for removal of the child and there is no parent or guardian to provide supervision and care for the child;
- (2) release of the child would present a serious threat of substantial harm to the child; or
- (3) the parent or guardian has been charged with a custodial interference.

Monitoring and Supervision of Child Placements

State Law: State law requires the DSHS to monitor out-of-home placements on a timely and routine basis to assure the safety, well-being, and quality of care being provided to children in foster care is consistent with legislative intent. Policies by the DSHS direct caseworkers to conduct monthly visits with children in out-of-home care and in-home dependencies. Accredited child placing agencies (CPA) with responsibility for supervising a child's placement also are required to conduct monthly visits as a condition of accreditation.

GMAP: The Governor, through the Government Measurement, Accountability, and Performance (GMAP) process, has prioritized monthly visits for children in in-home dependencies, with a projected phase-in for monthly visits to all children in out-of-home placements.

Braam: The 2006 Braam Implementation Plan (Plan) developed jointly by the Braam Oversight Panel, the DSHS, and attorneys for the Braam plaintiff class, the percentage of children in out-of-home care who receive a private and individual face-to-face visit from their caseworker at least every 30 days is required to increase significantly by region and statewide. The Plan calls for incremental improvements to baseline data such that by the 2011 monitoring report, there will have been a 95 percent increase from the baseline.

Federal Law: Federal statutes require the DSHS to conduct health and safety checks with children in out-of-home care at least every 90 days. A recent amendment to federal law requires states adopt a plan by June 1, 2008, to ensure that, by October 1, 2011, at least 90 percent of children in foster care are visited by their caseworker at least monthly.

HOPE Centers and Responsible Living Skills Programs

HOPE Centers are licensed by the DSHS and provide temporary residential and other services to street youth. A "street youth" is defined as a person under age 18 who lives outdoors or in another unsafe location not intended for occupancy and who is not residing with his or her parent or at his or her legally authorized residence. Street youth may remain in a HOPE center for 30 days while services are arranged and a placement is coordinated.

Responsible Living Skills Programs (RLSP) are provided by agencies licensed by the DSHS to provide transitional living services that emphasize the achievement of independent living skills competency. These programs may be offered in a group home setting or in a typical foster home setting. To be eligible for placement in an RLSP, the minor must be dependent and must have lived in a HOPE Center or in a secure crisis residential center.

Summary of Bill:

Reinstatement of Parental Rights

The required time lapse following a termination order prior to petitioning for reinstatement is three years, regardless of whether the order is appealed. The court may hear a petition filed by a child younger than 12 upon the child's motion or upon the court's own motion. The standard of proof by which the court will make its findings in a threshold hearing on a petition to reinstate parental rights is *a preponderance of the evidence*. If, after a hearing on the merits, the court grants the petition, a temporary order reinstating parental rights must be entered. If the child has been placed with the parent for six months and the placement has been successful, the court must hold a final hearing and enter a permanent order dismissing the dependency restoring the parent's parental rights, powers, privileges, immunities, duties, and obligations, and dismissing the dependency.

The state, the DSHS, and its employees are not liable for civil damages resulting from acts or omissions under the parental reinstatement section of the law unless the act or omission constituted gross negligence.

Shelter Care Hearings

References are added regarding restraining orders for child abuse and neglect cases and language is clarified regarding restraining orders being entered against any allegedly abusive household member during investigation of cases and after a shelter care hearing. At the shelter care hearing, uncertainty by a parent or potential placement caregiver that the alleged abuser has in fact abused the child cannot be the sole basis upon which the child is placed in out-of-home care, nor can it be the sole basis upon which to preclude placement with either a relative or a suitable person so long as the potential caregiver is willing to and does comply with the restraining order.

Monitoring and Supervision of Child Placements

The DSHS must monitor out-of-home placements and conduct face-to-face meetings with children in out-of-home care and their caregivers on a monthly basis. Within existing funds, when a child's case is managed by an accredited CPA, the CPA must conduct the monthly face-to-face meetings and provide the DSHS with a written report of the visit within 15 days of the meeting. In these cases, the department is required to visit the child and the child's caregiver on a quarterly basis.

HOPE Centers and Responsible Living Skills Programs

Eligibility for placement in a HOPE center is expanded to include minors who, without placement in a HOPE center, will continue to participate in increasingly risky behavior. Minors also may self-refer to a HOPE center. Payment for a HOPE center bed is not contingent upon prior approval by the DSHS.

If a minor's caseworker determines that placement in an RLSP would be the most appropriate placement given the minor's current circumstances, prior residence in a HOPE center or secure crisis residential center (CRC) is not required in order to provide the minor an RLSP placement.

Appropriation: None.

Fiscal Note: Requested on February 20, 2008.

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