

SENATE BILL REPORT

ESHB 1782

As Reported by Senate Committee On:
Human Services & Corrections, March 26, 2009

Title: An act relating to encouraging early and consistent engagement of parents in children's dependency matters.

Brief Description: Concerning parent participation in dependency matters.

Sponsors: House Committee on Early Learning & Children's Services (originally sponsored by Representatives Goodman, Roberts, Walsh, Dickerson, Darneille, Kagi and Nelson).

Brief History: Passed House: 3/11/09, 96-0.

Committee Activity: Human Services & Corrections: 3/26/09 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

Background: When a child has been taken into custody as the result of a child abuse or neglect investigation, the Department of Social and Health Services (DSHS) must provide a notice of custody and rights to the parent, guardian, or legal custodian no later than 24 hours after the child has been taken into custody or 24 hours after Child Protective Services has been notified that a child has been taken into custody. The statute requiring the notice also prescribes the content of the notice. The notice provides information about the court processes in dependency matters and some of the rights to which the parent is entitled.

If the court determines at the shelter care stage that the child should be placed, and the child was not originally placed with a relative, DSHS must make reasonable efforts to locate a relative.

Whenever a child is removed from the home of a dependency guardian, long-term relative, or foster care provider, and the child is placed in out-of-home care, a permanency planning hearing must be held no later than 12 months following removal unless, before the hearing,

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the child is returned home, or an adoption decree, guardianship order, or permanent custody order is entered, or the dependency is dismissed.

At a permanency planning hearing, the court must order one of the following:

- the permanency plan developed by DSHS be implemented;
- the permanency plan presented by DSHS be modified and the modified plan implemented;
- the child be returned home; or
- the child remains in out-of-home care for a limited period of time while efforts are made to implement the permanency plan.

In determining whether a petition to terminate parental rights should be granted, the court must, among other factors, determine that there is little likelihood that conditions will be remedied so that the child can be returned home in the near future. In determining whether the conditions will be remedied, the court may consider the following factors:

- use of alcohol or drugs so as to render the parent incapable of providing proper care to the child for extended periods of time and documented unwillingness of the parent to receive and complete treatment; or
- the parent's psychological incapacity or mental deficiency is so severe and chronic that the parent is incapable of providing proper care for the child for extended periods of time and documented unwillingness by the parent to receive and complete treatment.

Summary of Bill (Recommended Amendments): At shelter care, dispositional, and review hearings, the court must inquire of the parents whether DSHS has discussed a relative placement with them. When DSHS or a supervising agency recommends against continued placement with either a relative or a foster parent, and the court agrees with that recommendation, the court must indicate its reasons for its agreement with DSHS or supervising agency. The Family and Children's Ombudsman may investigate allegations of retaliation. Upon conclusion of its investigation, the Ombudsman must provide DSHS with a written report of its findings.

Six months before the adoption is finalized, DSHS must provide, in writing, to the prospective adoptive parents information describing the limits of the Adoption Support Program. DSHS must include at least the following:

- the limits on the monthly subsidies to adoptive families;
- the limits on the availability of mental health services and the funds with which to pay for these services;
- how to access mental health services for adoptive children;
- the limits on the reimbursement for nonrecurring costs;
- a statement that payment for residential or group care is not available for children receiving adoption support; and
- the risks inherent in adopting a child from DSHS.

The above information must also be provided to prospective foster parents at the foster parent preservice training.

The Administrative Office of the Courts must prepare standardized forms for use in dependency cases by November 1, 2009. Mandatory use of the forms begins January 1, 2010.

DSHS must place on its public website a document listing the duties and responsibilities DSHS has to a child subject to a dependency petition. DSHS must include in the document at least the following:

- reasonable efforts toward reunification of the child with the child's family;
- sibling visits;
- parent-child visits, subject to the restrictions in RCW 13.34.136(2)(b)(ii); and
- statutory preference for placement with a relative.

Once the dependency is established, the social worker assigned to a child's case must provide the child with a copy of the same document that DSHS must place on its website.

At any hearing that occurs after the dependency is established, the court must ensure that a dependent child over the age of 12, who is otherwise present in the courtroom, is aware of and understands the duties and responsibilities DSHS has toward him or her.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): Requires the court at shelter care and dispositional stages of a dependency to inquire into the child's placement with a relative if the child is not currently placed with a relative. The Office of the Family and Children's Ombudsman (OFCO) may investigate an allegation by a foster parent of retaliation by DSHS. OFCO must provide its investigative findings to DSHS. Six months before an adoption is finalized, DSHS must provide more specific information to prospective adoptive parents about the limitations of the Adoption Support Program. The Administrative Office of the Courts must prepare standardized forms for use in dependency cases by November 1, 2009. Mandatory use of the forms begins January 1, 2010. DSHS must place on its public website a document listing the duties and responsibilities DSHS has to a child subject to a dependency petition. DSHS must make sure that foster children know how to access this information.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: Reunification occurs only if birth parents are involved in the case early on; otherwise, the case drags on unnecessarily. Birth parents should receive appropriate notification about the consequences of their lack of involvement. If the birth parents have received notice, there are no mitigating circumstances for the parents' failure to participate. The children should not have to languish in the system as a result.

CON: It is a good idea to continue to reach out to birth parents; however, section 4 of the bill which allows a court to consider the child's attachment to the current provider seems to start the ball rolling toward the child remaining in foster care or being adopted. Prior notice to parents is a good idea, but section 5 dealing with bonding and attachment issues seems to violate a line of federal cases because the bill language appears to pit the interests of the parent with that of the caretaker without a prior finding that the parent is unfit. The bill is also silent about who is to provide the court with information regarding the bonding and attachment issues.

OTHER: The original purpose of the bill was to provide clear notice to parents early on in the dependency process about what the potential effects of their failure to participate in services could be. The bill morphed into much more than was originally intended. Parents who are involved in a dependency situation often have no one to explain to them what is happening and what they must do to get their kids back. There is a window of time for children to make a bond with their caregivers and build attachments. Once that window closes, then it is difficult to try to open it later on. The judges and court administrators believe that many of these families should be referred to family therapeutic courts in those counties which have them. These courts are in a much better position to deal with some of these families and there should be an amendment to allow for this to occur.

Persons Testifying: PRO: David Putnam, foster parent; Gary Malkasian, Foster Care Justice Alliance.

CON: Patrick Dowd, Office of Public Defense; Brenda Lopez, birth parent.

OTHER: Representative Goodman, prime sponsor; Tonia Morrison, Dependency 101; Dan Nord, Washington Adoptive Parents Alliance; Pete Peterson, Washington Association of Juvenile Court Administrators.