

# HOUSE BILL REPORT

## ESHB 1774

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### As Passed Legislature

**Title:** An act relating to dependency matters.

**Brief Description:** Concerning dependency matters.

**Sponsors:** House Committee on Early Learning & Human Services (originally sponsored by Representatives Goodman, Pettigrew, Orwall, Kenney, Roberts, Kagi and Moscoso).

**Brief History:**

**Committee Activity:**

Early Learning & Human Services: 2/15/11, 2/17/11 [DPS].

**Floor Activity:**

Passed House: 3/2/11, 95-0.

Senate Amended.

Passed Senate: 4/7/11, 48-0.

House Concurred.

Passed House: 4/15/11, 96-0.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Allows the Department of Social and Health Services to place a dependent child with a person with whom the child's sibling or half sibling has been placed or with the adoptive parent of a sibling or half sibling, where the person or adoptive parent has passed a criminal background check and is competent to care for the child.
- Permits a child to petition the juvenile court to reinstate the previously terminated parental rights of his or her parents even if the child has achieved his or her permanency plan if the permanency plan has not been sustained.
- Allows the court, in an adoption proceeding involving a dependent child and a minor parent, to rely on certain reports from the guardian ad litem (GAL) or the attorney representing the minor parent in the dependency proceeding.
- Allows the court, in adoption proceedings, to order the parties, as opposed to the county, to pay the fee of the GAL or attorney.

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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.*

- Defines the term "investigator" for the purposes of family law cases and requires investigators who are not supervised by a GAL or court-appointed special advocate to comply with training requirements.

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## HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Dickerson, Goodman, Johnson, Orwall and Overstreet.

**Staff:** Linda Merelle (786-7092).

### **Background:**

#### Placement of Dependent Children.

At the dispositional stage of a dependency matter, if the court orders that the child be placed in out-of-home care, the Children's Administration (CA) has the authority to place the child:

- with a relative;
- with another suitable person if the child or family has a preexisting relationship with that person and the person has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child; or
- in a foster family home or group care facility.

The CA may only place a child with a non-relative if the court finds that such a placement is in the child's best interest.

#### Reinstatement of Parental Rights.

A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent if the following requirements are met:

- the child was previously found to be a dependent child;
- the child's parent's rights were terminated pursuant to a dependency proceeding;
- the child has not achieved his or her permanency plan within three years of a final order of termination; and
- the child must be at least 12 years old at the time the petition is filed.

After a petition is filed, the court must hold a threshold hearing to consider the parent's fitness and interest in reinstatement of parental rights. If the court finds that the best interests of the child would be served by reinstatement, the court is to hold a hearing on the merits of the petition.

The court must conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not imminently likely to

achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interests. In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the Department of Social and Health Services (DSHS) must provide to the court information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

In a recent Court of Appeals case, *In Re the Interest of J.R.*, a 15-year-old child filed a petition to have his mother's parental rights reinstated. When the child was age 5, his mother voluntarily relinquished her parental rights. Two and a half months after the relinquishment, the court ordered that the child be placed in a guardianship with his grandmother and another relative. The guardianship was in place for 10 years until the court terminated the guardianship upon the guardian's request. Shortly thereafter, the child petitioned to have his mother's rights reinstated. At the threshold hearing, the state argued that J.R.'s petition did not meet the statutory criteria because he achieved permanency when he was placed in a dependency guardianship within three years of the order terminating parental rights. The juvenile court stated that although the reinstatement of his mother's parental rights might be in J.R.'s best interests, he did not meet the criteria established for reinstatement petitions. Upon appeal, the Court of Appeals affirmed the juvenile court and held only to dependent children whose permanent plans were not achieved within three years of a final order of termination could petition for reinstatement of parental rights. The court held that J.R.'s petition was appropriately dismissed by the juvenile court.

#### Guardians Ad Litem in Adoption Cases.

In adoption proceedings, the court must appoint a guardian ad litem (GAL) for any alleged parent under 18 years of age. Among other duties, the GAL must report to the court whether any written consent by the parent to relinquish the child for adoption was made voluntarily. The county in which a petition is filed in an adoption proceeding must pay the fees of a court-appointed GAL or attorney.

In some cases, the child being adopted has been the subject of earlier dependency proceedings, which means the state has terminated the parent's parental rights to the child. In a dependency proceeding, the court determines if a child should be considered a dependent of the state because of abuse, neglect, abandonment, or because there is no parent, guardian, or custodian capable of caring for the child. Once a child is found dependent, the court periodically reviews the case and makes determinations about the parent's progress in correcting parental deficiencies. If the parent fails to take corrective measures needed for the child to safely return home, the court can eventually terminate the parent's parental rights. The parent has the right to an attorney in dependency proceedings.

#### Investigators and GALs in Family Law Cases.

In dissolution cases in which there are minor children, the court must establish a parenting plan setting forth, among other things, each parent's residential time with the children. The court may order an investigation and report concerning parenting arrangements, may appoint a GAL, or both. The investigation and report may be made by a GAL, the staff of the court, or a professional social service organization experienced in counseling children. Some

family law courts have full- or part-time investigators that work for the court. The term "investigator" is used in the statutes but not defined.

In counties with a court-appointed special advocate (CASA) program for family law cases, the court may appoint a GAL from the CASA program. The GALs and CASAs must comply with certain training requirements developed by the Administrative Office of the Courts. Generally, the court must specify the hourly rate a GAL may charge and specify the maximum amount the GAL may charge without additional court approval. The court must specify rates and fees in the order appointing the GAL or at the earliest date the court is able to determine the appropriate rates and fees.

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

#### Placement of Dependent Children.

The DSHS or a supervising agency, when considering out of home placement of a child at the dispositional stage of a dependency, may consider placement of the dependent child with a person with whom the child's sibling or half-sibling is placed or with the adoptive parent of the child's sibling or half-sibling as long as that person or adoptive parent passes the criminal background check and is otherwise competent to provide care for the dependent child.

#### Reinstatement of Parental Rights.

A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent if the following requirements are met:

- the child was previously found to be a dependent child;
- the child's parent's rights were terminated pursuant to a dependency proceeding;
- the child has not achieved his or her permanency plan, or the child achieved a permanency plan, but it has not since been sustained;
- three years have passed since the final order of termination was entered; and
- the child must be at least 12 years old at the time the petition is filed, unless the court finds good cause to accept a petition for a child younger than 12 years old.

#### Guardians Ad Litem in Adoption Cases.

If the child in the adoption proceeding is a dependent child and the minor parent of the child is represented by an attorney or a GAL in the dependency proceeding, the court may rely on the parent's dependency attorney or the GAL to report to the court regarding the voluntariness of any written consent to adoption or petition for relinquishment signed by the parent.

When a GAL is appointed in an adoption case, the court must direct who shall pay the GAL's fee. If the court orders the parties to pay the GAL fee, the fee must be established under the same procedures that GAL fees are established in family law cases.

#### Investigators.

The term "investigator" is defined to mean a person appointed by the court as a full- or part-time assistant to the court, or any other third-party professional ordered or appointed by the court to provide an opinion, assessment, or evaluation regarding the creation or modification of a parenting plan. It is made explicit that the court may appoint an investigator in family law cases to make recommendations to the court.

Investigators who are not supervised by a GAL or by a CASA program must comply with the training requirements applicable to the GALs or the CASAs.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Where a child has been adopted by a foster family, the sibling of the adopted child may be placed somewhere else other than with the sibling. A child does not have any legal right or standing regarding the placement of his sister or brother. Siblings will be better off if they are raised together. Adoptive families are being passed over regarding placement of a sibling. The courts have said that a child who has been adopted by a family is legally no longer a sibling to his or her blood sibling. There is a lot of research indicates that children should be placed together. Placing siblings together increases family reunification.

(With concerns) Keeping siblings together is critical. Placing adoptive parents in equal stature as the members of the birth family will apply throughout the entire set of statutes, and that creates some concern.

(Opposed) None.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; David Putnam; and Gary Malkasion, Foster Care Justice Alliance.

(With concerns) Laurie Lippold, Children's Home Society of Washington.

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