

# SENATE BILL REPORT

## SB 5597

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As of February 14, 2011

**Title:** An act relating to staying an order terminating parental rights.

**Brief Description:** Providing for an automatic stay of any order terminating parental rights.

**Sponsors:** Senators Delvin, McAuliffe, Parlette and Roach.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/10/11.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Jennifer Strus (786-7316)

**Background:** Termination of parental rights is necessary before a child is legally eligible for adoption. Under current state law, once a trial court enters an order terminating parental rights following a contested trial, the Department of Social and Health Services (department) may consent to a foster parent or relative caregiver proceeding with adoption and dismiss the child's dependency case, even if the parent is appealing the decision terminating his or her rights. An order terminating parental rights can be appealed to an appellate court. Generally, the parent must file a notice to appeal in the trial court within 30 days of the date the court orders the termination. An appeal of the termination of parental rights is heard by the appellate court on an accelerated basis. Either the trial court or the appellate court may issue a stay on execution of the termination order if requested by the appellee.

When a decision to terminate parental rights is reversed on appeal, the only remedy for the biological parents and children whose legal relationship has been terminated is to vacate the child's adoption. The underlying dependency case is dismissed when the adoption is finalized which results in a "legal limbo" if the order terminating parental rights is reversed and the case remanded for further proceedings. Presumably, the court must then vacate the existing adoption and re-establish the dependency action.

There were two cases in 2010 in which the issue of the appeal of termination orders arose. *In re the Welfare of A.B.* was decided by the Washington Supreme Court and *In the Matter of the Dependency of B.R. and T.V.* was decided by Division I of the state Court of Appeals. In the A.B. case, A.B. was born on October 27, 2001, with cocaine in her system. On October 29, 2001, the Division of Children and Family Services (DCFS), Child Protective Services (CPS)

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removed A.B. from her mother's care and placed her in a foster home. The child's father was not married to the child's mother and was living in Las Vegas. In February 2002, the court determined that the child was dependent and entered disposition orders against both parents. The father visited with A.B., completed a drug treatment program, maintained employment, gained custody of step-children from a different relationship, and established a residence with his parents. During the dependency, he was also in jail at different times on an immigration hold and for pushing a police officer. On January 3, 2003, DCFS filed a petition for termination of parental rights. The court terminated the mother's parental rights on July 8, 2005. On March 31, 2006, after a contested trial, the court terminated the father's parental rights, even though the court did not find that the father was an unfit parent. The father appealed the trial court's decision. Despite the father's pending appeal, A.B. was adopted in late 2006. In 2007 the Washington State Court of Appeals affirmed the trial court's decision. The Washington State Supreme Court granted the father's motion for discretionary review. In June 2010 the Supreme Court issued its decision reversing the order terminating the father's parental rights. The Supreme Court ruled that a parent has a due process right not to have the state terminate his or her relationship with a child, absent a finding that the parent is currently unfit to parent the child. The Court directed the trial court to supervise the "prompt but orderly transfer" of A.B. to her father's care.

In the B.R. and T.V. cases, CPS received a referral stating that 20 month old B.R. sustained a head injury and that the mother's boyfriend's report that the child fell down the stairs was not consistent with B.R.'s injury. On July 5, 2005, the mother agreed to an order of dependency permitting B.R. to remain in her home. The disposition order required her to complete an anger management assessment, continue to participate in domestic violence support group, and adhere to the protection orders against her former boyfriend and against B.R.'s father. On October 5, 2005, B.R. was removed from his mother's care because she had not filed the return of service for the protection order against her ex-boyfriend. T.V. was born on December 17, 2005, and CPS filed for dependency based on the prior physical abuse of B.R. and on the mother's initial failure to obtain a valid protection order. On March 14, 2006, the mother agreed to a dependency order that allowed T.V. to remain in her care. The disposition order required her to maintain the protection order against the ex-boyfriend and attend domestic violence support groups. A week later the department also placed B.R. back in his mother's care. On May 24, 2007, the court found that the mother violated the no contact order with her ex-boyfriend by attending his mother's funeral in August 2006, and the court ordered B.R. and T.V. placed into foster care. Despite the mother's continued compliance with court ordered services, the department filed for termination of parental rights on January 7, 2009. Following a contested trial, the court terminated the mother's parental rights in June 2009 and she appealed.

While the mother's appeal was pending, the adoptions of B.R. and T.V. were finalized in early 2010. Seven months later, on September 27, 2010, the Court of Appeals (Division I) issued its decision reversing the trial court's order terminating the mother's rights. The Court of Appeals determined that the evidence did not support a conclusion that the mother was unfit.

**Summary of Bill:** A court order terminating parental rights that is entered under either the dependency statutes or the adoption statutes is automatically stayed for 30 days after the entry of the order. If the parent files a notice of appeal within the 30-day period, the stay will

continue until the appeal is complete or the stay is lifted by the reviewing court. If a notice of appeal is not filed within the 30-day period, the automatic 30-day stay will expire.

The automatic stay will stay the execution of the termination order to the extent that it would permit the entry of an order of adoption without the parent's consent or surrender. It will also stay the ability of a person or agency to consent to an adoption.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: A family started the process to foster/adopt two biological brothers. Their mother's rights were terminated and she appealed the termination. DSHS said they could adopt anyway even though the mother appealed the termination. They waited eight months after the termination to adopt but did adopt the two boys. In September 2010, the boys' mother won her appeal. It has been hard on the boys because they told the kids they were their forever family. The boys now have three legal parents – the family through adoption and their birth mother. The state told them to get a lawyer and they have spent \$30,000 of their own money trying to deal with this issue. Support this bill because it is a good idea to complete one legal process before going on to the next one. Also the time for appellate courts to decide issues needs to be shortened. Had a child removed by CPS and did not know how to handle it. Followed all the requirements DSHS laid out but then they terminated her parental rights. She had two other children still at home that DSHS did not remove. She is appealing her TPR but even if she wins her appeal, the child has been adopted and lives out of state. She filed her appeal long before the child was adopted. DSHS should not be allowed to adopt out kids before the termination appeal is decided.

OTHER: Filed a proposed court rule to deal with this issue and asked the court to adopt the rule on an expedited basis. The court will consider the rule for adoption in April or May of this year.

**Persons Testifying:** PRO: Senator Delvin, prime sponsor; Jim and Jill Mailloux, citizens; Marilyn Gunther, attorney; Katherine Minx, citizen.

OTHER: Joanne Moore, OPD.