

FINAL BILL REPORT

SHB 1284

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Synopsis as Enacted

Brief Description: Concerning the rights of parents who are incarcerated.

Sponsors: House Committee on Early Learning & Human Services (originally sponsored by Representatives Roberts, Walsh, Kagi, Sawyer, Goodman, Freeman, Farrell, Appleton, Ryu, Reykdal, Santos and Habib).

House Committee on Early Learning & Human Services
Senate Committee on Human Services & Corrections
Senate Committee on Ways & Means

Background:

Dependent Child.

A dependent child is any child who has been abandoned, abused, or neglected by a person who is legally responsible for the care of the child. A dependent child is also a child who has no parent, guardian, or person capable of adequately caring for the child, such that the child is in danger of substantial damage to his or her psychological or physical development.

A court may order law enforcement, a probation counselor, or a child protective services official to take a child into custody if a petition is filed alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. In support of the petition, the Department of Social and Health Services (DSHS) must file an affidavit that sets forth specific factual information that is the basis for the petition. To order that the child be taken into custody, the court must find, after reviewing the petition and affidavit, reasonable grounds to believe that the child is dependent and that the child's health, safety and welfare will be seriously endangered if the child is not taken into custody.

Shelter Care Hearing.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

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.

Case Conference.

A case conference must be convened after a shelter care hearing to develop a written agreement regarding the expectations of the DSHS and the parent regarding voluntary services for the parent.

Dependency Trial.

The court must conduct a trial to determine whether the allegations that a child is dependent can be shown by a preponderance of the evidence. If at the end of the dependency trial the burden of proof is met, the court's findings form the basis for the case plan, which includes services, placement of the child, and visitation. The content of the case plan is the basis for determining what steps need to be taken before a child may return safely home. If the burden of proof is not met, the dependency is dismissed and the child is returned to the custody of the parent.

Disposition Orders.

If the child is found to be dependent, the court must issue a disposition order directing the service plan for the parents and the child, a visitation plan, and, eventually, a permanent plan. The court's order sets the benchmarks and expectations for the parties. If the court determines that reunifying the family is not in the best interests of the child, the child may be placed with a relative, a foster family, group home, or other suitable place.

After the court issues a disposition order, review hearings are held. The court then makes findings regarding compliance and progress by the parents, child, and other parties to the dependency. If after a review hearing, a child remains out of the home, the court must establish a date by which the child will have a permanent plan for care. The court must also determine whether reasonable efforts have been made to provide services to the family, whether there has been compliance with the case plan, whether progress has been made toward correcting the problems that led to the removal of the child from the parents' home, and whether the parents have visited the child.

Termination of Parental Rights.

The court, under certain circumstances, may order the filing of a petition for the termination of parental rights. The court may exercise this discretion if it finds that "aggravated circumstances" exist, including the failure of a parent to complete available treatment ordered where such failure resulted in the prior termination of parental rights, and the parent has failed to effect change in the interim. A party to the dependency action may also file a petition for the termination of parental rights.

If a child has been in out-of-home care for 15 of the most recent 22 months, the court must order the DSHS to file a petition for termination of parental rights, unless the court finds a "good cause exception." Good cause exists if: (1) the DSHS has failed to provide the child's family with services that the DSHS and the court have determined are necessary for the child's safe return home; or (2) the DSHS has documented compelling reasons that filing a petition to terminate parental rights would not be in the child's best interest.

Summary:

Case Conference.

A parent who is unable to participate in a case conference in person because he or she is incarcerated must be afforded the option to participate by a telephone conference or a videoconference.

Permanency Planning.

The requirements in a permanency plan that a parent must meet to resume custody of a child must address the special circumstances of a parent who is incarcerated. This includes addressing how the parent will participate in the case conference and permanency planning meetings. Where possible, treatment must reflect the resources available at the facility where the parent is confined. Visitation must be provided for unless it is not in the best interest of the child.

Discretionary Petition for Termination of Parental Rights.

In determining whether a parent has failed to complete court-ordered treatment, the court must consider constraints that a parent experienced by a current or prior incarceration. The constraints considered may include delays or barriers experienced by the parent. The court may also consider whether the parent has maintained a meaningful role in the child's life and whether the DSHS has made reasonable efforts to assist the parent. Where there has been a claim of aggravated circumstances, the court may consider rebuttal evidence of whether barriers existed for the parent.

When a parent who is sentenced to long-term incarceration has maintained a meaningful role in his or her child's life, the DSHS should, but is not required to, seek a permanent placement that allows the parent to maintain a relationship with his or her child, such as a guardianship.

Mandatory Petition for Termination of Parental Rights.

Good cause exceptions to filing a mandatory petition for termination of parental rights include circumstances where a current or prior incarceration is a significant factor in why a child has been in foster care for 15 of the last 22 months, as long as the parent has maintained a meaningful role in the child's life. In determining whether the parent has maintained a meaningful role in a child's life, the court may consider the parent's lack of access to programs, services, treatment, legal counsel, or court proceedings. The court may also consider as a good cause exception any delays or barriers to completion of court-mandated treatment caused by incarceration.

Votes on Final Passage:

House	96	1	
Senate	47	1	(Senate amended)
House	95	0	(House concurred)

Effective: July 28, 2013