

# HOUSE BILL REPORT

## SHB 1284

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### As Passed Legislature

**Title:** An act relating to the rights of parents who are incarcerated.

**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).

#### **Brief History:**

##### **Committee Activity:**

Early Learning & Human Services: 2/5/13, 2/15/13 [DPS].

##### **Floor Activity:**

Passed House: 3/4/13, 96-1.

Senate Amended.

Passed Senate: 4/17/13, 47-1.

House Concurred.

Passed House: 4/22/13, 95-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Requires the court to consider barriers presented by a parent's current or prior incarceration when making determinations and findings during the course of a dependency case, including decisions regarding permanency planning and petitions for the termination of parental rights.

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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 11 members: Representatives Kagi, Chair; Freeman, Vice Chair; Walsh, Ranking Minority Member; Scott, Assistant Ranking Minority Member; Farrell, Goodman, MacEwen, Overstreet, Roberts, Sawyer and Zeiger.

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

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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.*

## **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, or 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. There must be an affidavit filed by the Department of Social and Health Services (DSHS) in support of the petition that sets forth specific factual information that is the basis for the petition. After reviewing the petition and affidavit the court must find 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 required 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.

### *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 contents 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 may exist 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 of Substitute Bill:**

##### *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 in order 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 has 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.

**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) In 2005 the Legislature started to address needs of children with incarcerated parents. A number of steps have been taken. A partnership has developed between the Department of Corrections and the DSHS regarding data collection. There has been support for the program at the Washington Correctional Center for Women that allows incarcerated parents to keep their babies with them until age three years, and the parents are involved in training for parenting skills and Head Start. The Legislature has created a new kind of guardianship that is somewhat cooperative and does not require the termination of parental rights. The best interests of the child is the top priority. Incarcerated parents have an average of two children, and they may maintain a meaningful role in their child's life in a number of ways. This bill emphasizes that incarceration should not be the sole reason for termination of parental rights. When the parent and child connections are kept, a child's chances for a positive outcome in his or her own life are improved. A majority of women in prison are mothers and they were primary caregivers for their children before they entered prison. Current timelines for permanency were created with positive goals in mind, to help take children out of foster care and find them a safe and stable home. In theory this is wonderful. When families get involved in the criminal justice system, however, the law often tips the balance towards termination, even when it is not in the best interests of the child and the family. It takes more time for parents to navigate two systems. This bill will make laws more responsive to meet the challenges facing the families in the child welfare and criminal justice systems. This bill will give families a fairer chance and allow the courts to have the

discretion necessary to make individualized decisions regarding children whose parents are incarcerated or in residential substance abuse programs.

(With concerns) It is important that children do not wait unnecessarily in out-of-home care while the courts make further determinations about whether the parent is going to be successful in addressing the issues that resulted in their incarceration. The court currently has the authority to consider the parent's circumstances in determining whether a petition for termination of parental rights should be filed. The bill also requires the DSHS to perform duplicative work, and, as a result, there will likely be impacts upon staffing.

(Opposed) None.

**Persons Testifying:** (In support) Representative Roberts, prime sponsor; Lillian Hewko, Legal Voice and Washington State Parent Advocacy Network; and Shayne Rochester, Snohomish County Parent Advocacy Committee.

(With concerns) Randy Hart, Department of Social and Health Services, Children's Administration.

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