
Children, Youth & Families Committee

HB 1903

Brief Description: Holding onto hope and preventing family trauma by nurturing relationships between biological parents and their children.

Sponsors: Representatives Davis, Orwall, Simmons, Ormsby, Harris-Talley and Duerr.

Brief Summary of Bill

- Creates a process where parents whose parental rights have been terminated may petition for visitation with that child.
- Creates a presumption that contact between a parent whose parental rights have been terminated and his or her child is, or in the future will be, in the child's best interest.
- Allows a court to impose civil fines of up to \$300 for each missed visit or violation of a contact provision required by an open adoption agreement.

Hearing Date: 1/31/22

Staff: Luke Wickham (786-7146).

Background:

Child Welfare (Dependency) Court Proceedings.

Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents if known.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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.

If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency. The fact-finding must be held within 75 days after the filing of the petition, unless exceptional reasons for a continuance are found.

If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

The DCYF must develop a permanency plan within 60 days from the date that the DCYF assumes responsibility for the child which must identify primary outcome goals for the case. The DCYF must submit this permanency plan to the parties and the court at least 14 days before a permanency planning court hearing. A permanency planning hearing must be held in all cases where the child has remained in out-of-home care for at least nine months, but no later than 12 months following out-of-home placement.

Under certain circumstances after a child has been removed from the custody of a parent for at least six months pursuant to a finding of dependency, a petition may be filed seeking termination of parental rights proving by clear, cogent, and convincing evidence that the:

- child is dependent;
- court entered a dispositional order;
- child was removed from the parent for a period of at least six months;
- services ordered under the dependency court order and all necessary services, reasonably available, capable of correcting parental deficiencies have been expressly and understandably offered or provided; and
- continuation of the parent relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

The court may also terminate a parent's rights if the whereabouts of the child's parent are unknown or if the parent has been convicted of certain crimes.

If a court terminates a parent's rights, all rights, powers privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing between the child and parent are severed and terminated, and the parent has no standing to appear at any future legal proceedings involving the child.

Visitation for Relatives.

In 2018 a law was enacted allowing relatives to petition the court for visitation with a child. Using this process, a person who is not a parent of the child may petition for visitation with the child if:

- the petitioner has an ongoing and substantial relationship with the child;
- the petitioner is a relative of the child or a parent of the child; and
- the child is likely to suffer harm or a substantial risk of harm if visitation is denied.

A parent whose rights have been terminated, relinquished, or declared not to exist are excluded from the relatives allowed to petition the court for visitation.

The Washington Supreme Court, in the cases *In re Custody of Smith* (1998) and *In the Matter of the Parentage of C.A.M.A.* (2005), held that parents have a fundamental right to raise their children without state interference. State interference with a parent's fundamental right is subject to strict scrutiny and therefore is justified only if it is narrowly drawn to meet a compelling state interest. The Washington Supreme Court recognized that the state may interfere with a parent's fundamental right in order to prevent harm to the child. Short of preventing harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest.

Open Adoption Agreements.

Child adoptees, adoptive parents, siblings of child adoptees, and birth parents may enter into agreements regarding communication or contact. These agreements are often referred to as open adoption agreements. These agreements are not legally enforceable unless the terms of the agreement are set forth in a written court order. Courts may not enter such agreements unless the terms are approved in writing by the prospective adoptive parents, a birth parent whose parental rights have not previously been terminated, and a representative of the DCYF or child-placing agency if the child or siblings of the child are in the custody of the DCYF or a child-placing agency.

Failure to comply with an open adoption agreement is not grounds for setting aside an adoption decree.

Open adoption agreements may be enforced by a civil action and the prevailing party may be awarded a reasonable amount of attorney's fees. Courts may not modify open adoption agreements unless it finds that the modification is necessary to serve the best interests of the child adoptee and that:

- the modification is agreed to by the adoptive parent and the birth parent; or
- exceptional circumstances have arisen since the agreed order was entered that justify modification.

Summary of Bill:

Contact Post-Termination.

If the court finds that termination of parental rights is in the child's best interest, the court must also examine whether it is in the child's best interest to have post-termination contact with the parent. It is presumed that contact between the child and the parent whose rights were terminated is, or will in the future be, in the child's best interest. To rebut this presumption, the Department of Children, Youth, and Families (DCYF) must establish by clear, cogent, and

convincing evidence that such contact currently is not, and never will be, in the child's best interest.

There is a presumption that visitation between the child and parent whose rights were terminated will continue, unless the contact is no longer, and never will be, in the child's best interest. If the visitation is not in the child's best interest, the open adoption agreement may include requirements for a birth parent to remedy challenges that led to the termination of parental rights before reinstatement of visitation.

Notification of change in placement.

The DCYF must notify any parent whose rights were terminated of any change in the child's placement until the child has been adopted or the court has established a guardianship.

Petition for Visitation for a Child in the Custody of the Department of Children, Youth, and Families.

A person whose parental rights were terminated may petition the court for visitation with the child who is in the custody of the DCYF, and for whom there remains no parent having parental rights, alleging that it would be in the child's best interest to allow visitation between the parent and the child. Such a parent must set forth facts supporting the request for visitation, service notice on the DCYF, and the DCYF may file an opposing motion. If the court finds that it is more likely than not that visitation will be granted, the court shall hold a hearing. The court must enter an order granting visitation if it finds that it would be in the child's best interest to visit the petitioner.

A court may not modify or terminate an order granting such visitation unless it finds that a substantial change of circumstances of the child or parent has occurred and that modification or termination of the order is necessary for the best interest of the child.

Petition for Visitation for a Child not in the Custody of the Department of Children, Youth, and Families.

A person whose parental rights were terminated may petition for visitation with a child if the person successfully addressed the parental deficiencies that led to the termination or relinquishment of parental rights and the child is likely to suffer harm or a substantial likelihood of harm if visitation is denied. In making this determination, the court may consider certain evidence.

If aggravated circumstances exist, the petitioner is not eligible for visitation.

Open Adoption Agreements.

The prohibition on parents whose rights were terminated entering into open adoption agreements is removed.

An open adoption agreement may be enforced by civil fines of up to \$300 for each missed visit or violation of a contact provision required by the open adoption agreement.

Exceptional circumstances that would allow a court to modify an open adoption agreement are defined to include, but not be limited to:

- refusal of the adoptive parent to comply with visitation or contact provisions;
- visitation or contact provisions which are no longer possible to follow; or
- a substantial change in the circumstances of the birth parent's life that justifies less restrictive or increased visitation with the child adoptee.

Other Provisions.

When possible, the DCYF should provide active efforts to engage parents during the period immediately following birth. For children born with neonatal abstinence syndrome, hospitals and child welfare services must work together to ensure that evidence-based best practices are followed, including keeping the birth mother and child together whenever possible.

Courts are encouraged to assign the same judicial officer to a child welfare court case for the duration of that case.

The definition of negligent treatment or maltreatment is modified to remove the requirement that evidence of a parent's substance abuse as a contributing factor to negligent treatment be given great weight.

Pediatric transitional care services must use evidence-based, best practices that maintain as much parent-child interaction as possible.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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