
**Early Learning & Human Services
Committee**

HB 1284

Brief Description: Concerning the rights of parents who are incarcerated or in residential substance abuse treatment.

Sponsors: Representatives Roberts, Walsh, Kagi, Sawyer, Goodman, Freeman, Farrell, Appleton, Ryu, Reykdal, Santos and Habib.

Brief Summary of Bill

- Requires the court to consider barriers presented by a parent's current or prior incarceration or participation in a residential substance abuse treatment program 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.

Hearing Date: 2/5/13

Staff: Linda Merelle (786-7092).

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

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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) DSHS has documented compelling reasons that filing a petition to terminate parental rights would not be in the child's best interest.

Summary of Bill:

Case Conference

A parent who is unable to participate in a case conference in person because he or she is incarcerated or participating in a residential substance abuse treatment program 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 or residing in a residential substance abuse treatment facility. If a current or prior incarceration or participation in a residential treatment program has prevented a parent from accessing services, the DSHS or supervising agency must notify the parent in writing of his or her legal rights and obligations and of the services available in the community that he or she resides in or will reside in upon release. The services must be of a nature that may aid the parent in the development of a meaningful relationship with the child. When possible, the information must include available services for re-entry and family support.

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 or participation in a residential substance abuse treatment program. The constraints considered may include delays or barriers experienced by the parent. The court may also consider: (1) whether the parent has maintained a meaningful role in the child's life; (2) whether the DSHS has made reasonable efforts, and (3) whether barriers existed for the parent. "Reasonable efforts" is expressly defined.

The DSHS may not petition to terminate a parent-child relationship of a parent who is incarcerated or participating in a residential substance abuse treatment program if the incarceration or participation is the primary reason that the child is dependent, and there is no independent reason for termination.

Mandatory Petition for Termination of Parental Rights

If the child has been in out-of-home care for 15 of the last 22 months, the court must require the DSHS to file a petition seeking termination of parental rights if the court has not made a good cause exception. Additional provisions of good cause exceptions include circumstances where 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. Detailed criteria are established to allow the court to determine whether a meaningful role has been maintained.

Appropriation: None.

Fiscal Note: Available.

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