

HB 4009 A -5, -6 STAFF MEASURE SUMMARY

Senate Committee On Human Services

Prepared By: Jamie Hinsz, LPRO Analyst

Meeting Dates: 2/22, 2/27

WHAT THE MEASURE DOES:

Allows reinstatement of terminated parental rights in specific circumstances. Specifies that the Department of Human Services (Department) or the ward may file a motion to reinstate the parental rights of a former parent if the ward has not been adopted or does not have a legal parent; it has been at least 18 months since the termination of parental rights or six months since affirmation of the judgment by an appellate court; and the ward is at least 12 years old, or good cause exists when the ward is under age 12.

Specifies the process for initiating reinstatement. Requires Department to give notice to ward if former parent notifies Department of desire and eligibility to reinstate parental rights. Requires showing by clear and convincing evidence that former parent is fit, wishes to have parental rights reinstated, and that reinstatement is in ward's best interest.

Specifies that if ward is over 14 years of age, ward must consent to reinstatement. Provides six-month period following reinstatement in which ward remains ward of the court. Requires permanency hearing within 60 days of reinstating parental rights. Provides counsel at state expense for ward who meets financial eligibility requirements. Becomes operative September 1, 2018. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Safeguards to protect children during and after process of reinstating parental rights
- Challenge in finding permanent homes for wards of the court
- Provisions of Washington law reinstating parental rights
- Importance of including the tribes for Indian Child Welfare Act cases
- Levels of court standards in considering a motion to reinstate parental rights
- Situations of former parents with criminal activity

EFFECT OF AMENDMENT:

-5 Removes the ability for a ward to file a motion to reinstate the parental rights of a former parent. Removes requirement of Department of Human Services to notify the ward regarding rights to file a motion to reinstate parental rights. Prohibits former parent from reinstating parental rights if the former parent has pending criminal charges or has been convicted of a person felony or person Class A misdemeanor and the ward was the victim of the person felony or the person Class A misdemeanor.

Revenue impact: No revenue impact.

Fiscal impact: Has minimal fiscal impact.

-6 Requires the tribe, if the Indian Child Welfare Act applies, to be notified when a copy of the motion to reinstate parental rights is provided to the former parent. Removes requirement of Department to notify the ward regarding rights to file a motion to reinstate parental rights. Removes the age restriction for a ward to consent to a former

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parent's reinstatement of parental rights. Expands considerations of courts when determining reinstatement of parental rights to include: reasons that the former parent's rights were terminated; the former parent's stated reasons for pursuing reinstatement of parental rights; and the likely impact on the ward of the former parent's past abuse or neglect. Directs Department to provide appropriate reunification services.

Revenue impact: No revenue impact.

Fiscal impact: Has minimal fiscal impact.

BACKGROUND:

Under Oregon law, a person's parental rights may be terminated if the Department of Human Services (Department) can show, by clear and convincing evidence, that: the parent is not fit to care for the child because of an episode of extreme conduct; unsafe conduct or conditions exist in the home to such a degree that it is highly improbable for the child to safely return home; the parents have failed or neglected to meet the basic physical or psychological needs of the child; or the parent has abandoned the child.

A parent who has had parental rights terminated may appeal the decision, but if the decision to terminate is upheld or the parent decides not to appeal, the parent loses all legal rights and, in the eyes of the law, there is no relationship with the child. Currently, there is no process for the reinstatement of parental rights once they have been terminated.

House Bill 4009-A provides an avenue for reinstatement of parental rights. The process is based on a similar law in Washington state. The process can only be initiated by the child or the Department. In order to proceed, the child must not be in a current adoption or pending adoption, and at least 18 months have passed since the parental rights were terminated, or six months after the appellate court affirmed the termination, whichever is later. If the child is under age 12, the court must find good cause to allow the motion. If the child is over 12 years of age, the criteria described above are met, and a former parent notifies the Department of the parent's desire to have parental rights reinstated, then the Department must give notice to the child of the right to proceed.

The court must grant the motion if the moving party can show, by clear and convincing evidence, that the conduct or conditions that led to termination have been remedied and the former parent is now fit; the former parent wishes to have their rights restored; if the child is over age 14, the child consents to reinstatement; and the reinstatement is in the child's best interest. If parental rights are reinstated, the court will continue to maintain jurisdiction over the child for at least six months. During that time, the Department will provide services to the family and a permanency hearing will be held within 60 days of the entry of the order.