
Judiciary Committee

HB 1285

Title: An act relating to representation of children in dependency matters.

Brief Description: Modifying provisions regarding the representation of children in dependency matters.

Sponsors: Representatives Goodman, Freeman, Pettigrew, Jinkins, Walsh, Kirby, Orwall, Roberts, Appleton, Seaquist, Ryu, Stanford, Clibborn, Maxwell, Tarleton, Morrell, Pollet and Ormsby.

Brief Summary of Bill

- Requires the appointment of counsel for a child in a dependency in several specified instances.
- Lowers the age at which a child in a dependency must be notified of the right to request an attorney, and asked his or her wishes with respect to having an attorney, from 12 years to seven years.

Hearing Date: 2/6/13

Staff: Cece Clynch (786-7195).

Background:

The Department of Social and Health Services (DSHS) or any person may file a petition in court to determine if a child should be a dependent of the state due to abuse, neglect, abandonment, or because there is no parent or custodian capable of caring for the child. If the court determines the child is dependent, the court conducts periodic reviews and makes determinations about the child's placement and the parent's progress in correcting parental deficiencies. The court, under certain circumstances, may order the filing of a petition for the termination of parental rights. If a child has been in out-of-home placement for 15 of the most recent 22 months, the court must order the DSHS to file a petition for termination, absent a good-cause exception.

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.

The court must appoint a guardian ad litem (GAL) for a child in a dependency unless the court finds the appointment unnecessary. It is discretionary with the court whether to appoint an attorney to represent a child in a dependency.

The DSHS and the child's GAL must notify a child who is age 12 or older of the child's right to request an attorney and must ask the child whether he or she wants an attorney. The DSHS and the GAL must notify the child every year and upon the filing of any motion affecting the child's placement, services, or familial relationships.

The DSHS must note in the child's service and safety plan, and the GAL must note in his or her report to the court, the child's position regarding appointment of an attorney. The GAL must provide the court with the GAL's recommendation regarding whether appointment of an attorney is in the child's best interests.

The court must also ask a child who is age 12 or older whether he or she has been informed by the DSHS and the GAL regarding the child's right to request an attorney. The court must make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday.

In the case of *In re Dependency of M.S.R.*, 174 Wn 2d 1, 271 P. 3d 234 (2012), the Washington Supreme Court held that "children of parents subject to dependency and termination proceedings have due process rights that must be protected and, in some cases, must be protected by appointment of counsel, but that the right to appointment of counsel is not universal." The court found RCW 13.34.100 "constitutionally adequate to protect the right of counsel for such children."

Summary of Bill:

Intent Section.

The Legislature recognizes that dependency proceedings determine many critical aspects of a child's future, that children have many legal rights at stake in dependency proceedings, that varying practices across the state have resulted in inconsistent protection of such rights, and that representation by an attorney can be invaluable in ensuring that the child's rights are respected. Note is taken of the recent opinion in *In re Dependency of M.S.R.* Whether individual children are entitled to an attorney is supposed to be determined by a balancing test, however, inconsistent practices with respect to attorney appointment across the state may result in children being denied their constitutional right to legal representation. The process to assert the right to counsel must be accessible to all children.

Appointment of Counsel for Child in a Dependency Proceeding.

RCW 13.34.100 is amended. The court *must* appoint an attorney for a child in a dependency within:

1. 72 hours of granting a petition to terminate the parent and child relationship.
2. 72 hours of placing the child in a group-care facility.
3. 72 hours of placing the child in inpatient treatment.
4. 14 days after the child has been prescribed psychotropic medications.
5. 72 hours after the child is placed in his or her fourth or subsequent placement.
6. 72 hours after the child has run away from a placement.
7. 72 hours of the child receiving a suspension or expulsion from school.

8. 72 hours of the child being charged with a criminal offense. (The child's criminal defense attorney may also serve as the dependency attorney if qualified to do so.)
9. 72 hours of the child being referred for a sexually aggressive youth evaluation.

The Department of Social and Health Services (DSHS) must promptly provide ex parte notice to the court of the occurrence of any of these conditions, other than termination of the parent and child relationship.

In addition, the court *may* appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the DSHS. A child's caregiver may refer the child to an attorney for purposes of filing a motion to request appointment of an attorney at public expense. A child or another individual may retain an attorney for the child for such purposes as well.

The age at which a child in a dependency must be notified of the right to request an attorney, and asked his or her wishes with respect to having an attorney, is lowered from 12 years to seven. Such notifications must continue to be made at least annually thereafter. At the first regularly scheduled court hearing after the following events, the court must inquire whether the child received such notice:

- The child's seventh birthday;
- The date that a dependency petition is filed on a child age 7 or older; or
- July 1, 2013 for a child who turned seven before that date.

The court must make additional inquiries at the first regularly scheduled hearing after the child's ninth birthday. No inquiry is necessary if the child has already been appointed an attorney.

References to "counsel" are changed to "attorney".

Appropriation: None.

Fiscal Note: Available.

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