

HOUSE BILL REPORT

HB 1285

As Reported by House Committee On: Judiciary

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 History:

Committee Activity:

Judiciary: 2/6/13, 2/12/13 [DPS].

Brief Summary of Substitute Bill

- Requires the appointment of counsel for a child in a dependency within 72 hours of granting a petition to terminate the parent and child relationship.
- Lowers, from 12 years to 7 years, the age at which a child in a dependency must be notified of the right to request an attorney.
- Tasks the Washington State Center for Court Research, in consultation with the Office of Civil Legal Aid, with evaluating the effects of the new mandate to provide attorney representation for children in terminations and reporting back to the Legislature and the Governor.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Pedersen, Chair; Hansen, Vice Chair; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Orwall and Roberts.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Hope, Klippert, Nealey and Shea.

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.

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.

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 so 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 this "constitutionally adequate to protect the right of counsel for such children."

Summary of Substitute 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 Children in Dependency Proceedings.

The court *must* appoint an attorney for a child in a dependency within 72 hours of granting a petition to terminate the parent and child relationship. The Washington State Center for Court Research, in consultation with the Office of Civil Legal Aid, is tasked with evaluating the effect of this new mandate. A preliminary report must be submitted to the appropriate committees of the Legislature and the Governor by December 1, 2014, and a final report one year later.

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 GAL, 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 7 years. 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 7 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."

Substitute Bill Compared to Original Bill:

Provisions requiring attorney representation for children in dependencies in the following types of cases are stricken:

- placement in a group-care facility;
- placement in inpatient treatment;
- prescription of psychotropic medications;
- fourth or subsequent placement;
- after the child has run away;
- after the child has been suspended or expelled from school;
- after the child has been charged with a criminal offense; and
- after child has been referred for a sexually aggressive youth evaluation.

Language is removed from the intent section that states that the balancing test will always favor the appointment of an attorney in the above circumstances.

The Washington State Center for Court Research, in consultation with the Office of Civil Legal Aid, is tasked with evaluating and reporting on the effect of mandatory attorney representation in termination cases.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 12, 2013.

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

Staff Summary of Public Testimony:

(In support) Children in dependencies do not have adequate legal representation. This bill will protect the most vulnerable children. Foster children are the only ones in this system who do not have attorneys. The best interest of a child can be different than the legal interest of the child. No one will disagree with the policy, although there may be those who are dissuaded by the financial cost. Appointment of attorneys, however, will reduce costs in the foster care system and abbreviate the legal processes. This would end up saving the state and counties money. The American Bar Association has called for the appointment of an attorney for all children in foster care. Most states do appoint attorneys. Washington is ranked 48th in the nation. The current process, in which some counties do appoint attorneys and others do not, results in "justice by geography" and this does not work. Children's voices can be lost in the process; as has happened with some siblings who spent most of their lives in the court system, starting with a custody battle that left them living with an aunt and uncle who abused them and moved them far from their father. These children ultimately ran away and were out of school for three months. They were ultimately able to get an attorney who worked to have the father obtain custody, and now lead normal lives and attend high school. The most common issues that attorneys for children in dependencies assist with concern placement and sibling contact. In one case, the attorney was able to enable one boy to have visits and Skype contact with his twin. In another situation, three teenage siblings, with the help of an attorney, were able to live with their stepfather rather than their alcoholic mother. Children do not understand the legal process and need attorneys to help them navigate the system. Studies and evidence say that this is effective and gets children out of the dependency system faster. King County already provides attorneys to all children 12 years and older at the time of termination petition approval. Benton-Franklin county does so for all children age 9 and older and may appoint attorneys for those as young as age 6. Parents whose rights have been terminated also support this for their children. The GALs are great but they only provide their opinions, they do not provide the child a voice. The GALs may make sense for younger children but adolescents should have attorneys so that they can take responsibility for major life decisions. As a result of work that has been done, and the development of training and curriculum, this state is prepared to take on this task. The intent

of this legislation is supported. The Office of Children and Family Ombudsman has identified three systemic issues: (1) the lack of coordination and collaboration in the variety of human services fields; (2) the lack of coordination and off-label use of psychotropic medications; and (3) relative placement and contact with siblings.

(Opposed) The policy is favored, but due to the financial costs, the bill is opposed.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Casey Trupin, Columbia Legal Services; Jasmine Gault; Erin Lovell, Washington Defender Association and Legal Council for Youth and Children; Hannah Armitage; Elaine Wolcott, Washington Families United; Lisa Kelley, University of Washington; Patrick Dowd, Office of Family and Children's Ombudsman; and David Kucklick, Catholic Community Services and Family Preservation.

(Opposed) Tom Parker, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.