
Judiciary Committee

E2SSB 6126

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

Brief Description: Concerning representation of children in dependency matters.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Darneille, Becker, Tom, Fraser, Pedersen, Kline, Pearson, Kohl-Welles, Braun and Frockt).

Brief Summary of Engrossed Second Substitute Bill

- Requires the appointment of an attorney to represent a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship when there is no remaining parent with parental rights.
- Provides that, subject to the availability of funds, the state may pay the costs of legal services for such appointments if the services meet certain standards.
- Tasks the Office of Civil Legal Aid with administration and disbursement of any state appropriations.

Hearing Date: 2/25/14

Staff: Cece Clynch (786-7195).

Background:

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. If an attorney is appointed by the court, the county pays the cost.

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. If the child requests an attorney and is age 12 or older, or if the GAL or the court determines that the child needs to be independently represented, the court may appoint an attorney to represent the child's position.

There are ongoing requirements with respect to notification of the right to request 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)*(MSR), 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 Bill:

Mandatory Appointment of Counsel.

The court *must* appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship when there is no remaining parent with parental rights. The court must also appoint an attorney for such a child when there is no remaining parent with parental rights for six months or longer prior to the effective date and the child is unrepresented.

Legal services provided by an attorney so appointed do not include representation of the child in any appellate proceedings related to the termination of parental rights. The court may appoint one attorney to represent a group of siblings unless there is a conflict of interest or it would be inconsistent with rules of professional conduct.

Subject to the availability of amounts appropriated for this specific purpose, the state may pay the costs of attorneys appointed following termination of parental rights if the legal services are provided in accordance with standards of practice, training, and caseload limits developed and

recommended by the Statewide Children's Representation Workgroup (Workgroup) pursuant to House Bill 2735 (2012).

Counties are encouraged to set caseload limits as low as possible and to account for the individual needs of the children in care. Specific provision is made for determining compliance with caseload standards and state reimbursement in cases where one attorney represents a sibling group. In such cases, the first child is counted as one case, and each child thereafter is counted as one-half case.

The Office of Civil Legal Aid (OCLA) is responsible for implementation and administration of state moneys appropriated for appointment of attorneys. The OCLA may enter into contracts with the counties to disburse funds, and may also require a county to use attorneys under contract with OCLA for the provision of the legal services in order to remain within appropriated amounts. Prior to distributing the funds, the OCLA must verify that the attorneys are providing representation in accordance with the standards of practice and training developed and recommended by the Workgroup, as well as the caseload limits (as modified with respect to attorneys appointed to represent siblings).

Discretionary Appointment of Counsel.

The court *may* appoint an attorney to represent the child's position at any point in a dependency action on its own initiative, or upon the request of a parent, the child, a GAL, a caregiver, or the DSHS. This is not limited to situations in which the child is age 12 or older.

If the court has not already appointed an attorney for a child or the child is not represented by a privately retained attorney: a child's caregiver or other individual may refer the child to an attorney for purposes of filing a motion to request appointment of an attorney at public expense; or, a child or another individual may retain an attorney for the child for such purposes.

Technical Changes.

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

Appropriation: None.

Fiscal Note: Requested on February 21, 2014.

Effective Date: The bill takes effect on July 1, 2014.