

# SENATE BILL REPORT

## 2SHB 1219

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As Passed Senate - Amended, April 10, 2021

**Title:** An act relating to the appointment of counsel for youth in dependency court proceedings.

**Brief Description:** Concerning the appointment of counsel for youth in dependency court proceedings.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Frame, Johnson, J., Ramos, Bateman, Peterson, Fitzgibbon, Davis, Ryu, Fey, Senn, Lovick, Chase, Orwall, Taylor, Santos, Thai, Ortiz-Self, Ormsby, Simmons, Slatter, Berg, Chopp, Bergquist, Callan, Valdez, Macri, Goodman, Tharinger, Harris-Talley, Ybarra and Hackney).

**Brief History:** Passed House: 3/2/21, 85-12.

**Committee Activity:** Human Services, Reentry & Rehabilitation: 3/16/21, 3/19/21 [DPA-WM, w/oRec].

Ways & Means: 3/30/21, 4/02/21 [DPA, w/oRec].

**Floor Activity:** Passed Senate - Amended: 4/10/21, 40-7.

### Brief Summary of Amended Bill

- Creates the Statewide Children's Legal Representation Program, which establishes a six year, phase-in implementation for mandatory appointment of counsel in dependency proceedings for children beginning July 1, 2022.

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### SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means. Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Gildon, Ranking Member; Saldaña and Wilson, C.

**Minority Report:** That it be referred without recommendation.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Dozier and McCune.

**Staff:** Julie Tran (786-7283)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

**Staff:** Trevor Press (786-7446)

**Background:** Current Youth Dependency Proceedings. The Department of Children, Youth and Families (DCYF) or any person may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, abandonment, or because there is no parent, guardian, or custodian capable of caring for the child.

The court must hold a shelter care hearing within 72 hours of the child's removal and determine if the child can return home. If the child remains out of the home, there will be a dependency fact-finding hearing within 75 days of the petition. If the court determines the child is a dependent, the court must conduct periodic reviews and makes determinations about:

- the child's placement;
- the provisions of services by DCYF;
- the compliance of the parents; and
- whether supervision should continue.

If the parent fails to make progress in curing the parental deficiencies which led to the dependency, or if one of the statutory aggravating factors exist, a termination petition may be filed. Federal law requires that after a child has been in foster care for 15 of the past 22 months, the state must file a petition to terminate parental rights unless the child is being cared for by relatives, there is a compelling reason why termination would not be in the best interest of the child, or the state has failed to offer the necessary services to the parent.

The court must appoint a guardian ad litem (GAL) for a child in a dependency proceeding, which represents the best interests of the child, unless the court finds the appointment unnecessary. The GAL requirement may be deemed unnecessary if the child is represented by an independent attorney in the proceedings.

In dependency proceedings, DCYF is represented by an assistant attorney general. Parents and guardians have the right to counsel and, if indigent, they have the right to have counsel appointed by the court. The Office of Public Defense contracts with attorneys to represent indigent parents, custodians, and legal guardians involved in child dependency and termination of parental rights proceedings.

Whether or not a court appoints an attorney for a child in a dependency proceeding depends upon the age of the child, the stage of the proceeding, and is, in most cases, a matter of court discretion.

Discretionary Appointment of Counsel for Children. 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 DCYF. 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.

DCYF and the child's GAL must notify a child who is age 12 years or older of the child's right to request an attorney and must ask the child whether they want an attorney. The court may appoint an attorney to represent the child's position if:

- the child age 12 or older requests an attorney; or
- the GAL or the court determines that the child needs to be independently represented.

Notification requirements of the right to request an attorney include but are not limited to:

- annual notifications to the child of the right to request an attorney;
- required documentation of the child's position regarding appointment of an attorney; and
- additional inquiry regarding the right to an attorney at the first regularly scheduled hearing after the child's fifteenth birthday.

Circumstances for Mandatory Appointment of Counsel for Children. 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.

Legal services provided by an appointed attorney do not include representation of the child in any appellate proceedings relative to the termination of the parent and child relationship.

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.

Office of Civil Legal Aid. Created in 2005 by the Legislature, the Office of Civil Legal Aid (OCLA) is an independent agency responsible for the administration and oversight of state funds appropriated by the Legislature to provide civil legal aid services. OCLA contracts with attorneys and agencies to provide civil legal aid and ensures legal services are provided in accordance with standards of practice, training, and caseload limits.

Extended Foster Care Program. The extended foster care program allows youth at the age of 18, who are dependents of the state, to voluntarily agree to continue receiving foster care services until the age of 21 if they:

- are enrolled in an educational or vocational program;
- participating in an employment barrier reduction program or activity;
- working 80 hours or more a month; or
- have certain medical conditions.

The court must appoint an attorney for a youth participating in the extended foster care program.

**Summary of Amended Bill:** Statewide Children's Legal Representation Program. Within OCLA, the Statewide Children's Legal Representation Program (Program) is established and responsible for the development of the phase-in schedule for mandatory appointment of counsel for children in dependency proceedings. The Program's duties include recruitment, training, and oversight of attorneys providing representation.

OCLA must administer the funds appropriated for the appointment of an attorney for a legally free child and the Program is responsible for contracting with attorneys and agencies for the provision of legal services.

Attorneys must provide legal services in accordance with the standards of practice, training, and caseload limits adopted by the Children's Representation Work Group.

Mandatory Appointment of Counsel for Children. Counsel for children in dependency proceedings are to be appointed on a phased-in county-by-county basis over a six-year period with full statewide implementation by January 1, 2027, subject to the availability of funds appropriated. The Program must include representation in at least:

- 3 counties beginning July 1, 2022;
- 8 counties beginning January 1, 2023;
- 15 counties beginning January 1, 2024;
- 20 counties beginning January 1, 2025; and
- 30 counties beginning January 1, 2026.

Mandatory appointment occurs for:

- children age 7 and younger, upon the filing of a termination petition;
- children age 8 through 17 when new dependency petitions occurs at or before the commencement of the shelter care hearing; and

- any pending or open dependency case where the child is unrepresented and is entitled to the appointment of an attorney, mandatory appointment occurs at or before the next hearing.

The implementation schedule must prioritize:

- counties that have either no current practice of appointment of attorneys in dependency cases; or
- significant prevalence of racial disproportionality or disparities in the number of dependent children compared to the general population, or both.

In cases where the statewide children's legal representation program provides funding and where consistent with its administration and oversight responsibilities the Program must prioritize continuity of counsel for children who are already represented by counsel at county expense when the program becomes effective in that county.

Subject to amounts appropriated, mandatory appointment of counsel for youth in the extended foster care program is modified to provide that the costs of legal services provided by an appointed attorney pursuant to the phase-in schedule are at state expense.

The right to have counsel appointed by the court is expanded to include indigent legal custodians.

Children's Representation Work Group. Requested by the Legislature, the Supreme Court's Commission on Children in Foster Care is to convene a Children's Representation work group to review, develop, and update the standards of practice, caseload limits, and training guides by March 31, 2022.

The Washington State Center for Court Research must convene stakeholders to identify:

- relevant outcome measures and data collection methods to effectively assess the number of youth for whom attorneys are appointed by the phase-in schedule; and
- the short and long- term impact of standards-based legal representation on case outcomes.

A report must be submitted to the appropriate committees of the Legislature and the Governor outlining the outcome measures identified by November 30, 2022.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Second Substitute House Bill (Human Services, Reentry & Rehabilitation):** *The committee recommended a different version of the bill than what was heard.* PRO: Legal representation should be a human right and it is essential for youth as the attorneys will advocate for their stated interests. Children should have an attorney of their own since their parents and the state have their own attorneys. In some cases, attorneys can help the youth more than social workers as they advise children of their rights and help them make the decisions that will benefit them. All youth should feel that their well-being is important and they should feel their attorney is there to protect them. The younger the youth, the more important it is they have a well-trained and experienced attorney to understand their rights. This has been implemented in many other states successfully.

OTHER: There are benefits to standards based legal representation in terms of permanency outcomes and the benefits apply to children of all age groups from birth through 17 years old and aging out. The cost analysis shows there are general positive results of cost reduction. There is reduced juvenile justice involvement. For youth of color, the rate of juvenile justice involvement is greatly reduced in the study population. There are some concerns about setting the mandatory appointment for youth at eight years old. Current standard practice is set at 12 years old and only one county in Washington State has set the mandatory appointment to age eight.

**Persons Testifying (Human Services, Reentry & Rehabilitation):** PRO: Representative Noel Frame, Prime Sponsor; Dorian Brajkovich, The Mockingbird Society; Kimberly Melendrez, The Mockingbird Society; Megan Valentine, Valentine Law Office, PS; S. Annie Chung, Legal Counsel for Youth & Children; Adam Ballout, ABC Law Group; Kim Dvorchak, National Association of Counsel for Children.

OTHER: Carl McCurley, Washington State Center for Court Research; Ryan Murrey, Washington Association of Child Advocate Programs.

**Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation):** No one.

**Staff Summary of Public Testimony on the Bill as Amended by Human Services, Reentry & Rehabilitation (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: You cannot put a price tag on keeping kids in the communities that they belong to. The House has already paid for this, please do the same. Foster kids with attorneys spend less time in congregate care and find permanency sooner which means the state spends less money on foster care.

OTHER: The attorney general needs the full cost of the fiscal note to ensure the intent of the bill is met. There is not currently enough capacity for the additional caseload. I recommend a four year implementation rather than six years to ensure full funding. Per child costs should go down with this bill because of shorter time changes before

guardianship.

**Persons Testifying (Ways & Means):** PRO: Samuel Martin, The Mockingbird Society; Megan Valentine, Valentine Law Office PS.

OTHER: Carl McCurley, AOC/Center for Court Research; Yasmin Trudeau, Washington State Office of the Attorney General.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.