

# SENATE BILL REPORT

## SHB 1747

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As of February 16, 2022

**Title:** An act relating to supporting relative placements in child welfare proceedings.

**Brief Description:** Supporting relative placements in child welfare proceedings.

**Sponsors:** House Committee on Children, Youth & Families (originally sponsored by Representatives Ortiz-Self, Taylor, Davis, Peterson, Ryu, Orwall, Dolan, Simmons, Ramos, Wicks, Valdez, Fitzgibbon, Morgan, Stonier, Goodman, Ormsby, Macri, Harris-Talley and Frame).

**Brief History:** Passed House: 2/2/22, 96-0.

**Committee Activity:** Human Services, Reentry & Rehabilitation: 2/16/22.

### Brief Summary of Bill

- Expands the good cause exception to the requirement that the court require the Department of Children, Youth, and Families (DCYF) to file a termination petition if a child is in out-of-home care for 15 of the last 22 months to include circumstances where DCYF has not yet met with the caregiver for the child to discuss guardianship as an alternative to adoption or the court has determined that guardianship is an appropriate permanent plan.
- Requires the court to consider the efforts taken by DCYF to support a guardianship and whether a guardianship is available as a permanent option for the child when considering one of the required elements of a termination of parental rights petition.
- Expands the subsidy program for eligible relatives appointed by the court to include limited guardians of a minor.
- Prohibits a child who is placed with a relative or other suitable person from being moved, unless, under certain criteria, the court finds that a change in circumstances necessitates a change in placement.

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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.*

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## SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

**Staff:** Alison Mendiola (786-7488)

**Background:** Child Welfare—Dependency—Court Proceedings. Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency. The fact finding must be held within 75 days after the filing of the petition unless exceptional reasons for a continuance are found.

If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by DCYF, compliance of the parents, and whether progress has been made by the parents.

DCYF must develop a permanency plan within 60 days from the date that DCYF assumes responsibility for the child which must identify primary outcome goals for the case. DCYF must submit this permanency plan to the parties and the court at least ten working days before a permanency planning court hearing. A permanency planning hearing must be held in all cases where the child has remained in out-of-home care for at least nine months, but no later than 12 months following out-of-home placement.

During a permanency planning hearing, the court must order DCYF to file a petition seeking termination of parental rights (TPR) if the child has been in out-of-home care for 15 of the last 22 months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a TPR petition is not appropriate.

A petition seeking the TPR must include certain allegations including that:

- the child has been found to be a dependent child;
- the court has entered a dispositional order pursuant to current law;
- that the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- that the services ordered under current law have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of

correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

- that there is little likelihood that conditions will be remedied so the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption there is little likelihood conditions will be remedied so the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to a number of factors; and
- that the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

The parent, guardian or legal custodian whose rights are the subject of the petition to terminate parental rights are to be provided with a notice of rights as proscribed in statute.

Following a TPR, if there is no parent with parental rights, the court is to commit the child to the custody of DCYF.

Guardianship. There are two types of guardianships that are recognized during child welfare proceedings: a guardianship restricted to parties in a dependency case, and a broader guardianship that is not limited to the parties of a dependency case. Neither of these guardianships require TPR.

Dependency-Specific Guardianship. A dependency-specific guardianship allows any party to a dependency proceeding to file a petition in juvenile court seeking a guardianship, with notice provided to all the parties in the dependency case. This is sometimes referred to as a Title 13 guardianship based on the location of this guardianship in the law.

To be designated as a proposed guardian, a person must be age 21 or older and must meet minimum requirements to care for children established by DCYF. A guardianship may be established if the court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or continue to return custody of the child to the parent and:

- all parties agree to the entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of carrying out the duties of a guardian; or
- the child has been found dependent, removed from the custody of the parent for at least six consecutive months, services have been offered or provided to the parent, there is little likelihood that the child can be returned to the parent in the near future, and the proposed guardian acknowledged the guardian's rights and responsibilities to the child committing to care for the child until the child reaches age 18.

In all guardianship proceedings, the court must appoint a guardian ad litem or attorney for the child.

Except in limited circumstances, the court may not establish a guardianship for a child who has no legal parent.

Any party to a guardianship may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The court may terminate a guardianship on the agreement of the guardian, the child— if the child is age 12 or older, and the parent seeking to regain custody of the child if the court finds by a preponderance of the evidence that the parent has successfully corrected the parenting deficiencies identified by the court in the dependency case, among other things.

A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship. The court must deny such a petition unless adequate cause is found.

A guardianship remains in effect until the child turns age 18 or the court terminates the guardianship, whichever is sooner.

Limited Guardianship of a Minor. A person interested in the welfare of a minor, including the minor themselves, may petition for the appointment of a guardian in a broader guardianship process that is not limited to parties involved in a dependency case. This is sometimes referred to as a Title 11 guardianship based on the location of this guardianship in the law. After a petition is filed for this type of guardianship, a person becomes a guardian for a minor only on appointment of the court. The court may appoint a guardian if the court finds that the appointment is in the minor's best interest and:

- each parent consents;
- all parental rights have been terminated; or
- there is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions.

In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court may create a limited guardianship by limiting the powers otherwise granted to a guardian. When establishing a Title 11 guardianship of a minor, the court shall state rights retained by the parent, which must preserve the parent-child relationship through an order for parent-child visitation and other contact, unless the court finds the relationship should be limited or restricted, and which may include decision-making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.

An order granting guardianship for a minor must state that the parent of the minor is entitled to notice that:

- the guardian has delegated custody of the minor;
- the court has modified or limited the powers of the guardian; or
- the court has removed the guardian.

Relative Guardianship Assistance Program. The Relative Guardianship Assistance Program (R-GAP) is a subsidy program operated by DCYF for eligible relatives appointed by the court as a guardian under the guardianship specific to dependency cases.

**Summary of Bill:** If a dependent child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court is to instruct DCYF to discuss guardianship as a permanent option for the child with the child's parents and caregiver as an alternative to termination of parental rights. No child who is placed with a relative or other suitable person may be moved, unless the courts finds a change in circumstances necessitates a change in placement, pursuant to the criteria established in statute, as opposed to recommending a change in placement based on DCYF's recommendation.

Termination of Parental Rights. Good cause exceptions to ordering DCYF to file a petition seeking to TPR are expanded to include if DCYF has not yet met with the caregiver for the dependent child to discuss guardianship as an alternative to adoption or the court has determined that guardianship is an appropriate permanent plan.

In a petition to TPR, the allegation that the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home is expanded. In this instance, the court is to consider efforts taken by DCYF to support a guardianship and whether a guardianship is available as a permanent option for the child.

The statutory notice of rights of the TPR is to include an explanation of local procedure for obtaining a court-appointed lawyer and the name and number of the agency that parents may call for more information about their child.

If DCYF takes custody of a child after parental rights are terminated, the statutory placement requirements continue to apply throughout the life of the case, except the court does not need to consider whether reunification with the parent will be hindered when evaluating relative placements.

Guardianship. Both eligible Title 11 and Title 13 guardians may receive a R-GAP subsidy.

**Appropriation:** None.

**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:** PRO: The goal is to keep families together because we know the trauma a child experiences when they are removed from their home and community. With adoption, ties to the family, extended family and community are severed. This bill doesn't prevent adoption but ensures that everything is done to preserve the family first by ensuring that guardianship has been fully explored and also extends a subsidy to some guardians which can be immensely helpful. This is not only better for the child but also saves the state money. When tribal youth are taken from their family, they have no connection to their culture or history due to placements outside of the tribe. Nationally, we do this to over 20,000 kids every single year. When a child is adopted, the birth certificate is changed and all familial ties are erased. With guardianship the parents still have a voice regarding the placement of their child. State efforts should be focused on kinship providers when reunification is not possible—it is in the best interests of the child and nurtures their well-being. Youth with lived experience can attest to how hard it is to be taken from your family, even if it's necessary and you are placed with strangers. With safe family you know that someone cares about you and your well-being.

**Persons Testifying:** PRO: Representative Lillian Ortiz-Self, Prime Sponsor; Jerry Milner, Director Family Integrity & Justice Works; Shrounda Selivanoff, Children's Home Society of Washington; Emily Stochel; Angela Bishop, Washington CASA Association; Katie Biron, Fostering Connections for Families.

**Persons Signed In To Testify But Not Testifying:** No one.