

FINAL BILL REPORT

2SHB 1219

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Synopsis as Enacted

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).

House Committee on Civil Rights & Judiciary
House Committee on Appropriations
Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means

Background:

Dependency Proceedings Generally.

The Department of Children, Youth, and Families (DCYF) 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 progress of the parties, as well as whether supervision should continue. 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 DCYF 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 proceeding 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. A

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GAL represents the best interests of the child.

In dependency proceedings, the 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 (OPD) 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 the 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.

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

Mandatory Appointment of Counsel for Children in Some Circumstances.

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 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.

Extended Foster Care Program.

The extended foster care program is a program that allows youth who are dependents of the state at age 18 to voluntarily agree to continue receiving foster care services until age 21, provided that they are enrolled in an educational or vocational program, participating in a

program or activity to reduce barriers to employment, working 80 hours or more a month, or have certain medical conditions. A court must appoint an attorney for a youth participating in the program.

The Office of Civil Legal Aid.

The Office of Civil Legal Aid (OCLA) is responsible for the implementation and administration of state money appropriated for the appointment of an attorney following termination of parental rights. The OCLA enters into contracts with attorneys and agencies for the provision of such services. When entering into a contract with a qualified legal aid provider, the OCLA ensures legal services are provided in accordance with standards of practice, training, and caseload limits developed and recommended by the Statewide Children's Representation Workgroup.

Summary:

Mandatory Appointment of Counsel for Children.

Subject to the availability of funds appropriated for this purpose, counsel for children in dependency proceedings are to be appointed on a phased-in county-by-county basis over a six-year period as follows:

1. at least 3 counties beginning July 1, 2022;
2. at least 8 counties beginning January 1, 2023;
3. at least 15 counties beginning January 1, 2024;
4. at least 20 counties beginning January 1, 2025;
5. at least 30 counties beginning January 1, 2026; and
6. full-statewide implementation by January 1, 2027.

For children ages 0-7 years, mandatory appointment occurs upon the filing of a termination petition. For children ages 8-17, mandatory appointment for new dependency petitions occurs at or before the commencement of the shelter care hearing and for any pending or open dependency case where the child is unrepresented and is entitled to appointment, mandatory appointment occurs at or before the next hearing.

Counties that have either no current practice of appointment of attorneys in dependency cases or that have a significant prevalence of racial disproportionality or disparities in the number of dependent children compared to the population, or both, must be prioritized.

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 attorney appointed pursuant to the phase-in schedule are at state expense.

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

Statewide Children's Legal Representation Program.

The Statewide Children's Legal Representation Program (Program) is established within the OCLA. Courts maintain the responsibility to appoint attorneys in dependency proceedings, and the Program is responsible for the development of the phase-in schedule, as well as the recruitment, training, and oversight of attorneys providing representation.

While the OCLA will continue to administer funds appropriated for the appointment of an attorney for a legally free child, the Program will assume the responsibility for contracting with attorneys and agencies for the provision of legal services.

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.

Other Provisions.

The provision affording indigent parents and guardians the right to have counsel appointed by the court is amended to also include indigent legal custodians.

The Washington State Center for Court Research (Center) is required to convene stakeholders to identify: (1) relevant outcome measures and data collection methods to effectively assess the number of youth subject to the phase-in; and (2) the short- and long-term impact of standards-based legal representation on case outcomes. The Center must submit a report to the appropriate committees of the Legislature and the Governor outlining the outcome measures identified by November 30, 2022.

The Supreme Court's Commission on Children in Foster Care is requested to convene a Children's Representation Workgroup to review and update the standards of practice, caseload limits, and training guidelines developed and adopted by the Statewide Children's Representation Work Group from 2010. The updated standards must be developed by March 31, 2022.

The sections are restructured so that provisions relative to GALs are in one section and provisions relative to attorneys are in another.

Votes on Final Passage:

House	85	12	
Senate	40	7	(Senate amended)
House	84	13	(House concurred)

Effective: July 25, 2021