

SENATE BILL REPORT

SB 5461

As Reported by Senate Committee On:
Human Services & Corrections, February 19, 2013

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

Brief Description: Modifying provisions regarding the representation of children in dependency matters.

Sponsors: Senators Darneille, Harper, Kohl-Welles and Frockt.

Brief History:

Committee Activity: Human Services & Corrections: 2/12/13, 2/19/13 [DPS-WM, DNP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5461 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Harper.

Minority Report: Do not pass.

Signed by Senator Padden.

Staff: Joan Miller (786-7784)

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 that the child is dependent, the court will conduct periodic reviews and make determinations about the child's placement and the parents' progress in correcting parental deficiencies. Under certain circumstances, the court 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 DSHS to file a petition for termination, in the absence of 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 court has the discretion to appoint an attorney to represent a child in a dependency.

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.

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 the child wants an attorney. DSHS and the GAL must notify the child about the right to an attorney annually, and also upon the filing of any motion affecting the child's placement, services, or familial relationships.

DSHS must note in the child's service and safety plan, and the GAL must note in the report to the court, the child's position regarding the appointment of an attorney. The GAL must provide the court with the GAL's recommendation about whether the 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 the child has been informed by 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 15th birthday.

Summary of Bill (Recommended Substitute): The court must appoint an attorney for a child in a dependency hearing within 72 hours of granting a petition to terminate the parent and child relationship.

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 guardian ad litem, a caregiver, or 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 their wishes with respect to having an attorney, is lowered from 12 years to seven. Such notifications must continue to be made at least annually. At the first regularly scheduled court hearing, the court must inquire whether the child received such notice after the following events:

- the child's seventh birthday;
- the date that a dependency petition is filed on a child age seven or older; or
- July 1, 2013, for a child who turned seven before that date.

The court must make additional inquiries at the first regularly scheduled hearing after the child's ninth birthday unless the child has already been appointed an attorney.

The Washington State Center for Court Research, in consultation with the Office of Civil Legal Aid, is tasked with evaluating the effect of mandatory attorney representation in termination cases, particularly the effect on case-processing timelines and child and family well-being outcomes. A preliminary report is due in December 2014 with a final report to follow in December 2015.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): The court is not required to appoint an attorney for a child in a dependency in the following circumstances: placement of the child in a group-care facility; placement of the child in inpatient treatment; the child has been

prescribed psychotropic medications; placement in the child's fourth or subsequent placement; the child has run away from a placement; the child receives a suspension or expulsion from school; the child is charged with a criminal offense; or the child is referred for a sexually aggressive youth evaluation. The court must appoint an attorney within 72 hours of granting a petition to terminate the parent and child relationship.

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Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is the fiscally sound thing to do for this committee and the best thing to do for children. Thirty-three states and the District of Columbia provide legal representation to children in dependency proceedings. In those states, outcomes for children are better, and the states save money because children are moved to permanency more quickly. The National Conference of State Legislatures has found this policy to be an evidence-based practice. The Washington Supreme Court has stated that because these children have as much at stake, if not more, as parents in these proceedings, children have at least the same constitutional right to an attorney as parents. Children with an attorney have permanency rates 59 percent higher than children without one. The fiscal analysis done by Columbia Legal Services shows that this bill, which provides legal representation to our state's most vulnerable children, would more than pay for itself, even over the current biennium. Youth impacted by the foster care system deserve a seat at the decision-making table because so much of their lives are decided in the courtroom. It is problematic that whether a foster child receives a lawyer depends on where the child lives rather than the child's needs, and this bill would address the inconsistencies among the counties in our state. Attorneys and court-appointed special advocates (CASAs) provide distinct and unique roles, but several children of all ages have neither an attorney nor a CASA. Even though a CASA or GAL is supposed to be appointed at the time of the initial hearing, it is up to the CASA or GAL program to actually fill the appointment. Many children feel voiceless and powerless during the dependency process, and they need an advocate to stand up for their legal rights. Young adolescents and teenagers come into court, which is a very intimidating environment, and they are asked by the court if they want an attorney. The kids mumble, or they say, "I don't know." It is hard for kids to assert themselves, and they are afraid to speak up, but this bill would protect them. Jasmine Gault lived with her great-aunt and great-uncle who were in a custody battle with Jasmine's father. Jasmine was subjected to various forms of abuse, but no one would listen to her or to what she wanted. Eventually, she and her sister ran away. After they managed to connect with some attorneys, the sisters were able to file a dependency petition. Very quickly, that process

got them placed in a safer area, and now, they are able to live with their dad. As a youth that has been through the system without an attorney, Jasmine knows what it is like to not have your voice heard, to feel like you do not matter.

OTHER: While the Office of Family and Children's Ombudsman (OFCO) technically remains neutral on specific legislation, it does support the intent of this legislation. Appointing an attorney to represent children under the circumstances described in this bill will help address systemic issues identified by OFCO. Specifically, legal advocacy for these children can remove barriers to the collaboration and coordination of services between multiple agencies and assure the delivery of services. Attorney representation will also help protect the legal rights of foster children regarding the use of psychotropic medications and prevent the misuse of prescription drugs. OFCO frequently receives complaints about the failure to place a dependent child with available relatives, multiple placements, and sibling separation. The child has the greatest stake in decisions regarding placement and visitation, and an attorney will ensure that the child's interest is heard. With respect to the fiscal note, it is important to bear in mind that many of these children will eventually be appointed an attorney; this bill would simply assure that the appointment takes place earlier in the process.

Persons Testifying: PRO: Casey Trupin, Columbia Legal Services; Danielle Malcolm, University of Washington School of Law; Erin Lovell, WA Defender Assn.; Brenda Kauffman, Catholic Community Services; Jon Brumbach, The Mockingbird Society; Marche Rhyne, Janeice Jackson, Jasmine Gault, Jennifer Walker, citizens.

OTHER: Patrick Dowd, OFCO.