

SENATE BILL REPORT

SB 6126

As Reported by Senate Committee On:
Human Services & Corrections, January 30, 2014
Ways & Means, February 11, 2014

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

Brief Description: Concerning representation of children in dependency matters.

Sponsors: Senators O'Ban, Darneille, Becker, Tom, Fraser, Pedersen, Kline, Pearson, Kohl-Welles, Braun and Frockt.

Brief History:

Committee Activity: Human Services & Corrections: 1/20/14, 1/30/14 [DPS-WM].
Ways & Means: 2/11/14 [DP2S, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6126 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Padden.

Staff: Joan Miller (786-7784)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6126 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Billig, Braun, Conway, Dammeier, Fraser, Frockt, Hasegawa, Hatfield, Kohl-Welles, Rivers and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Hewitt and Schoesler.

Staff: Julie Murray (786-7711)

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.

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, then 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, then 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.

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 Second Substitute): The court must appoint an attorney for a child in a dependency proceeding within 72 hours of granting a petition to terminate the parent and child relationship. The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.

The cost of the legal services must be paid by the county. Subject to the availability of amounts appropriated for this specific purpose, the state may pay up to one-half of the costs of legal services provided if these legal services are provided in accordance with the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation workgroup. When one attorney represents a sibling group, however, the first child is counted as one case, and each child thereafter is counted as one-half case for the following purposes only: to determine compliance with caseload standards, and to determine reimbursement to the county by the state.

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 GAL, a caregiver, or DSHS. The child or any individual may retain an attorney for the purpose of filing a motion to request appointment of an attorney at public expense.

The Office of Civil Legal Aid (OCLA) must administer any money appropriated for the appointment of an attorney for a child within 72 hours of granting a petition to terminate parental rights. Prior to disbursing state funds, OCLA must verify that the appointed attorneys meet the standards of practice, voluntary training, and caseload limits.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):

- Makes amount of state reimbursement to counties for legal services subject to amounts appropriated for that purpose.
- Removes authority of OCLA to enter into contracts with counties for disbursement of state funds.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended First Substitute): A codified intent section is added to clarify that the intent of the legislation is to provide legal representation to legally free children for the purpose of accelerating permanency. The intent section also states that nothing in this act must be construed against the parent's fundamental liberty interest in parenting the child prior to termination of the parent and child relationship.

One attorney may represent a sibling group so long as there is not a conflict of interest. A modified calculation for reimbursement and caseload computations is provided, which corresponds to the reduced level of work that the attorney would not need to repeat for siblings.

The pilot program to study the effects of appointing an attorney for a child at the time of the shelter care hearing is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: For better or worse, children's dependency rights and interests are decided in courts, which are adversarial by nature. It seems commonsensical that the most powerless children need advocates, and this bill would help the legally free children who are most vulnerable. Washington is an absolute outlier on this issue. Thirty-four other states require the appointment of counsel for all children in dependencies. The appointment of lawyers for foster youth shortened their time in care, and it leads to permanency 1.5 times faster, which saves money. Asking children, who have experienced trauma, to request an attorney is well beyond their confidence level and skill set. Our current law is well below community standards, as there are no known parents who would allow their child in a courtroom without a lawyer. Decisions about placement, sibling visitation, and schooling often take place

during proceedings that the child does not even know about. Adolescents need healthy, developmentally appropriate control over their lives. There are good people working in the foster care system, including court-appointed special advocates (CASAs), but the role of an attorney is different. In addition to listening to what the child wants as opposed to what someone believes is in the child's best interest, the attorney has different tools. The attorney can go to court, file motions, and petition for a move in placement. The only way to ensure children are heard is for them to have an advocate with the same level of expertise as the advocate for the state. If children are given counsel during their time in foster care, there will be fewer youth entering the criminal justice system or ending up homeless. Hell's Canyon Circuit has provided an attorney for every foster child for over 13 years. The state average for reunification is 56 percent. In Hell's Canyon, it is 81 percent, the highest in the state. Providing attorneys is a key component to Hell's Canyon's success. The pilot program will prove that attorneys get kids out of foster care faster, and that saves the state money.

Having a lawyer made one testifier feel like he had a voice in court. This person felt confused about the process, so he wanted an attorney's help. He stated that the attorney was there to answer his questions, and it made a big difference for this person to have someone who was willing to explain things to them. Another testifier stated that when he was a child, he was the subject of a dependency and lost his parents; but now he is a surgeon, a foster parent, and an adoptive parent. However, this testifier still believes that the system is broken. CASAs and social workers are great touch points for the child, but what children need is an attorney or advocate who can navigate the legal system. The state will pay for an attorney regardless; one just has to choose whether it is going to be a dependency attorney or a criminal defense attorney. The scars left behind from foster care are not physical, but emotional, because there is the fear of being moved around or getting attached. One of the worst things for children in foster care is that they do not have the opportunity to really know who they are. One testifier stated that she was moved through five different homes in two years. She was scared because of her absolute lack of control. Children four or five years old often have to navigate the foster care system. CASAs and social workers are overworked and cannot give enough attention to every foster child. One testifier stated she lost her heritage because she did not have an attorney; she recently learned that she is a Native American, but because that fact was not documented by her CASA or social worker, she is unable to take advantage of federal benefits.

CON: This bill has fiscal concerns. If it is good policy, pass it and pay for it. The counties and court budgets do not have the money to absorb even half of the costs. The part of the bill that calls for a pilot study would be useful to see if the differences are statistically significant. But there are concerns about caseload standards and the ability for caregivers and parents to retain an attorney for the purpose of filing a motion to obtain an attorney at public expense.

OTHER: One testifier remained neutral but supported the intent of this bill. Children have at least the same due process right to counsel as do parents, but under current law, whether a child is represented lies in the court's discretion and depends largely on local practices of the county. Children in dependencies have much at stake and deserve legal representation.

Persons Testifying (Human Services & Corrections): PRO: Senator O'Ban, prime sponsor; Jill Malat, Columbia Legal Services; Andrea Freimuth, Legal Counsel for Youth and Children; Jim Theofelis, Wesley Robinson, Mockingbird Society; Constance Proctor,

Catholic Community Services; Brian Plaskon, Foster and Adoptive Parent; Janet St. Clair, foster parent; Honorable William Acey, Hell's Canyon Circuit Superior Court; Sharonta Pickering, Portia Plaskon, Toby Plaskon, citizens.

CON: Stephen Warning, Superior Court Judges Assn.; Al Rose, Pierce County.

OTHER: Patrick Dowd, Office of the Family & Children's Ombuds.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: This bill kicks in when children are orphaned. If a child's life is going to be determined by a court, they deserve representation in court. Legal representation moves kids from foster care system and into permanency faster. We need to protect the most vulnerable kids in the system.

OTHER: Fiscal note has been revised to reflect reduced costs to administer program.

Persons Testifying (Ways & Means): PRO: Senator O'Ban, prime sponsor; Jill Malat, Columbia Legal Services.

OTHER: Jim Bamberger, OCLA.