

HOUSE BILL REPORT

HB 2030

As Reported by House Committee On:
Children & Family Services

Title: An act relating to guardianship of dependent children.

Brief Description: Revising provisions relating to guardianship of dependent children.

Sponsors: Representatives Roberts and Kagi; by request of Department of Social and Health Services.

Brief History:

Committee Activity:

Children & Family Services: 2/21/05, 2/28/05 [DPS].

Brief Summary of Substitute Bill

- Eliminates dependency guardianships and defines a new category of guardianship.
- Establishes when guardianships are the preferred permanent plan, guidelines for the creation of the guardianship, qualifications for guardians, rights and duties of guardians, financial support of guardians, and the modification and termination of guardianship orders.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kagi, Chair; Roberts, Vice Chair; Hinkle, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Darneille, Dickerson, Dunn and Pettigrew.

Staff: Sonja Hallum (786-7092).

Background:

Dependency Background:

If there are allegations of abandonment, abuse or neglect, or no parent who is capable of caring for a child, the state may investigate the allegations and initiate a dependency proceeding in juvenile court. If the court finds the statutory requirements have been met, the court will find the child to be a dependent of the state.

Whenever the court orders a dependent child to be removed from the home, the Department of Social and Health Services (Department) is required to provide the court with a permanent plan for the child. The permanent plan will contain the desired goal for the child which may include a plan to return the child home, adoption, long-term placement, or guardianship, including a dependency guardianship.

Definition of Dependency Guardianship:

A dependency guardian is a person, nonprofit corporation, or Indian tribe appointed by the court to assist the court in supervision of the dependency.

Creation of a Dependency Guardianship:

Any party to the dependency may petition the court to request a dependency guardianship be created.

The court will hold a hearing and may establish a dependency guardianship if the court finds the following:

1. the child has been found to be a dependent child;
2. a dispositional order has been entered in the dependency;
3. the child has been removed from the parent's home for six months pursuant to the dependency;
4. services have been offered to correct the parental deficiencies;
5. there is little likelihood the parental deficiencies will be corrected so the child may be returned home in the near future; and
6. a guardianship is in the best interest of the child rather than a termination of parental rights or returning the child to the parent's home.

Qualifications for a Dependency Guardian:

Any person who is over the age of 21, any nonprofit corporation, or any Indian tribe, who meets the qualifications under the statutes relating to criminal background checks and suitability for the care of children may be appointed a guardian. The preferences of the child's parents should also be considered.

Rights and Duties of the Dependency Guardian:

If the court orders a dependency guardianship, the court will enter an order which contains the following:

1. the appointment of a person or agency to act as the dependency guardian;
2. the dependency guardian's rights and responsibilities, including rights to make decisions regarding finances, health, education, discipline, and social issues, but not the authority to consent to adoption;
3. the frequency of visitation between the parent and child; and
4. the nature of any continued future involvement by the supervising agency.

Continuation of the Dependency:

Under a dependency guardianship, the underlying dependency continues as if the child were in a foster care placement. However, unlike a foster care placement, review hearings only take place if required by the court.

Financial Support of Dependency Guardianships:

Establishment of a dependency guardianship does not preclude the dependency guardian from continuing to receive foster care payments.

Modification and Termination of the Dependency Guardianship:

Any party may request to modify or terminate a dependency guardianship order. The Department may initiate a modification or termination proceeding, or intervene in a proceeding, even if it was not a party to the dependency guardianship.

The court will grant the order if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances which occurred after the dependency guardianship was established and that it is in the best interest of the child to modify or terminate the dependency guardianship.

Placement of the Child Following Termination of the Guardianship:

If an order terminating the guardianship is granted, the dependency guardian no longer has any rights or responsibilities toward the child and the child remains dependent. The child will remain a dependent. The court will either return the child home to the parent or place the child into the custody, control, and care of the Department, or licensed child-placing agency, for placement in a foster home or in group care.

Summary of Substitute Bill:

Effect on Current Dependency Guardianships:

Dependency guardianships are eliminated. However, any dependency guardianships existing at the time of the effective date of the act will remain in effect unless the dependency guardian and the Department agree the dependency guardianship should be converted to a guardianship.

Definition of Guardianship:

The definition of "guardian" is changed. The revised definition of guardian includes any person, persons or agency that has been appointed guardian in a proceeding, including a guardian appointed under the dependency and termination of parental rights statutes, who has legal right to custody of the child. However, the term "guardian" does not include a "dependency guardian."

Creation of a Guardianship:

Any party to the dependency may petition the court to request a guardianship be created.

The court will hold a hearing and may establish a guardianship if the court finds the following:

1. the child has been found to be a dependent child;
2. a dispositional order has been entered in the dependency;
3. the child has been removed from the parent's home for six months pursuant to the dependency;
4. services have been offered to correct the parental deficiencies;
5. there is little likelihood the parental deficiencies will be corrected so the child may be returned home in the near future;
6. the guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child, and has agreed to accept the commitment to care for the child until the child reaches age 18;
7. guardianship is a more reasonable or appropriate option for the child than adoption; and
8. a guardianship is in the best interest of the child rather than a termination of parental rights or returning the child to the parent's home.

In determining whether a guardianship is in the best interest of the child, in addition to the factors listed above, the court will consider the following:

1. the nature of the relationship between the child and the child's parent or parents;
2. the relationship of the proposed guardian to the child;
3. the nature of the child's relationship with siblings and the extent to which the guardianship will facilitate those relationships;
4. the child's preference, if any, for the guardianship;
5. the ability of the proposed guardian to meet the familial and cultural needs of the child; and
6. if the child is an Indian child, the position of the child's tribe regarding the guardianship.

A guardianship may only be established for a child under the age of 12, or a child who has no legal parent, if a court determines the above factors have been met and that exceptional circumstances exist. Exceptional circumstances may include:

1. a child under age 12 who has special needs and has a suitable guardian willing to take custody of the child; or
2. establishment of a guardianship will allow the child to be placed, or to maintain contact, with siblings to an extent unlikely to be achieved through other permanency options.

The finding of exceptional circumstances is not required if the proposed guardian has promised to provide long-term care for the child and is:

1. related to the child;
2. a long-term care giver whom the child views as a parent and who has acted like a parent; or
3. identified as the preferred guardian by the child's family and the child, if the child is over the age of 12.

Indian Child Welfare Act:

The guardianship petition must contain a statement alleging whether the child is an Indian child as defined by the Indian Child Welfare Act (ICWA). Every order or decree entered in any proceeding under the dependency and termination of parental rights chapter must contain a finding the ICWA does or does not apply. If the ICWA does apply, the order must contain a finding that all notice requirements and evidentiary requirements under the ICWA have been satisfied.

Qualifications for a Guardian:

Any suitable person or persons who are over the age of 21 who meet the qualifications under the statutes relating to criminal background checks and suitability for the care of children may be appointed a guardian. The preferences of the child's parents should also be considered.

Before the court appoints a guardian, the Department, a private agency, or the child's tribe if the child is an Indian child, must have available in its files or shall complete a current satisfactory home study of the proposed guardian and those persons age 16 and older residing in the proposed guardian's home. The home study shall include a criminal background check. The Department is only required to complete the home study if the Department is currently providing services to the child or prospective guardian.

Rights and Duties of the Guardian:

If the court orders a guardianship, the court will enter an order which contains the following:

1. establishment of the guardianship and dismissal of the dependency;
2. appointment of a person or agency to act as the guardian;
3. the guardians rights and responsibilities, including rights to make decisions regarding finances, health, education, discipline, and social issues;
4. the frequency and type of contact between the parent and child, and between the child and siblings; and
5. the requirement that the guardian must notify the court before moving out of state with the child.

The court does not have the authority to order the Department to supervise or provide services to the guardian or the child.

Continuation of the Dependency:

Under a guardianship the underlying dependency is dismissed. There are no review hearings.

Financial Support of Guardianships:

The Department may provide incentives and subsidies for special needs children placed in guardianships. The Department is required to establish rules for eligibility standards for the subsidy. Children eligible for a subsidy include special needs children whose guardian was receiving Temporary Assistance for Needy Families (TANF) or foster care payments from the Department, during the dependency, to meet the child's needs.

The Department is required to establish rules for the maximum rates for guardianship subsidies. The Department may enter into an agreement with the guardian for the basic subsidy payments following the entry of the guardianship order .

The court may consider the subsidy agreement or proposal in deciding whether to grant the guardianship. However, the court may not direct the Department to make payment.

The Department is required to establish rules for a process to renegotiate the subsidy agreement and establish a process for appeal and review of the Department decisions regarding the subsidy.

Modification and Termination of the Guardianship:

General Requirements:

Any party, including the guardian, may apply to modify or terminate a guardianship order under the dependency and termination of parental rights chapter. The party seeking to modify or terminate the guardianship order must first request a threshold hearing, a show cause hearing, at which time the court will review the request and may decide one of the following:

1. to schedule a hearing on the motion to modify or terminate the guardianship;
2. to appoint a guardian ad litem to investigate the issues raised by the application or to take immediate action if necessary; or
3. to deny the application without scheduling a hearing if the application appears frivolous.

The court must hold a hearing on the motion before modifying the guardianship. The court will grant the order to modify the guardianship if the court finds by a preponderance of the evidence that, based upon facts that have arisen since the entry of the guardianship order, modification is in the best interest of the child.

The guardianship will be terminated if the court finds by a preponderance of the evidence that, based on facts that have arisen since entry of the guardianship order, a substantial change has occurred in the circumstances of the child or the guardian and that the termination is in the best interest of the child and necessary to serve the best interests of the child.

If the order is granted the court will either return the child home to the parent or place the child into the custody, control, and care of a substitute guardian. The court may only place the child in shelter care or other out of home care if a dependency petition has been filed and is pending before the court.

At any point during the modification or termination proceedings the court may appoint a guardian ad litem or attorney to represent the child.

Requirements If the Parent is the Moving Party:

If the person who is moving to terminate a guardianship is a parent who is seeking a return of custody of the child, the court may only terminate the guardianship order if the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the entry of the order that:

1. the parent has substantially and successfully addressed the parenting deficiencies identified by the court in the dependency action, or the circumstances of the parent have changed, and the child would no longer be at risk of harm to the child's health, welfare, and safety if returned to the care and custody of the parent;
2. the child, if age 12 or older, agrees to the return to the parent; and
3. termination of the guardianship and return of the child to the care and custody of the parent is in the best interests of the child.

Termination by Agreement:

The court may terminate the guardianship if the parties, including the child who is over the age of 12, the parent, and the guardian, agree and the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the entry of the order that:

1. the parent has substantially and successfully addressed the parenting deficiencies identified by the court in the dependency action, or the circumstances of the parent have changed, and the child would no longer be at risk of harm to the child's health, welfare, and safety if returned to the care and custody of the parent;
2. the guardian of the child agrees that the parent is presently able to provide appropriate care for the child and agrees to the return of the child to the parent's care and custody;
3. the child, if age 12 or older, agrees to the return to the parent; and
4. termination of the guardianship and return of the child to the care and custody of the parent is in the best interests of the child.

Placement of the Child Following Termination of the Guardianship:

If the order is granted the court will either return the child home to the parent or place the child into the custody, control, and care of a substitute guardian. The court may place the child in shelter care, or other out-of-home care, if the court determines it is necessary.

Effective Date:

The effective date of the act is January 1, 2006.

Substitute Bill Compared to Original Bill:

The substitute bill permits the court to appoint more than one person as a guardian.

The substitute bill changes the requirements the court must find to terminate the guardianship when the parent is the moving party by removing the requirement that the court must find that the guardian is unfit to care for the child before the guardianship is terminated.

If the guardianship is terminated, the substitute bill permits the court to order a child into shelter care if the court determines it is necessary.

The Department is required to establish rules for a process to renegotiate the subsidy agreement and to establish a process for appeal and review of the Department decision regarding the subsidy.

The substitute bill makes technical changes including reinstating the definition of "dependency guardian" in the definition section, correcting a statutory reference to the dependency guardianship statute, and clarifying that the home study that is available prior to granting the guardianship be current.

The substitute bill adds a delayed effective date. The act becomes effective on January 1, 2006.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2006.

Testimony For: (In support on original bill) We have a general impression that this is a good idea. We support removing the Department from the lives of children and families. We like that the parent has on-going contact with the parent and siblings. This is a step in the right direction to provide permanency and stability for children. When possible children should be placed with family. This could be incredibly beneficial to children. The most important part of this bill is that the Department is no longer involved. The Department will be setting up resource centers for referrals to services. The current dependency guardianship is unique in this state and may have adverse consequences when children move out-of-state.

(With concerns on original bill) There are areas for improvement such as who may petition to be a guardian. It should be anyone with a vested interest. There are also no services provided to the child and the costs of meeting the child's needs may go beyond the means of the parent. The subsidies should be the same amount as they were receiving in foster care. This is a very big change and it makes people nervous. Some foster parents may think the child's needs are greater than what the case worker thinks and that a foster parent would be forced to choose between losing the child or entering into the guardianship. There is no appeal process for a guardian to appeal subsidy decisions by the Department.

(Neutral) The concerns of the judges were mostly addressed by the new bill. There is a concern that children are going to need continued services and the funding must be there. There is some continuing concern about when the child is a teenager and the court can't ask the Department to file a dependency.

Testimony Against: We have continuing concerns that once the underlying dependency is dismissed there will no longer be services and, with our current budget situation, this is concerning. The bill doesn't address current dependency guardianships that are pending. Parents and children should have notice of the motion for guardianship.

Persons Testifying: (In support of original bill) Dave Wood, Elaine Wolcott-Ehrhardt, and Jennifer Sutton, American Family Rights Association and Families United; and Uma Ahluwalia, Department of Social and Health Services.

(With concerns on original bill) Kenneth Babcock, American Family Rights Association and Families United; Laurie Lippold, Children's Home Society; Kevin Campbell, Catholic Community Services; and John Stout, Washington State Court Appointed Special Advocates.

(Neutral on original bill) Judge Paula Casey, Superior Court Judges.

(Opposed to original bill) Pam Crone, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.