

HOUSE BILL REPORT

HB 2760

As Reported by House Committee On:
Early Learning & Children's Services

Title: An act relating to children's rights and participation in dependency and termination proceedings.

Brief Description: Establishing children's rights in dependency matters.

Sponsors: Representatives Dickerson, Kagi, Lantz, Appleton, Kenney, Darneille and Goodman.

Brief History:

Committee Activity:

Early Learning & Children's Services: 1/31/08, 2/4/08 [DPS].

Brief Summary of Substitute Bill

- Establishes rights for children ages 12 years and older who are the subject of dependency proceedings to receive notice, be present, and be heard in proceedings.
- Requires guardians ad litem or other court-appointed advocates to meet with or observe a child at least once before making recommendations to the court regarding the child's best interests.
- Requires guardians ad litem or other court-appointed advocates to report to the court any preferences or views expressed by the child with regard to issues pending before the court.
- Directs the child's attorney or guardian ad litem to coordinate transportation for a child who wishes to attend a hearing.
- Permits the court to interview a child in chambers regarding issues before the court.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kagi, Chair; Roberts, Vice Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Goodman, Hinkle and Pettigrew.

Staff: Sydney Forrester (786-7120).

Background:

Notice and Rights in Dependency Proceedings

Upon the filing of a dependency petition, state law requires a copy of the summons and petition be sent to children ages 12 years and older who are the subject of such petitions. Parents, guardians, and custodians of children also are summoned, and the court may include an order for the child to be brought to the fact-finding hearing on the dependency petition.

Under federal and state law, foster parents, although not considered parties to dependency proceedings, also have rights to notice and to be heard in dependency matters. The Department of Social and Health Services (DSHS) is required to provide foster parents with notice of all hearings regarding children in their care.

All parties to dependency proceedings are entitled to be represented by counsel and to be heard in all proceedings. Parents, guardians, and custodians who are found to be indigent are entitled to counsel at public expense.

Guardians Ad Litem

For children in dependencies, the court is required to appoint a guardian ad litem (GAL) unless good cause exists not to do so. This requirement is considered satisfied for children who are represented by independent counsel. The court may appoint an attorney to represent the child if the child is age 12 years or older and requests independent counsel, or if the court or the GAL determined the child should be represented by counsel.

Statewide there is considerable variability regarding both GAL programs and whether children in dependencies are represented by independent counsel. Some GALs are also licensed attorneys, although their role as GAL differs from that of independent counsel. Counties without a sufficient number of contracted or available GALs may appoint lay volunteers to serve as special advocates for children in dependencies. In some counties all children are represented by independent counsel in dependency matters, and these children may or may not also have an appointed GAL or volunteer advocate. The GALs and volunteer advocates are charged with investigating relevant information and making recommendations to the court regarding the child's best interests.

Children's Rights and Participation in Dependency Proceedings

Other than the initial requirement for a child over the age of 12 to receive a summons and petition when a dependency is initiated, there is no requirement for the child to receive further notice of dependency proceedings. Similarly there is no express right granted to a child to be heard in dependency proceedings.

Summary of Substitute Bill:

For children ages 12 years and older who are the subjects of dependency proceedings, the following rights are established:

- (1) the right to receive notice of hearings;
- (2) the right to be present at hearings; and
- (3) the right to be heard personally.

These rights cannot be limited or denied unless the court makes a written finding that denial or limitation is in the child's best interests and necessary to protect the child's health, safety, or welfare. Prior to hearings, the child's GAL or attorney must determine if the child wishes to attend the hearing. If the child wishes to attend, the attorney and GAL must coordinate with the child's caregiver and the DSHS or other supervising agency to arrange for transportation.

If the child exercises his or her right to be present, the court may interview the child in chambers to determine the child's wishes regarding issues before the court. The interview can be at the request of the child, the GAL or volunteer, the child's attorney, or at the court's discretion.

Prior to making recommendations to the court regarding the child's best interests, a GAL or volunteer advocate must meet with, interview, or observe the child at least once. The GAL or volunteer also must report to the court any preferences or wishes expressed by the child regarding issues to be decided by the court.

Substitute Bill Compared to Original Bill:

The substitute bill changes the age at which a child is granted certain rights in dependency proceedings from age 8 years to 12 years.

Appropriation: None.**Fiscal Note:** New fiscal note on substitute bill requested on February 5, 2008..**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.**Staff Summary of Public Testimony:**

(In support of original bill) This bill is about giving children a voice in court when important decisions are being made about their lives. Dependency decisions influence a child's hope for the future and shape the kind of person they will become through court-ordered services, educational opportunities, and possible reunification with parents. Children have important information that no other person in the courtroom may have. The thinking about children in dependency matters is changing around the nation, with a much greater recognition that there are significant benefits to allowing children to be present and provide information directly to

the court. Judges who routinely see the inclusion of children and children's views in proceedings report that the quality of information available for decision-making is much better.

There is ample provision for judges to protect children from portions of proceedings when it is not in their best interests to be present. The important aspect of this bill in getting input directly from children who are subjects of dependencies. Issues and concerns regarding children's interests and protection of those interests are being addressed in a variety of ways. Most states are moving forward with allowing children to be present in court. This would change the dynamics of the courtroom in a positive way, but it will be important to allow the court to exercise discretion to preclude children when appropriate.

Many older foster youth and former foster youth report that had they been allowed to be present and speak at hearings, their stay in foster care would not have been so traumatic because they would at least have understood more about the process governing their lives.

Children are central to dependency proceedings. Their well-being is the primary goal, and yet they are often the one person without a voice. Children know better than anyone when they are hurt, when they are happy, where they feel bonded, where they feel lost, who loves them and cares for them, and where they feel safe. Children do and can articulate their feelings. We need to listen. The concept of giving children a right to have a say in decisions made about them is consistent with the United Nations Convention on the Rights of the Child.

For younger children, being able to speak privately with the judge in chambers provides an alternative to speaking in the larger courtroom. Some children may need to speak through their therapist. But the main point is that children are the most profoundly affected by the decisions made in dependency and termination matters, and if we do not listen to their voices in court, we are missing a significant piece of valuable information. As we learn more about early brain development, we need to pay closer attention the effect of decisions on children's psychological and emotional development during this critical phase in their life.

This bill also takes an important step toward clarifying the duties and responsibilities of child advocates. These are measures that will go far to provide added safeguards for dependent children in Washington.

(With concerns on original bill) Children's increased participation in dependency and termination proceedings raises two issues. First is the logistical issue of how these children will get to court. Second is the issue of whether children who are present should be represented by GALs, attorneys, or both. The duties and professional roles of GAL and attorney are different. While it is critical to empower children who have very little control over their lives, it must be done well and in a way that does not place children, particularly older children, in court without an attorney. There is considerable risk children may end up subjecting themselves to incarceration based on what they say in court if they do not have independent counsel. Washington should at least take the step of making a child a party to proceedings.

(Opposed) None.

Persons Testifying: (In support of original bill) Representative Dickerson, prime sponsor; Martha Harden Cesar, Superior Court Judges Association; Jennifer Shaw, American Civil Liberties Union - Washington; and Laurie Lippold, Children's Home Society.

(With concerns on original bill) Kim Ambrose, Washington State Bar Association Juvenile Law Section; and Erin Shea, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.