

HOUSE BILL REPORT

SHB 2680

As Passed House:
February 13, 2010

Title: An act relating to implementing a guardianship program.

Brief Description: Implementing a guardianship program.

Sponsors: House Committee on Early Learning & Children's Services (originally sponsored by Representatives Roberts, Kagi, Angel, Seaquist, Walsh, Maxwell and Kenney).

Brief History:

Committee Activity:

Early Learning & Children's Services: 1/21/10, 1/22/10 [DPS];
Ways & Means: 2/3/10, 2/6/10 [DPS(ELCS)].

Floor Activity:

Passed House: 2/13/10, 94-0.

Brief Summary of Substitute Bill

- Creates a process for the establishment, modification, and termination of guardianships to allow children to safely exit foster care.
- Removes dependency guardianships as a future permanency option for children in foster care.
- Revises elements of the subsidized guardianship program.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

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; Angel, Goodman and Seaquist.

Staff: Sydney Forrester (786-7120).

HOUSE COMMITTEE ON WAYS & MEANS

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 by Committee on Early Learning & Children's Services be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick and Seaquist.

Staff: Melissa Palmer (786-7388).

Background:

A dependency guardianship is a permissible permanency option under state and federal law for children who have been in foster care and for whom the prospects of reunification with a parent or adoption are not promising. Establishing a dependency guardianship in Washington requires filing a petition, a court hearing, and specific findings by the court. If the court finds, among other factors, that a dependency guardianship is in the child's best interest, a dependency guardianship order is entered specifying the rights and duties of the guardian. Although a dependency guardianship is considered a permanency option and the dependency guardian has many of the same rights and responsibilities of a parent, the underlying dependency is not dismissed and the court may order continued involvement by the Department of Social and Health Services (DSHS) or supervising agency.

Dependency guardians may be eligible for a subsidy on behalf of the child, but unlike most foster care reimbursements, guardianship subsidies for non-relatives are funded with state-only dollars. As of May 2008, there were about 785 subsidized dependency guardianships and about 765 unsubsidized dependency guardianships in Washington.

In 2008 with the enactment of the Fostering Connections to Success and Increasing Adoptions Act (Act), the federal government authorized the use of federal funds to provide subsidy payments to relatives serving as guardians for children exiting the foster care system. To be eligible, the relative must be licensed by the DSHS as a foster parent and have the child placed in the relative's home for a period of six consecutive months prior to establishment of the guardianship. Following entry of the guardianship order, the relative may continue to receive the subsidy without having to continue being a licensed foster parent. The Act allows states to waive non-safety standards when licensing relatives seeking to be appointed as guardians and eligible for the guardianship subsidy. In October 2009 the DSHS began implementation of the Relative Guardianship Subsidy Program.

Foster parent licensing includes a criminal history background check. In Washington, the list of crimes that can disqualify a person, including a relative, from being licensed as a foster parent (and later appointed as a guardian) is more comprehensive than what is required by federal law under the Adoption and Safe Families Act (ASFA).

Summary of Substitute Bill:

A new chapter is created in Title 13 setting forth a process for the establishment, modification, and termination of guardianships for children in foster care. Dependency guardianships are removed as a future permanency option for children in foster care.

Existing dependency guardianships may continue or may be converted by the court to a guardianship upon the request of the dependency guardian and the DSHS or supervising agency.

Any party to the dependency may petition the court for an order of guardianship for a child in foster care. The petition must name the proposed guardian, who must be at least 21 years of age and meet the minimum qualifications to care for children established by the DSHS. Foster parents, relatives, and other suitable persons with whom the child has been placed in the underlying dependency are eligible to be guardians. In the hearing on a guardianship petition, the rules of evidence apply and the parties have the right to present evidence and cross examine witnesses. Notice of a proposed guardianship must be given to all parties. The court must appoint a guardian ad litem (GAL) or attorney for the child in the guardianship proceedings. The court may direct the GAL or attorney appointed in the underlying dependency proceeding to also serve the child in the guardianship proceeding, or may appoint a different GAL or attorney. A child 12 years and older is a party to guardianship proceedings.

Required Court Findings.

To enter an order of guardianship the court must find that it is in the child's best interests to establish a guardianship and dismiss the dependency, rather than terminate parental rights and pursue adoption, or continue efforts to reunify the child and parent. Upon the agreement of the DSHS, the parent, and the child, if the child is 12 or older, the court may enter an order of guardianship.

In the absence of agreement between the parties, the court also must enter specific findings that:

- the child has been in out-of-home care for six months following the entry of the order of dependency;
- the services ordered have been offered or provided and all necessary services reasonably available to correct parental deficiencies have been offered or provided; and
- there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.

Guardianship Order.

A guardianship order must:

- appoint a person to be the guardian for the child;
- specify the guardian's rights and responsibilities concerning the care, custody, control, and nurturing of the child;
- specify the guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;
- specify an appropriate frequency and type of contact between the parent or parents and the child, if applicable, and between the child and his or her siblings, if applicable; and
- specify the need for and scope of continued oversight by the court, if any.

Guardian's Rights and Duties.

Once appointed, the guardian has the following rights and duties:

- duty to protect, nurture, discipline, and educate the child;
- duty to provide food, clothing, shelter, education as required by law, and health care for the child, including but not limited to, medical, dental, mental health, psychological, and psychiatric care and treatment;
- right to consent to health care for the child and sign a release authorizing the sharing of health care information with appropriate authorities, in accordance with state law;
- right to consent to the child's participation in social and school activities;
- duty to notify the court of a change of address of the guardian and the child; and
- for a child who has independent funds or other valuable property under control of the guardian, the guardian must provide an annual written accounting to the court regarding receipt and expenditure by the guardian of any such funds or benefits.

A guardianship will remain in effect until the child reaches age 18, or until it is terminated by the court. The court is required to dismiss the underlying dependency when a guardianship is established or when a current dependency guardianship is converted to a guardianship under the new chapter. After the entry of the guardianship order, the court cannot require the DSHS or supervising agency to provide continuing case management services to the guardian or the child.

Modification of Guardianship.

A parent or a guardian may request a modification to the visitation provisions of a guardianship order by filing a petition with the court and providing notice to all parties. If the court finds, based on the affidavits filed, adequate cause exists for hearing the petition, the court shall schedule a hearing. If the court finds that a petition for modification was brought in bad faith, the court may assess the attorney's fees and costs of the nonmoving party against the moving party.

Termination of Guardianship.

Any party to a guardianship proceeding may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change of circumstances for the child or the guardian, and that the termination is necessary to serve the best interests of the child. The petition and affidavit must be served on all parties to the guardianship and the DSHS.

If termination of the guardianship is in dispute, the court may terminate the guardianship only if it finds upon the basis of facts that have arisen since the guardianship was established or that were unknown to the court at the time the guardianship was established:

- that a substantial change has occurred in the circumstances of the child or the guardian; and
- that termination of the guardianship is necessary to serve the best interests of the child.

Upon the agreement of the guardian and a parent seeking to regain custody of the child, the court may terminate a guardianship if it finds by a preponderance of the evidence and on the basis of facts that have arisen since the guardianship was established that:

- the parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a

- degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety;
- the guardian agrees that the parent is presently able and willing to provide appropriate care for the child and agrees to the return of the child to the parent's care and custody;
- the child, if 12 years or older, agrees to termination of the guardianship, the return of custody to the parent; and
- termination of the guardianship and return of custody of the child to the parent is in the child's best interests.

Relative Guardianship Subsidy.

For the purpose of licensing relatives seeking to be appointed as guardians and eligible for a relative guardianship subsidy, the DSHS must, on a case-by-case basis and when in the child's best interests:

- waive non-safety licensing standards; and
- apply the list of disqualifying crimes from the ASFA, rather than Washington's list of crimes, unless doing so would compromise the child's safety or would jeopardize the state's eligibility to continue receiving federal funding for child welfare.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Early Learning & Children's Services):

(In support) This bill addresses two of the important goals of foster care: to move children to permanency; and to reduce the overall number of children in foster care. The focus of the bill is in the child's best interests. It addresses the importance to children of knowing they have a permanent family relationship with their guardians. Another important element is that the guardianship does not require termination of parental rights in order to move the child to permanency and out of foster care. This is of particular importance to parents who may be incarcerated, because it allows them to arrange for permanent care for their children without requiring termination of parental rights. The family relationship can be preserved with a guardianship. When parents recognize they are unable to appropriately care for a child, but still desire to continue a relationship with the child, guardianship would be a good option.

It is crucial to assure that children 12 and older are allowed a voice in the process. This is one of the strengths of the bill. Guardianship is a very good option when families cannot reunite.

The federal Fostering Connections Act provided a great opportunity to continue the work done in Washington to support relative placements and this bill would take a further step in that direction. Background checks are an important area for consideration that relatives have been talking about for years. Becoming eligible for a guardianship subsidy requires becoming a licensed foster parent. We would encourage using the shorter list of disqualifying crimes required by the AFSA as the starting point or the presumptive list when

licensing relatives, and then allowing the DSHS discretion on a case-by-case basis to use the longer state list if necessary to protect the child's safety.

Subsidized guardianships offer a permanency option that does not require children to abandon their parents through termination, and doesn't require a trial to demonstrate how deficient the child's parent is.

(In support with amendment) A technical correction is requested to clarify that the guardianship proceeding is a stage of the dependency process and that indigent parents have the right to counsel. This technical correction would be budget neutral and has the potential to actually reduce the workload of the Parent Representation Program attorneys.

Guardianships provide a viable option for permanency for children and a guardianship subsidy offers a viable option for stable placement with relatives. Providing for dismissal of the dependency and allowing for a subsidy to relative guardians helps meet the needs of families, particularly where, for cultural reasons, adoption by relatives is not appropriate. We would suggest clarification on whether the subsidy would be provided only to relatives or to all guardians. There would be no fiscal impact if subsidies are limited to relatives because federal funding is available. Guardianship subsidies to nonrelatives would be paid with state-only money so there would be a fiscal impact.

(Opposed) The direction of this particular bill does not seem to be focused on extended families. What I see in this bill is that foster relatives will be in opposition to foster strangers. Relatives are discriminated against in foster parent licensing. There is no attempt to let extended family members know of the potential for a guardianship. If families are not told, the numbers are going to be low.

Staff Summary of Public Testimony (Ways & Means):

(In support) Outcomes that are in the best interest of the child can be achieved through this bill. It aligns with the clear goal of achieving permanency for children who are dependents of the state. It builds on the kinship care work that has already occurred in the state. Creating a guardianship program that dismisses dependency will remove the state involvement while allowing kinship caregivers to receive subsidy benefits. There is evidence which shows positive outcomes for children who live with relatives. This bill provides an opportunity to meet the needs of children of incarcerated parents and does not require the termination of parental rights. Savings are likely to be achieved because the underlying dependency will be dismissed, which will alleviate case management and court oversight. Additionally, the appointment of a guardian ad litem (GAL) should not result in an increased fiscal impact because courts already provide a court-appointed special advocate, a GAL, or in some cases, an attorney, to children in dependency proceedings.

(Opposed) None.

Persons Testifying (Early Learning & Children's Services): (In support) Representative Roberts, prime sponsor; Edith Owen, Pierce County Relatives Raising Children; Brett Ballew, Office of Public Defense; Laurie Lippold, Children's Home Society of Washington and Mockingbird Society; and Shelly Willis, Family Education and Support.

(In support with amendment) Denise Revels Robinson, Department of Social and Health Services, Children's Administration.

(Opposed) Jan Smith.

Persons Testifying (Ways & Means): Representative Roberts, prime sponsor; Edith Owen, Pierce County Relatives Raising Children; and Laurie Lippold, Children's Home Society.

Persons Signed In To Testify But Not Testifying (Early Learning & Children's Services): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.