

HOUSE BILL REPORT

HB 2735

As Reported by House Committee On:
Judiciary

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

Brief Description: Encouraging the need for representation of children in dependency matters.

Sponsors: Representatives Goodman, Appleton, Rolfes, Seaquist, Finn, Rodne, Williams, Haigh, Pettigrew, Nelson, Darneille, Hasegawa and Ormsby.

Brief History:

Committee Activity:

Judiciary: 1/27/10, 1/28/10 [DP].

Brief Summary of Bill

- Requires the Department of Social and Health Services (DSHS) and the guardian ad litem (GAL) to notify a child in a dependency who is age 12 years or older that the child has the right to request an attorney.
- Requires the DSHS or the GAL to notify the child of his or her right to petition the court to re-instate a previously terminated parent's rights if the child is eligible to petition and the previously terminated parent contacts the DSHS or the GAL.
- Requires the Administrative Office of the Courts to develop recommendations for voluntary training and caseload standards for attorneys representing children in dependencies.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Trudes Tango (786-7384).

Background:

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.

Children in Dependency.

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. Once a child is found dependent, the court conducts periodic reviews and makes determinations about the child's placement and the parent's progress in correcting parental deficiencies.

The court must appoint a guardian ad litem (GAL) for the child unless the court finds the appointment unnecessary. If the child is 12 years or older and requests an attorney, or if the GAL or the court determines that the child needs one, the court may, but is not required to, appoint an attorney to represent the child. The county would be responsible for the cost of the attorney.

Reinstatement of Parental Rights.

If the parent fails to take the corrective measures needed to allow the child to return home safely, the court can eventually terminate the parent's parental rights. A dependent child may petition the court to reinstate the previously terminated parental rights of his or her parent if, among other things, the child is 12 years old or older and has not achieved a permanency plan within three years of the final order terminating parental rights. A court may hear a petition filed by a child under the age of 12 years upon a motion and for good cause shown. A permanency plan identifies a particular outcome, such as adoption or long-term relative care, as a primary goal for the child. A child seeking to petition for reinstatement must be provided an attorney at no-cost to the child.

Summary of Bill:

The DSHS and the child's GAL must notify a child who is age 12 years or older in a dependency proceeding of the child's right to request an attorney and must ask the child whether he or she wants to have an attorney. The DSHS and the GAL must notify the child every year and upon the filing of any motion affecting the child's placement, services, or familial relationships.

The DSHS must note in the child's service and safety plan, and the GAL must note in his or her report to the court, the child's position regarding appointment of an attorney. The GAL must provide the court with a recommendation as to whether an appointment of an attorney is in the child's best interests.

The court must also ask a child who is age 12 years or older in a dependency proceeding whether he or she has been informed by the DSHS and the GAL regarding the right to request an attorney. The court must make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday.

If a child is eligible to petition the court to re-instate previously terminated parental rights, and a parent has contacted the DSHS or the child's GAL regarding reinstatement, the DSHS or the GAL must notify the child about his or her right to petition for reinstatement.

Within available resources, the Administrative Office of the Courts (AOC) must develop recommendations for voluntary training and caseload standards for attorneys representing children in dependency proceedings. The AOC must work with the Washington Supreme Court Commission on Children in Foster Care and report its recommendations to the Legislature by December 31, 2010.

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:

(In support) Due to the economic situation of the state, the best Washington can do right now is to make sure children in dependencies are at least given notice that they have a right to request counsel. Ideally, all children in dependencies should have adequate legal representation, but this bill is a first step. Courts and agencies have a responsibility to children in the system to let them know what their rights are. Children who are going through dependency need to feel as if they have some control and some voice in the process. The goal is to increase engagement of children in dependencies. Children can trust their attorneys more than the social workers or the GAL because there is a higher level of confidentiality between the attorney and the child. An attorney will fight for the child's stated wishes, which is different from what the GAL will do. The current law does not provide any process for children to know that they can ask for an attorney. Requiring the GAL and the agency to make this inquiry and report it to the court will help in tracking data on how many children request attorneys.

(With concerns) Judges are concerned that children will request counsel and there will not be counsel available because of funding issues. There is concern that this could result in an unfunded mandate. Judges want to make sure that there are sufficient funds to appoint an attorney when a child requests one.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Jim Theofelis and Georgina Ramirez, Mockingbird Society; Erin Shea McCann, Columbia Legal Services; Delilah Bruskas, Pacific Northwest Alumni of Foster Care; and Roger Freeman, Society of Counsel.

(With concerns) Tom Parker, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.