
Civil Rights & Judiciary Committee

HB 1219

Brief Description: Concerning the appointment of counsel for youth in dependency court proceedings.

Sponsors: Representatives Frame, Johnson, J., Ramos, Bateman, Peterson, Fitzgibbon, Davis, Ryu, Fey, Senn, Lovick, Chase, Orwall, Taylor, Santos, Thai, Ortiz-Self, Ormsby, Simmons, Slatter, Berg, Chopp, Bergquist, Callan, Valdez, Macri, Goodman, Tharinger, Harris-Talley, Ybarra and Hackney.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Phases in the appointment of counsel for all children in dependency proceedings, beginning January of 2022.

Hearing Date: 1/27/21

Staff: Ingrid Lewis (786-7289).

Background:

Dependency Proceedings Generally.

The Department of Children, Youth, and Families (DCYF) 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 the child is dependent, the court conducts periodic reviews and makes determinations about the child's placement and the progress of the parties, as well as whether supervision should continue. The court, under certain circumstances, 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, the court must order the DCYF to file a petition for termination,

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absent 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 GAL requirement may be deemed unnecessary if the child is represented by an independent attorney in the proceedings. A GAL represents the best interests of the child.

In dependency proceedings, the DCYF is represented by an assistant attorney general. Parents and guardians have the right to counsel and, if indigent, they have the right to have counsel appointed by the court. The Office of Public Defense (OPD) contracts with attorneys to represent indigent parents, custodians, and legal guardians involved in child dependency and termination of parental rights proceedings.

Whether or not a court appoints an attorney for a child in a dependency proceeding depends upon the age of the child, the stage of the proceeding, and is, in most cases, a matter of court discretion.

Discretionary Appointment of Counsel for Children.

The court may appoint an attorney to represent the child's position at any point in a dependency action on its own initiative, or upon the request of a parent, the child, a GAL, a caregiver, or the DCYF.

If the court has not already appointed an attorney for a child or the child is not represented by a privately retained attorney: a child's caregiver or other individual may refer the child to an attorney for purposes of filing a motion to request appointment of an attorney at public expense; or, a child or another individual may retain an attorney for the child for such purposes.

The DCYF and the child's GAL must notify a child who is age 12 years or older of the child's right to request an attorney and must ask the child whether he or she wants an attorney. The court may appoint an attorney to represent the child's position if the child requests an attorney and is age 12 years or older, or if the GAL or the court determines that the child needs to be independently represented.

There are ongoing requirements with respect to notification of the right to request an attorney, including but not limited to: an annual notification to the child of the right to request an attorney; required documentation of the child's position regarding appointment of an attorney; and an additional inquiry regarding the right to an attorney at the first regularly scheduled hearing after the child's fifteenth birthday.

Mandatory Appointment of Counsel for Children in Some Circumstances.

The court *must* appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship when there is no remaining

parent with parental rights.

Legal services provided by an attorney so appointed do not include representation of the child in any appellate proceedings related to the termination of parental rights. The court may appoint one attorney to represent a group of siblings unless there is a conflict of interest or it would be inconsistent with rules of professional conduct.

The Office of Civil Legal Aid (OCLA) is responsible for the implementation and administration of state money appropriated for the appointment of an attorney following termination of parental rights. The OCLA enters into contracts with attorneys and agencies for the provision of such services. When entering into a contract with a qualified legal aid provider, the OCLA ensures legal services are provided in accordance with standards of practice, training, and caseload limits developed and recommended by the Statewide Children's Representation Workgroup.

Summary of Bill:

Mandatory Appointment of Counsel for Children.

Subject to the availability of funds appropriated for this purpose, counsel for children in dependency proceedings are to be appointed on a phased-in county- by- county basis over a six-year period as follows:

1. at least 3 counties beginning January 1, 2022;
2. at least 8 counties beginning January 1, 2023;
3. at least 15 counties beginning January 1, 2024;
4. at least 20 counties beginning January 1, 2025;
5. at least 30 counties beginning January 1, 2026; and
6. full statewide implementation by January 1, 2027.

Counties that have either no current practice of appointment of attorneys in dependency cases or that have a significant prevalence of racial disproportionality or disparities in the number of dependent children compared to the population, or both, must be prioritized.

Appointment must be made at the same time that counsel is appointed for the child's parent, guardian, or legal custodian, or at the shelter care hearing in the event that no counsel is appointed for the parent, guardian, or legal custodian.

Attorneys must provide legal services in accordance with the standards of practice, training, and caseload limits adopted by the Children's Representation Work Group.

Statewide Children's Legal Representation Program.

The Statewide Children's Legal Representation Program (Program) is established within the OCLA. Courts maintain the responsibility to appoint attorneys in dependency proceedings, and the Program is responsible for the development of the phase-in schedule, as well as the

recruitment, training, and oversight of attorneys providing representation.

While the OCLA will continue to administer funds appropriated for the appointment of an attorney for a legally free child, the Program will assume the responsibility for contracting with attorneys and agencies for the provision of legal services.

Other Provisions.

The provision affording indigent parents and guardians the right to have counsel appointed by the court is amended to also include indigent legal custodians.

The Washington State Center for Court Research (Center) is required to convene stakeholders to identify relevant outcome measures and data collection methods to effectively assess the number of youth subject to the phase-in; and the short and long-term impact of standards-based legal representation on case outcomes. The Center must submit a report to the appropriate committees of the Legislature and the Governor outlining the outcome measures identified by November 30, 2022.

The Supreme Court's Commission on Children in Foster Care is requested to review and update the standards of practice, caseload limits, and training guidelines developed and adopted by the Statewide Children's Representation Work Group from 2010. The updated standards must be developed by December 21, 2021.

The sections are restructured so that provisions relative to GALs are in one section and provisions relative to attorneys are in another.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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