

HOUSE BILL REPORT

2SHB 1219

As Passed House:

March 2, 2021

Title: An act relating to the appointment of counsel for youth in dependency court proceedings.

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

Sponsors: House Committee on Appropriations (originally sponsored by 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).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/27/21, 2/9/21 [DPS];

Appropriations: 2/17/21, 2/18/21 [DP2S(w/o sub CRJ)].

Floor Activity:

Passed House: 3/2/21, 85-12.

Brief Summary of Second Substitute Bill

- Phases in the mandatory appointment of counsel in dependency proceedings for children age 8 and over, beginning July 2022.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 5 members: Representatives Walsh, Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno and Klippert.

Minority Report: Without recommendation. Signed by 1 member: Representative Ybarra.

Staff: Ingrid Lewis (786-7289).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; Boehnke, Caldier, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler.

Minority Report: Without recommendation. Signed by 3 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member.

Staff: Yvonne Walker (786-7841).

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, 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.

Extended Foster Care Program.

The extended foster care program is a program that allows youth who are dependents of the state at age 18 to voluntarily agree to continue receiving foster care services until age 21, provided that they are enrolled in an educational or vocational program, participating in a program or activity to reduce barriers to employment, working 80 hours or more a month, or have certain medical conditions.

A court must appoint an attorney for a youth participating in the program.

Summary of Second Substitute 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 July 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.

For children ages 0-7 years, mandatory appointment occurs upon the filing of a termination petition. For children ages 8-17, mandatory appointment for new dependency petitions occurs at or before the commencement of the shelter care hearing; for any pending or open dependency case where the child is unrepresented, mandatory appointment occurs at or before the next hearing.

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.

Subject to amounts appropriated, mandatory appointment of counsel for youth in the

extended foster care program is modified to provide that the costs of legal services provided by an attorney appointed pursuant to the phase-in schedule are at state expense.

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.

The Program must prioritize continuity of counsel for children who are already represented by counsel at county expense when the Program becomes effective in that county.

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: (1) relevant outcome measures and data collection methods to effectively assess the number of youth subject to the phase-in; and (2) 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 convene a Children's Representation Workgroup 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 31, 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: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The right to counsel for children in the foster care system is an effort that has been led by youth in the system since 2008. Children currently get attorneys after parental rights have been terminated. While progress has been made, more must be done. Youth are the most important party in a child protection case, but they are the only party that does not have consistent access to counsel. International standards recognize that access to proper legal counsel is a human right and a means to protect other universally recognized rights.

The role of an attorney is different from that of the court-appointed special advocate (CASA). The two are not mutually exclusive. The role of the CASA/GAL is to assess the whole child and make a recommendation as to what is in the best interests of the child. The role of an attorney is to represent the child's stated interests, counsel them on their legal rights, and help the child with decisions that may have life-long impacts, for example where they live and whether they can see siblings and other family members. Attorneys are bound by rules of professional ethics and standards of practice. They have duties to clients, regardless of age. Attorneys give foster youth a voice in a moment of crisis, as well as strength. They provide vital support and work through complicated legal issues with the child by explaining options in a way that a child can understand. A child in foster care is facing a loss of dignity. Denying the right to counsel denies a youth's right to succeed and denies them rights that others in the system hold.

A 2017 study and pilot project show the efficacy of the mandatory appointment of counsel. Preliminary data shows that when children are assigned their own attorneys, they spend 22 percent less time in the foster care system, they are more likely to be placed with their own kin as a permanency plan, and they have less contact with the juvenile justice system. In addition, for those who ran away from a placement, the number of days on the run was drastically reduced.

At the onset of the pandemic, the Washington Supreme Court ordered juvenile courts to determine whether each child in a proceeding should be appointed counsel and put their findings on the record. In a study done on whether the mandate was being followed, it was found that out of 244 children, 78 percent did not have counsel and 15 percent had no advocate at all. Although judges have the discretion to appoint counsel, many do not because of fiscal implications.

It is important to get children into homes where they are safe and connected, particularly Black and Native youth who are more likely to come into care and spend more time in care without permanency. Attorneys can be a powerful resource in ensuring the Indian Child Welfare Act is upheld and ensure that connections are maintained with tribal communities. Attorneys are able to connect youth with culturally appropriate placements. Children in

foster care are not treated equally. Child representation varies by county, and it is dangerous to leave the health, care, and safety of children to luck.

Attorneys for teens would help with the growing prevalence of placement exceptions for youth for whom the DCYF does not have immediate placement options. An attorney would be able to advocate for appropriate placement for the teen's long-term stability and safety.

The Children's Representation Program started in 2014 and is a community for children's attorneys to communicate regularly. Attorneys in the program are required to participate in training focused on skills needed to represent children in proceedings.

The bill will likely need to be narrowed to focus on children 8 years and older and spend more time examining the best form of representation for children who are 7 years and younger.

(Opposed) Judges already have the discretion to appoint an attorney to any child at any point in a proceeding. It is unnecessary to use scarce state resources to appoint an attorney for cases with infants. The state should instead focus on the advocacy provided by CASA volunteers. Volunteers generally remain with the child throughout the case, maintain regular and consistent contact, and develop relationships built on trust. When legal issues arise, the volunteer is in the best position to identify the need for counsel and request appointment by the court.

(Other) Mandatory appointment of counsel is best set at age 12. There are two foster care systems: one for children and one for teens. Many counties have been appointing counsel at county expense for children at the age of 12; one county appoints at the age of 8.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is about providing better outcomes for children in the foster care system. It is important for foster care youth to have a voice and receive adequate legal representation, otherwise, a child's constitutional rights can be at stake. This bill provides funding to the Office of Civil Legal Aid to fund foster care attorneys the same way the state currently funds parents' attorneys through the Office of Public Defense.

Research supports that early appointment of qualified attorneys to youth in foster care reduces the time in dependency and increases family reunification and kinship placements. A price tag cannot be put on family connections and keeping children in their community. Based upon data from a pilot project that was done in Lewis and Grant counties, it has been shown that this program works, and that participating youth spend 22 percent less time in the system.

Often, youth cannot advocate for themselves, however, data has shown when youth receive permanent placement, they are more likely to be with family. As kids spend less time in

care, the state will experience a cost savings. This not only provides equity for foster care youth, but also puts the kids whose very lives are affected by these court decisions on a level playing ground.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Frame, prime sponsor; Adam Ballout, ABC Law Group; Samuel Martin and Dre Thornock, The Mockingbird Society; Breeanna Campbell; Tonia McClanahan; Adam Cornell; S. Annie Chung, Legal Counsel for Youth and Children; Karen S. Lindholdt; Charlotte Pfeiffer; Megan M. Valentine, Valentine Law Office; Kim Dvorchak, National Association of Counsel for Children; and John Pollock, National Coalition for a Civil Right to Counsel.

(Opposed) Laurie Tuff; and Angela Murray, Washington Court Appointed Special Advocate Association.

(Other) Ryan Murrey, Washington Association of Child Advocate Programs; Jill Malat, Office of Civil Legal Aid; Lisa Kelly, University of Washington School of Law; and Carl McCurley, Washington Center For Court Research.

Persons Testifying (Appropriations): Representative Frame, prime sponsor; Dre Thornock and Sam Martin, The Mockingbird Society; Megan Valentine, Valentine Law Office, P.S.; and Adam Ballout, ABC Law Group LLP.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.