

SENATE BILL REPORT

SHB 2680

As of February 18, 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: Passed House: 2/13/10, 94-0.

Committee Activity: Human Services & Corrections: 2/19/10.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Jennifer Strus (786-7316)

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 as 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 as a match 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 DSHS as a foster parent and have the child placed in the relative's home for a period of six consecutive months prior to

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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 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 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 DSHS or the 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 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.

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 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 an 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 to the parents 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.

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.

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 DSHS or the supervising agency to provide continuing case management services to the guardian or the child.

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 must 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.

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 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

- 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.

For the purpose of licensing relatives seeking to be appointed as guardians and eligible for a relative guardianship subsidy, 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.