

# HOUSE BILL REPORT

## E2SSB 6126

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### As Passed House - Amended:

March 7, 2014

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

**Brief Description:** Concerning representation of children in dependency matters.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Darneille, Becker, Tom, Fraser, Pedersen, Kline, Pearson, Kohl-Welles, Braun and Frockt).

### Brief History:

#### Committee Activity:

Judiciary: 2/25/14, 2/26/14 [DPA];

Appropriations: 3/1/14 [DPA(APP w/o JUDI)].

#### Floor Activity:

Passed House - Amended: 3/7/14, 97-0.

### Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Requires the appointment of an attorney to represent 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.
- Provides that, subject to the availability of funds, the state shall pay the costs of legal services for such appointments if the services meet certain standards.
- Tasks the Office of Civil Legal Aid with administration and disbursement of any state appropriations.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

**Staff:** Cece Clynch (786-7195).

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*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.*

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Judiciary. Signed by 31 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Christian, Cody, Dahlquist, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan, Taylor and Tharinger.

**Staff:** Alex MacBain (786-7288).

### **Background:**

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. If the court determines the child is 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, 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 DSHS 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 unless the court finds the appointment unnecessary. It is discretionary with the court whether to appoint an attorney to represent a child in a dependency. If an attorney is appointed by the court, the county pays the cost.

The DSHS 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. 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, the court may appoint an attorney to represent the child's position.

There are ongoing requirements with respect to notification of the right to request an attorney:

1. The DSHS and the GAL must so notify the child every year and upon the filing of any motion affecting the child's placement, services, or familial relationships.
2. 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.
3. The GAL must provide the court with the GAL's recommendation regarding whether appointment of an attorney is in the child's best interests.
4. The court must also ask a child who is age 12 years or older whether he or she has been informed by the DSHS and the GAL regarding the child's right to request an attorney.

5. The court must make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday.

In the case of *In re Dependency of M.S.R., 174 Wn 2d 1, 271 P. 3d 234 (2012)*(MSR), the Washington Supreme Court held that "children of parents subject to dependency and termination proceedings have due process rights that must be protected and, in some cases, must be protected by appointment of counsel, but that the right to appointment of counsel is not universal." The court found this "constitutionally adequate to protect the right of counsel for such children."

### **Summary of Amended Bill:**

#### Mandatory Appointment of Counsel.

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. The court must also appoint an attorney for such a child when there is no remaining parent with parental rights for six months or longer prior to the effective date and the child is unrepresented.

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.

Subject to the availability of amounts appropriated for this specific purpose, the state shall pay the costs of attorneys appointed following termination of parental rights if the legal services are provided in accordance with standards of practice, training, and caseload limits developed and recommended by the Statewide Children's Representation Workgroup (Workgroup) pursuant to House Bill 2735 (2012).

Counties are encouraged to set caseload limits as low as possible and to account for the individual needs of the children in care. Specific provision is made for determining compliance with caseload standards and state reimbursement in cases where one attorney represents a sibling group. In such cases, the first child is counted as one case, and each child thereafter is counted as one-half case.

The Office of Civil Legal Aid (OCLA) is responsible for implementation and administration of state moneys appropriated for appointment of attorneys. The OCLA may enter into contracts with the counties to disburse funds, and may also require a county to use attorneys under contract with OCLA for the provision of the legal services in order to remain within appropriated amounts. Prior to distributing the funds, the OCLA must verify that the attorneys are providing representation in accordance with the standards of practice and training developed and recommended by the Workgroup, as well as the caseload limits (as modified with respect to attorneys appointed to represent siblings).

#### Discretionary Appointment of Counsel.

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 DSHS. This is not limited to situations in which the child is age 12 years or older.

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. Nothing with respect to this provision is to be construed to change or alter the confidentiality provisions found in RCW 13.50.100.

Technical Changes.

References to "counsel" are changed to "attorney."

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect July 1, 2014. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Judiciary):**

(In support) Under House Bill 1285, the appointment of an attorney was mandated within 72 hours of termination of parental rights and the state paid just one-half of the costs, with the counties having to pay the other half. Under this Senate bill, the appointment is mandated at a much later point, six months after termination. This was done in order to halve the cost. The state will bear the entire cost rather than requiring the counties to pay one-half of the costs. Washington is one of the few states that doesn't require appointment of an attorney for dependent children. This is long overdue. If a child has not been adopted within six months of termination, he or she may well languish in foster care. Attorneys help shorten the time spent in dependency and get children to permanency faster, and this in turn results in state savings. Children do better when they have attorneys.

(With concerns) Two amendment suggestions are made. First, in subsection (6)(c)(i), change "may" to "must" to require the state to pay for the legal services if funds are appropriated. Also, there may be a need for a null and void clause. It is funded in the Senate budget, but when the fiscal note is received, it is recommended it be reviewed to see how the amounts funded in the budget match with the funds needed to fully fund the bill.

(Opposed) There are simply not enough attorneys in Grays Harbor to represent these children and provide the face to face contact that court appointed special advocates can. Already, the caseloads for the attorneys are too high. It appears that the concerns regarding cost to the counties have been dealt with.

**Staff Summary of Public Testimony (Appropriations):**

(In support) There is widespread support for this bill. It was passed out of the Senate unanimously, and it passed out of the House Judiciary Committee unanimously as well. A

similar bill last year passed off the House floor. The bill represents good policy and wise fiscal policy. Washington is an outlier in the country, ranked forty-eighth among states and receiving an "F" grade with respect to the provision of legal representation. Children who have attorneys spend a shorter time in care, reach permanency faster, and have a chance for a better life. If children leave care faster, the state saves money. It costs \$839 per month to keep a child in care. Twelve years ago, when an adopted son became a foster parent, one community volunteer and his wife became foster grandchildren and became deeply involved with the system which was, before that, unknown to them. One of those foster grandchildren really needed an attorney but the court could not appoint one. These are vulnerable children; they need attorneys and the cost is modest. The state controls every aspect of these children's lives, including sibling visitation, school, and services. Appointment of attorneys will protect these children's liberty interests and may reduce the liability of the state for children in care. Many children in care suffer poor outcomes. This bill may help restore a childhood for kids in the foster care system.

(With concerns) The policy is supported but it is important that the bill receive funding. The only concern is with the fiscal costs to the counties if the funding isn't appropriated. The bill should include a null and void clause to protect counties.

(Opposed) None.

**Persons Testifying (Judiciary):** (In support) Senator O'Ban, prime sponsor; Jill Malet, Columbia Legal Services; and Donna Christiansen.

(With concerns) Brian Enslow, Washington State Association of Counties.

(Opposed) Doreen Cato, Grays Harbor Court Appointed Special Advocates.

**Persons Testifying (Appropriations):** (In support) Jill Malat, Columbia Legal Services; Joel Benoiel; and Hathaway Burden, Center for Children and Youth Justice.

(With concerns) Tom Parker, Superior Court Judges Association; and Tom McBride, Washington Association of Juvenile Court Administrators.

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

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