

# SENATE BILL REPORT

## SHB 1285

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As Reported by Senate Committee On:  
Human Services & Corrections, April 1, 2013

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

**Brief Description:** Modifying provisions regarding the representation of children in dependency matters.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Goodman, Freeman, Pettigrew, Jinkins, Walsh, Kirby, Orwall, Roberts, Appleton, Seaquist, Ryu, Stanford, Clibborn, Maxwell, Tarleton, Morrell, Pollet and Ormsby).

**Brief History:** Passed House: 3/06/13, 74-23.

**Committee Activity:** Human Services & Corrections: 3/19/13, 4/01/13 [DPA-WM, DNP].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Harper and Padden.

**Minority Report:** Do not pass.

Signed by Senator Hargrove.

**Staff:** Joan Miller (786-7784)

**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 that the child is dependent, the court will conduct periodic reviews and make determinations about the child's placement and the parents' progress in correcting parental deficiencies. Under certain circumstances, the court 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 DSHS to file a petition for termination, in the absence of a good-cause exception.

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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.*

The court must appoint a guardian ad litem (GAL) for a child in a dependency proceeding unless the court finds the appointment unnecessary. The court has the discretion to appoint an attorney to represent a child in a dependency.

DSHS and the child's GAL must notify a child who is age 12 or older of the child's right to request an attorney and must ask the child whether the child wants an attorney. DSHS and the GAL must notify the child about the right to an attorney annually, and also upon the filing of any motion affecting the child's placement, services, or familial relationships.

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

The court must also ask a child who is age 12 or older whether the child has been informed by DSHS and the GAL regarding the child's right to request an attorney. The court must make an additional inquiry at the first regularly scheduled hearing after the child's 15th birthday.

**Summary of Bill (Recommended Amendments):** The court may appoint an attorney for a child in a dependency hearing within 72 hours of granting a petition to terminate the parent and child relationship. References to counsel are replaced with attorney.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** The intent section is deleted. The appointment of an attorney for parental termination petitions is discretionary rather than mandatory. The other discretionary language regarding when the court may appoint an attorney is also deleted. The age at which dependent youth must be notified of their right to an attorney is changed from seven back to 12 years. The section that tasks the Washington State Center for Court Research with evaluating the effects of attorney representation is deleted.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Substitute House Bill:** PRO: Washington is ranked at the bottom in the United States for the degree to which we protect our most vulnerable youth in the court system. This bill would establish a right to a lawyer for foster children whose parents already had their parental rights terminated. These youth are completely alone; they have no parents. They do not know what is going on, and they need someone to represent them throughout the legal process. A lawyer is probably the first person a foster child comes to trust. Foster children may have never had a confidential relationship with anyone before. Studies show that attorneys shorten cases and accelerate

permanency for these children. They reduce costs both for the state and locally. By no means is this bill intended to replace guardians ad litem (GALs) or court-appointed special advocates (CASAs). Rather, they would be working in concert with the lawyers.

Washington is ranked 48th in the nation, and we received an F grade for protecting the legal rights of children in foster care. Most states appoint attorneys for foster children of all ages. The National Conference of State Legislatures has found that providing foster youth with an attorney is an evidence-based practice for reducing the number of children in care. The Washington Supreme Court held in *M.S.R.* that because youth have so much at stake in these proceedings, which can control their lives for up to 21 years, they have just as much of a constitutional right to an attorney as their parents. Studies show that lawyers increase the rate of permanency by 59 percent and results in a 32 percent reduction in costs.

The Children's Representation Workgroup was composed of various stakeholders, including representatives of the Attorney General's Office, CASA, the Office of Public Defense, and the Office of Civil Legal Aid. The Workgroup drafted standards for the legal representation of children, and we stated in the preamble that all children subject to dependency or termination of parental rights proceedings should have legal representation as long as the court's jurisdiction continues. This bill is one small step toward achieving this goal. Our clinic has been working on cases since the *M.S.R.* decision to try to move for counsel for children who want it, and our efforts have been blocked by the state who does not want us to have access to the children. The GALs have been unable to move these cases because it is against their programmatic interests to do so. While we believe that every foster child should have both a GAL and lawyer, this bill is important because it also allows parents and caregivers to move for appointment of an attorney.

Due to addiction, my daughter was removed from my care when she was three years old. She was placed with relatives while I went through a six-month treatment program. During that time, my relatives began the process for terminating my parental rights. My daughter did not have an attorney. If she had one, she would have been able to be with me at the treatment center during the last three months. We would have been able to get to know one another, and I could have had the chance to become the parent she deserved. After my daughter was taken from me permanently, my addiction got worse, and I ended up in prison. At the age of 16, my daughter finally received an attorney and was removed from my relatives due to the abuse she had suffered. With the help of her lawyer, we have been reunified. She has been placed back in my care because I am a suitable placement now. If my daughter had an attorney when she was three years old, both of our lives would have been completely changed.

Attorneys for children can help reunify families and reconnect siblings under the same roof. We negotiate for and file motions when needed to ensure each child receives timely, appropriate services and is moving toward a permanency plan. Many children in Washington have no advocate whatsoever. At the initial hearing, the court routinely appoints a CASA program to find the child a CASA, but for several hundred children, no CASA ever engages and no attorney is ever appointed. The child is left with no one at all. The privileged relationship that attorneys have with their clients leads to increased safety for children.

I have been a foster mother for 20 years, and my children have had both CASAs and lawyers, and they have always done better with a lawyer. I have seen siblings separated or adopted out, but with a lawyer, they can at least receive their sibling visits and have someone help them with medical decisions. Without lawyers, kids really do not get what they deserve, and we should be protecting these foster children who have lost everything. This bill will help us hear the voices of foster children. When their needs are truly addressed, their stay in foster care will be greatly reduced. I entered the foster care system when I was about five years old. By the time I graduated from high school and the child welfare system, I had lived with seven different families. If I had been granted legal representation, I would have asked if I could speak with my mom. No one ever told me why I was in foster care, but if I had been granted an attorney, I would have asked.

CON: In Pierce County, we use both GALs and CASAs, and we find that they also reduce the amount of a time a child spends in foster care, which is the point of this bill. This bill also impacts Pierce County financially. Last year, 330 youth would have qualified, which would have cost us almost \$500,000. We do not argue with the policy, but we get the same results with GALs and CASAs. The Superior Court Judges Association reluctantly opposes this bill based on fiscal grounds. The goal of providing every foster child an attorney is laudable. Unfortunately, under existing requirements, the courts cannot keep up with the demand for counsel. We feel that an expansion is just not realistic. It is important to note that judges do have the discretion to appoint an attorney under these circumstances. It is also required that every child have a GAL or CASA. Not including King County and other cases we feel are covered, this bill would cost counties over \$4 million per biennium.

OTHER: While the Office of Family and Children's Ombudsman (OFCO) technically remains neutral on specific legislation, it does support the intent of this legislation. Appointing an attorney to represent children under the circumstances described in this bill will help address systemic issues identified by OFCO. Specifically, legal advocacy for these children can remove barriers to the collaboration and coordination of services between multiple agencies and assure the delivery of services. OFCO frequently receives complaints about the failure to place a dependent child with available relatives, multiple placements, and sibling separation. The child has the greatest stake in decisions regarding placement and visitation, and an attorney will ensure that the child's interest is heard. When family reunification is not possible, it is essential for a child to have an attorney assist in making decisions about permanency. Because attorney-client relationship affords confidentiality, a child can speak freely about conditions in the home.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Lisa Kelly, University of Washington Children and Youth Advocacy Clinic, Children's Representation Workgroup; Casey Trupin, Columbia Legal Services; Erin Lovell, WA Defender Assn.; Delilah Bruskas, Pacific NW Alumni of Foster Children; Gina McConnell, Carol Hutson, citizen.

CON: Brian Enslow, WA State Assn. of Counties; Al Rose, Pierce County; Laura Inveen, Superior Court Judges Assn.; Tom McBride, WA Assn. of Juvenile Court Administrators.

OTHER: Patrick Dowd, OFCO.