

# HOUSE BILL REPORT

## HB 1251

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### As Reported by House Committee On: Judiciary

**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:** Representatives Frame, Rodne, Goodman, Stokesbary, Jinkins, Haler, Kagi, Muri, Reeves, Tarleton, Kilduff, Appleton, Ormsby, Senn, Blake, McBride, Fey, Doglio, Ryu, Pollet, Dolan, Gregerson and Bergquist.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/24/17, 2/9/17 [DPS].

#### **Brief Summary of Substitute Bill**

- Phases in the appointment of counsel for all children over the age of two in dependency proceedings, beginning in January of 2018.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby and Orwall.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert and Shea.

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

#### **Background:**

##### Dependency Proceedings Generally.

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,

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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 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 DSHS 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 in 31 of Washington's 39 counties.

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. In a 2012 case, 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."

#### 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 DSHS.

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 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 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.

#### 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.

Subject to the availability of amounts appropriated for this specific purpose, the state pays 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. The Office of Civil Legal Aid is responsible for implementation and administration of state moneys appropriated for appointment of attorneys.

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#### **Summary of Substitute Bill:**

##### Mandatory Appointment of Counsel for Children Over Two Years Old.

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

- beginning January 1, 2018, for children 10 and older;
- beginning July 1, 2018, for children seven and older;
- beginning July 1, 2019, for children five and older; and
- beginning July 1, 2020, for children two and older.

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. An attorney may represent siblings of children eligible for representation, including siblings not yet eligible under the phase-in schedule, unless there is a conflict of interest or such representation is otherwise inconsistent with the rules of professional conduct. Attorneys must provide legal services in accordance with the standards of practice, training, and caseload limits developed and recommended by

the Statewide Children's Representation Workgroup. Whenever one attorney represents a sibling group, the first child is counted as one case and each child thereafter is counted as one-half case to determine compliance with the caseload limits.

The Office of Civil Legal Aid (OCLA) is responsible for implementation. In addition, the OCLA must contract with an independent research organization to evaluate:

- the compensation rate for children's attorneys using local and national data, the feasibility of sibling group representation, and the hours necessary for attorneys to represent children and youth in compliance with state standards; and
- the impact of legal representation on case timelines and permanency outcomes for children and youth represented by attorneys.

The evaluation must include a review of data disaggregated by race, ethnicity, and age, and qualitative interviews with children, youth, and parents regarding their experiences in the dependency process. A report to the Legislature and the Governor is due by December 1, 2021.

#### 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.

A court may continue, for good cause shown, to find that appointment of a GAL is unnecessary, but the language is stricken that provides that the requirement of a GAL is deemed satisfied if the child is represented by an independent attorney in the proceedings.

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

#### **Substitute Bill Compared to Original Bill:**

Provisions requiring the appointment of counsel for all children in dependencies upon the effective date are stricken and replaced with the phased-in appointment of counsel for children over two years old. Language in current law pertaining to discretionary appointment of counsel and notification requirements regarding the right to request appointment of an attorney is retained rather than stricken. Language regarding appointment of counsel to children six months after entry of an order terminating parental rights is also retained rather than stricken.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) While children are at the heart of a dependency process, they are the only ones who don't have an attorney. Washington is an outlier in this respect. Appointment of attorneys for children has been shown to move to permanency faster, make for better outcomes, and save money. It also results in more family reunifications. In this state, some counties do provide children with attorneys, while others do not. In the current system, one-quarter of GALs don't even raise the best interest of the child. In the experience of one young man in California, he had no court appointed special advocate (CASA) or attorney. It wasn't until he was 13 years old that he had an attorney appointed, and the attorney's advocacy saved him from being overmedicated and languishing in the system. Children need advocates. Another young man spent 19 years in foster care, and for 13 years was in abusive situations. At 13 years old he finally received an attorney and was placed in a nonabusive foster home. There are gaping holes in the foster care system, and permanency is key. Attorneys focus on the children's legal rights and can keep children from languishing in the system. The tandem of a CASA and an attorney is a dynamic duo. It shouldn't be an either/or situation. In Snohomish County, children over 12 years old are provided an attorney. Attorneys are able to cut through weeks of process, and this can result in positive change in terms of visits. The data is troubling. In some counties, 30 percent of the children had no advocate at all. In more than 20 percent of the observed proceedings, the child wasn't even mentioned. Instead, the focus was all on the parents. National organizations, such as the American Bar Association, support the provision of counsel to children in dependency proceedings. According to a University of Washington report, the system works best when all work together in tandem, with the CASA working for the court and representing the best interests of the child, and the attorney representing what the child says he or she wants.

(Opposed) This bill would create one more person doing just what a CASA does already. Resources, instead, should be devoted to other things. While a CASA cannot file a motion, a CASA program attorney can do that when needed.

(Other) In other juvenile matters, such as At Risk Youth proceedings and Children in Need of Services petitions, children get attorneys. Every decision in a dependency has the most impact upon the child. Attorneys lead to better outcomes. Counties have concerns with the fiscal impact. A large part of county budgets go to public defenders. If this bill does pass, it should be fully funded. It should be clarified that the duty of the attorney is to represent the stated interest of the child and leave the CASAs to represent the best interests of the child. One has to question what problem is trying to be solved with appointment of an attorney for babies and toddlers.

**Persons Testifying:** (In support) Representative Frame, prime sponsor; Louis Gaspar and Deonte Cruz, The Mockingbird Society; Connie Krebs, Foster Parents Association of Washington; Adam Ballout; Alicia LeVezu; Lynda Brown; and Hillary Madsen, Columbia Legal Services.

(Opposed) Keith Smith.

(Other) Patrick Dowd, Office of the Family and Children's Ombuds; Juliana Roe, Washington State Association of Counties; Jill Malat, Office of Civil Legal Aid; and Ryan Murrey, Washington State Court Appointed Special Advocates.

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