

# SENATE BILL REPORT

## SB 5363

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As of February 10, 2017

**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:** Senators Walsh, Frockt, Rivers, Fain, Carlyle, Darneille, Miloscia, Warnick and Kuderer.

**Brief History:**

**Committee Activity:** Human Services, Mental Health & Housing: 1/30/17.

**Brief Summary of Bill**

- Requires the court to appoint an attorney to represent every child who is alleged dependent in a dependency case, regardless of the child's age.
- Continues the child's right to appointed counsel during all stages of the dependency case.
- Requires the attorney's appointment to represent the child before the initial shelter care hearing.

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### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

**Staff:** Melissa Burke-Cain (786-7755)

**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. When a child is removed from her home due to alleged abuse or neglect, decisions about where the child will live, the services received, and the family relationships maintained are no longer made by the child's parents. If the court determines that the child is dependent, then 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

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rights. According to an August 2016 University of Washington Law School Report (Report), approximately 9000 Washington children are in foster care at any given time. If a child has been in out-of-home placement for 15 of the most recent 22 months, then the court must order DSHS to file a petition for termination, in the absence of 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.

Children over 12 years old must be notified of their right to request counsel. Under current law, the court has discretion to appoint an attorney for the child at any stage of the proceeding on its own initiative or upon the request of a parent, the child, a GAL, a caregiver, or DSHS. The child, or any individual, may retain an attorney for the purpose of filing a motion requesting appointment of an attorney at public expense. However, if the child is not already represented by court-appointed counsel, the court must appoint an attorney six months after an order terminating parental rights and when there is no remaining parent with parental rights. The court may appoint one attorney to represent a sibling group, unless joint representation is a conflict of interest, or violates the rules of professional conduct. Appointed attorneys must meet practice standards, training requirements, and caseload limits.

According to the Report, the practices around appointing attorneys for children who are alleged dependent varies from county-to-county. Currently, twelve Washington counties automatically appoint an attorney for a child in a dependency proceeding. Two counties make an automatic appointment at eight years old: Benton and Franklin. Ten counties make an automatic appointment at twelve years old: Clark, Cowlitz, Grays Harbor, Island, King, Mason, Snohomish, Spokane, Thurston, and Walla Walla. The remaining 27 counties have no automatic appointment process.

**Summary of Bill:** The court must appoint an attorney to represent any child alleged dependent in a dependency proceeding. There is no minimum age triggering the child's right to appointed counsel. The appointment must occur prior to the initial shelter care hearing. The right to an appointed attorney for a child extends throughout the dependency proceeding including any appeals related to termination of parental rights.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: Appointing an attorney to represent children in all stages of dependency proceedings is a heavy lift but it puts a face on the importance of preventing children involved in dependency from slipping through cracks in the system. From personal experience as a foster child in the system, it is hard, if not impossible, to understand your legal rights without having your own attorney. Appointed counsel can be instrumental in helping a foster child get out of a bad group placement, or into a better placement. An attorney for the child can be vital to expedite permanency for a child in foster care. Foster children may have many well-meaning service providers, but in my personal

experience, without an attorney, my needs and wants did not have a voice. For children in foster care without specific legal advocacy for the dependent child, siblings can be separated, visitation disrupted, or a child's safety concerns can be ignored. For the child, the lawyer who represents him or her can be someone the child can safely open up to and talk to about worries and needs. As a foster child without a lawyer, I didn't think my voice was being heard; but with my own lawyer, I knew the lawyer was working for me and helping me through the process. My attorney spoke up for me, helped during the adoption process, got court orders that protected me, and allowed me to get stable in life so I am able to help others.

Looking back from experience as a foster child, I could have been spared significant trauma if I had legal representation and these early traumas can impact a child for a lifetime. Parents may feel they have no voice in dependency cases, but children feel the same. An attorney for parents may not be in a position to advance the interests of the child in a dependency case. Not all siblings may have the same interest leaving the one attorney in a difficult position trying to represent all siblings. There are many good reasons for appointing counsel for a child. The current volunteer advocates, like Court Appointed Special Advocate (CASA) volunteers are generally not trained lawyers, the child may not agree with the assigned CASA volunteer's recommendation, or the child's parents may not be aware of services the child needs and could have available to them. There are many things that happen to a child that seriously disrupt their well-being such as not being able to stay on the same soccer team, being cut off from relatives and friends, or the emotional toll from not seeing siblings.

There is data to support the positive effects of appointing an attorney to represent a child in dependency cases. In one UW study of approximately 900 observed dependency hearings across Washington state, 1 in 4 cases had no CASA volunteer, no guardian ad litem, and no attorney for the child. In 22 percent of hearings observed, the child was not even mentioned. In cases with an appointed attorney representing the child, the child's needs are mentioned 92 percent of the time.

Permanence is paramount to a child's success and early permanence will save money for the state by reducing the time the child is in foster care, and giving the child a better chance at a positive outcome. An appointed attorney for the child speeds up permanency without interfering with reunification.

There are inequalities in the dependency system in which children of different ages are treated differently. Children in dependency should not be treated differently based on geography, or the county where they are living, but that is the case now in Washington. The best possible outcome for the child is the goal of these cases, not life-long dependency on the system.

When someone tells the child's story and the child knows they are being heard, the child has hope for a better future. The child should be an integral part of the plans being made by others about his or her life, so the child has an investment in the long-term plan and the child is more willing to participate in available resources. Putting the youth's voice first gives a better chance to do right by the child. A foster child needs all the support he or she can get when dealing with a very difficult situation.

CON: The CASA volunteer system already serves many of the purposes of appointed counsel. CASA volunteers are able to spend the time needed to talk to the child, to consider all of their circumstances, to talk to others in the child's surroundings, and pass along important observations. The CASA may have information or recognize problems in the child's environment that the public defender or even the social worker may not know. For example, in one case, there was a no-contact order but the social worker was unaware of the order. The social worker wanted to allow visits right away. The CASA volunteer knew and informed the social worker, thereby protecting the child. CASA volunteers do file motions in a dependency case. Attorneys can be a redundancy to the role of the CASA volunteer, and can gum up the system, leading to unnecessary delays for permanency planning.

OTHER: Appointing counsel for every child in a dependency is very costly, and it is challenging to recruit trained and willing attorneys to act as appointed counsel given the difficult cases and limited funding. The CASA volunteers are advocates working for the child's best interests and there are currently 2000 CASAs across the state. It may be possible to gradually roll out this bill and keep costs manageable, for example, being able to waive an appointed attorney if a child is non-verbal and has a guardian-ad-litem. Or, if a child has a limited capacity and cannot state their interests, an attorney can be appointed at a later point in time. As some counties do now, a guardian-ad-litem could be appointed and an attorney can be appointed at a specific age, for example 12 years of age.

**Persons Testifying:** PRO: Senator Maureen Walsh, Prime Sponsor; Louis Gaspar, Mockingbird Society; Annie Blackledge, Mockingbird Society; Lynnda Brown, Owner, Law Office of Lynnda Brown PLLC; Tonia McClanahan, Parent Action Committee; D'Adre Cunningham, Attorney, Washington Defender Association Incarcerated Parents Project; Flint Stubbins, Partner, ABC Law Group; Sonya Jacobsen, Attorney, King County Department of Public Defense; Tiana Marquis, citizen; Linda Thomas, Catholic Community Services; Ann Marie Simmons, citizen; Connie Kerbs, Foster Parents Association of Washington; Chris McBride, Student, University of Washington School of Law; Hillary Madsen, Attorney, Columbia Legal Services.

CON: Keith Smith, citizen.

OTHER: Patrick Dowd, Washington State Office of the Family & Children's Ombuds, Director; Jill Malat, Office of Civil Legal Aid; Ryan Murrey, Washington State CASA.

**Persons Signed In To Testify But Not Testifying:** No one.