
Children, Youth & Families Committee

HB 1747

Brief Description: Supporting relative placements in child welfare proceedings.

Sponsors: Representatives Ortiz-Self, Taylor, Davis, Peterson, Ryu, Orwall, Dolan, Simmons, Ramos, Wicks, Valdez, Fitzgibbon, Morgan, Stonier, Goodman, Ormsby, Macri, Harris-Talley and Frame.

Brief Summary of Bill

- Prohibits the Department of Children, Youth, and Families (DCYF) from filing a petition for termination of parental rights when the court enters a finding of good cause that a termination of parental rights petition is not appropriate.
- Expands the good cause exception to the requirement that the court require the DCYF to file a termination petition if a child is in out of home care for 15 of the last 22 months to include circumstances where the DCYF has not yet met with the caregiver for the child to discuss guardianship as an alternative to adoption or the court has determined that guardianship is an appropriate permanent plan.
- Expands the subsidy program for eligible relatives appointed by the court to include limited guardians of a minor.
- Prohibits a child who is placed with a relative or other suitable person from being moved, unless, under certain criteria, the court finds that a change in circumstances necessitates a change in placement.

Hearing Date: 1/24/22

Staff: Luke Wickham

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Child Welfare (Dependency) Court Proceedings.

Anyone, including the DCYF, may file a petition in court alleging that a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency. The fact finding must be held within 75 days after the filing of the petition, unless exceptional reasons for a continuance are found.

If a court determines that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

The DCYF must develop a permanency plan within 60 days from the date that the DCYF assumes responsibility for the child which must identify primary outcome goals for the case. The DCYF must submit this permanency plan to the parties and the court at least 14 days before a permanency planning court hearing. A permanency planning hearing must be held in all cases where the child has remained in out-of-home care for at least nine months, but no later than 12 months following out-of-home placement.

During a permanency planning hearing, the court must order the DCYF to file a petition seeking termination of parental rights if the child has been in out-of-home care for 15 of the last 22 months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination or parental rights petition is not appropriate.

Guardianship.

There are two types of guardianships that are recognized during child welfare proceedings: a guardianship restricted to parties in a dependency case and a broader guardianship that is not limited to the parties of a dependency case. Unlike adoption, neither of these guardianships require termination of parental rights.

Dependency-Specific Guardianship.

A dependency-specific guardianship allows any party to a dependency proceeding to file a petition in juvenile court seeking a guardianship, with notice provided to all the parties in the dependency case. This is sometimes referred to as a "Title 13" guardianship based on the

location of this guardianship in the law and in contrast to the broader "Title 11" guardianship described below.

To be designated as a proposed guardian, a person must be age 21 or older and must meet minimum requirements to care for children established by the DCYF. A guardianship may be established if the court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or continue to return custody of the child to the parent and:

- all parties agree to the entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of carrying out the duties of a guardian; or
- the child has been found dependent, removed from the custody of the parent for at least six consecutive months, services have been offered or provided to the parent, there is little likelihood that the child can be returned to the parent in the near future, and the proposed guardian acknowledged the guardian's rights and responsibilities to the child committing to care for the child until the child reaches age 18.

In all guardianship proceedings, the court must appoint a guardian ad litem or attorney for the child.

Except in limited circumstances, the court may not establish a guardianship for a child who has no legal parent.

Any party to a guardianship may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The court may terminate a guardianship on the agreement of the guardian, the child (if the child is age 12 or older), and the parent seeking to regain custody of the child if the court finds by a preponderance of the evidence that the parent has successfully corrected the parenting deficiencies identified by the court in the dependency case, among other things.

A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship. The court must deny such a petition unless adequate cause is found.

A guardianship remains in effect until the child turns age 18 or the court terminates the guardianship, whichever is sooner.

Limited Guardianship of a Minor.

A person interested in the welfare of a minor, including the minor themselves, may petition for appointment of a guardian in a broader guardianship process that is not limited to parties involved in a dependency case. This is sometimes referred to as a "Title 11" guardianship based on the location of this guardianship in the law. After a petition is filed for this type of guardianship, a person becomes a guardian for a minor only on appointment of the court. The court may appoint a guardian if the court finds that the appointment is in the minor's best interest and:

- each parent consents;
- all parental rights have been terminated; or
- there is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions.

In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court may create a limited guardianship by limiting the powers otherwise granted to a guardian. When establishing a Title 11 guardianship of a minor, the court shall state rights retained by the parent, which must preserve the parent-child relationship through an order for parent-child visitation and other contact, unless the court finds the relationship should be limited or restricted, and which may include decision-making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.

An order granting guardianship for a minor must state that the parent of the minor is entitled to notice that:

- the guardian has delegated custody of the minor;
- the court has modified or limited the powers of the guardian; or
- the court has removed the guardian.

Relative Guardian Subsidy.

The DCYF operates a subsidy program for eligible relatives appointed by the court as a guardian under the guardianship specific to dependency cases.

Summary of Bill:

Good Cause Exception.

The good cause exception to the requirement that the court require the DCYF to file a termination petition if a child is in out of home care for 15 of the last 22 months is expanded to include circumstances where the DCYF has not yet met with the caregiver for the child to discuss guardianship as an alternative to adoption or the court has determined that guardianship is an appropriate permanent plan.

If a child has been in the home of a foster parent or relative for more than six months, the court must instruct the DCYF to discuss guardianship as a permanent option for the child with the child's parents and caregiver as an alternative to termination of parental rights and adoption.

No child who is placed with a relative or other suitable person may be moved, unless, under certain criteria, the court finds that a change in circumstances necessitates a change in placement.

The DCYF is prohibited from filing a petition for termination of parental rights when the court enters a finding of good cause that a termination of parental rights petition is not appropriate.

The petitioner must demonstrate in a termination petition that a guardianship is not sufficient to

protect the health, safety, and welfare of the child.

After the court enters an order terminating a parents rights, the court must commit to the child to the custody of the DCYF (but not for the purpose of placing the child for adoption).

The subsidy program for eligible relatives appointed by the court is expanded to include limited guardianship of a minor.

Appropriation: None.

Fiscal Note: Requested on January 11, 2022.

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