HOUSE BILL 1219

State of Washington 67th Legislature 2021 Regular Session

By Representatives Frame, J. Johnson, Ramos, Bateman, Peterson, Fitzgibbon, Davis, Ryu, Fey, Senn, Lovick, Chase, Orwall, Taylor, Santos, Thai, Ortiz-Self, Ormsby, Simmons, Slatter, Berg, Chopp, Bergquist, Callan, Valdez, Macri, Goodman, Tharinger, Harris-Talley, Ybarra, and Hackney

Read first time 01/15/21. Referred to Committee on Civil Rights & Judiciary.

- AN ACT Relating to the appointment of counsel for youth in dependency court proceedings; amending RCW 13.34.090, 13.34.092, 13.34.100, and 2.53.045; adding new sections to chapter 2.53 RCW; adding a new section to chapter 13.34 RCW; creating a new section; and providing an expiration date.
- 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 7 NEW SECTION. Sec. 1. (1) The legislature recognizes that dependency proceedings determine many critical aspects of a child's 8 future, including whether the child may remain at home with their 9 10 family, whether and how often the child sees their parents and 11 siblings if they do not remain with their family, where the child attends school, and how long the child remains in state care. 12 Children and youth, regardless of age, have many legal rights at 13 14 stake in these proceedings, including a right to maintain family 15 relationships, a right to freedom from harm, and a right to 16 reasonable safety. Standards-based representation by a well-qualified 17 attorney can be invaluable in protecting and advancing the child's legal rights and, where articulable, stated interests. Attorneys can 18 advise and assist children and youth in presenting their experiences 19 20 and position to the court, improving the court's comprehensive 21 decision making.

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(2) The legislature further recognizes that appointing attorneys to provide standards-based legal representation for children and youth in dependency proceedings has been shown to result in more timely permanency for children and youth, increased school and placement stability, and increased contact with parents and siblings.

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- (3) The legislature finds that the current system for child legal representation is inadequate and has resulted in a patchwork system that varies by county leading to many children and youth not having equal access to the court process. This is particularly true when significant events, such as the COVID-19 pandemic, result in sudden changes to court rules and procedures.
- 12 (4) The legislature further finds that Black and Indigenous children and youth and other youth of color are much more likely to 13 be removed from their parents' care, placed into foster care, and 14 remain in the child welfare system longer than White children. 15 16 Systemic racism contributes to this overrepresentation and to the 17 lack of meaningful access to the court process for children and their families. It is the intent of the legislature to ensure that any 18 19 legal representation actively combat expansion of this 20 disproportionality.
- 21 **Sec. 2.** RCW 13.34.090 and 2017 3rd sp.s. c 6 s 303 are each 22 amended to read as follows:
 - (1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.
 - (2) At all stages of a proceeding in which a child is alleged to be dependent, the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency.
- 36 (3) At all stages of a proceeding in which a child is alleged to 37 be dependent, the child has the right to be represented by counsel as 38 provided in this act.

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(4) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

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 $((\frac{4}{1}))$ Copies of department $(\frac{6}{1} \text{ supervising agency})$ records to which the child and the child's parents have legal access pursuant to chapter 13.50 RCW shall be given to the ((child's parent)) child or child's counsel, and the parents, quardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within $((\frac{\text{fifteen}}{}))$ 15 days after the department $((\frac{\text{or}}{}))$ supervising agency)) receives a written request for such records from the ((parent)) child or child's counsel, and the parents, quardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the child or child's counsel, and the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the ((parents)) client and shall review the records with the ((parents)) client prior to the shelter care hearing.

22 **Sec. 3.** RCW 13.34.092 and 2000 c 122 s 6 are each amended to 23 read as follows:

At the commencement of the shelter care hearing the court shall advise the parties of basic rights as provided in RCW 13.34.090 and appoint counsel to the child's parent, guardian, or legal custodian pursuant to RCW 13.34.090 if the parent $((\Theta r))_{L}$ guardian, or legal custodian is indigent unless counsel has been retained by the parent $((\Theta r))_{L}$ guardian, or legal custodian or the court finds that the right to counsel has been expressly and voluntarily waived in court.

- Sec. 4. RCW 13.34.100 and 2019 c 57 s 1 are each amended to read as follows:
- (1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by an independent attorney in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem

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1 who has specific training or education related to the child's 2 individual needs.

- (2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.
- (3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:
 - (a) Level of formal education;

- (b) General training related to the guardian ad litem's duties;
- 14 (c) Specific training related to issues potentially faced by children in the dependency system;
 - (d) Specific training or education related to child disability or developmental issues;
 - (e) Number of years' experience as a guardian ad litem;
 - (f) Number of appointments as a guardian ad litem and the county or counties of appointment;
 - (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
 - (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
 - (i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and
- 36 (j) Criminal history, as defined in RCW 9.94A.030, for the period covering ((ten)) 10 years prior to the appointment.

The background information record shall be updated annually and fingerprint-based background checks shall be updated every three years. As a condition of appointment, the guardian ad litem's

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1 background information record shall be made available to the court.

2 If the appointed guardian ad litem is not a member of a guardian ad 3 litem program a suitable person appointed by the court to act as

litem program a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to

5 the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

- (4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.
- (5) A guardian ad litem through an attorney, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.
- (6)(((a) 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 pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights.

The court must appoint an attorney for a child when there is no remaining parent with parental rights for six months or longer prior to July 1, 2014, if the child is not already represented.

The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.

(b) Legal services provided by an attorney appointed pursuant to (a) of this subsection do not include representation of the child in

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any appellate proceedings relative to the termination of the parent and child relationship.

(c) (i) Subject to the availability of amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney appointed pursuant to (a) of this subsection, if the legal services are provided in accordance with the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must be calculated pursuant to (c) (ii) of this subsection.

(ii) Counties are encouraged to set caseloads as low as possible and to account for the individual needs of the children in care. Notwithstanding the caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010, when 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 standards pursuant to (c)(i) of this subsection and RCW 2.53.045.

(iii) The office of civil legal aid is responsible for implementation of (c)(i) and (ii) of this subsection as provided in RCW 2.53.045.

(7) (a) The court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.

(b) (i) If the court has not already appointed an attorney for a child, or the child is not represented by a privately retained attorney:

(A) The child's caregiver, or any individual, may refer the child to an attorney for the purposes of filing a motion to request appointment of an attorney at public expense; or

(B) The child or any individual may retain an attorney for the child for the purposes of filing a motion to request appointment of an attorney at public expense.

(ii) Nothing in this subsection (7)(b) shall be construed to change or alter the confidentiality provisions of RCW 13.50.100.

(c) Pursuant to this subsection, the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request an attorney and shall ask the child

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whether he or she wishes to have an attorney. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

(i) The date of the child's twelfth birthday;

- 5 (ii) Assignment of a case involving a child age twelve or older; 6 or
 - (iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010.
 - (d) The department or supervising agency and the child's guardian ad litem shall repeat the notification and inquiry at least annually and upon the filing of any motion or petition affecting the child's placement, services, or familial relationships.
 - (e) The notification and inquiry is not required if the child has already been appointed an attorney.
 - (f) The department or supervising agency shall note in the child's individual service and safety plan, and the guardian ad litem shall note in his or her report to the court, that the child was notified of the right to request an attorney and indicate the child's position regarding appointment of an attorney.
 - (g) At the first regularly scheduled hearing after:
 - (i) The date of the child's twelfth birthday;
- (ii) The date that a dependency petition is filed pursuant to this chapter on a child age twelve or older; or
- 24 (iii) July 1, 2010, for a child who turned twelve years old 25 before July 1, 2010;
 - the court shall inquire whether the child has received notice of his or her right to request an attorney from the department or supervising agency and the child's guardian ad litem. The court shall make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday. No inquiry is necessary if the child has already been appointed an attorney.
 - (8))) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to this section shall be deemed a guardian ad litem.
 - $((\frac{(9)}{)})$ <u>(7)</u> When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The program shall attempt to match a child with special needs with a guardian ad litem who has

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specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.

(((10))) <u>(8)</u> If a party in a case reasonably believes the courtappointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

(((11))) <u>(9)</u> The court shall remove any person from serving as a court-appointed special advocate or volunteer guardian ad litem if the court is notified that the person has been removed from another county's registry pursuant to the disposition of a grievance or if the court is otherwise made aware that the individual was found by a court to have made a materially false statement that he or she knows to be false during an official proceeding under oath.

NEW SECTION. Sec. 5. A new section is added to chapter 2.53 RCW to read as follows:

- (1) The statewide children's legal representation program is established within the office of civil legal aid. The children's legal representation program shall ensure the provision of standards-based representation informed by best practice models, rigorous data analysis, race and other equity considerations that cause or perpetuate racial and other disparities in the child welfare system, involvement of stakeholders, including youth and young adults impacted by the system.
- 31 (2) The statewide children's legal representation program is 32 responsible for implementation of section 6 of this act and RCW 33 2.53.045 except that it is the court's responsibility to appoint 34 attorneys in dependency proceedings.
- NEW SECTION. Sec. 6. A new section is added to chapter 13.34 RCW to read as follows:
- 37 (1)(a) The court shall appoint an attorney for a child in a 38 dependency proceeding six months after granting a petition to

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terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights. Legal representation provided by attorneys appointed pursuant to this section shall conform to rules of professional conduct, the standards of practice, caseload limits, and training guidelines adopted by the children's representation work group established by the Washington state supreme court commission on children in foster care as requested in section 9 of this act.

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- (b) The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.
- (c) Subject to availability of amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney appointed pursuant to (a) of this subsection.
- (d) The office of civil legal aid is responsible for implementation of (a) through (c) of this subsection as provided in RCW 2.53.045.
- (e) Legal services provided by an attorney pursuant to (a) of this subsection do not include representation of the child in any appellate proceedings relative to the termination of the parent and child relationship.
- (2) (a) The court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.
- (b)(i) If the court has not already appointed an attorney for a child, or the child is not represented by a privately retained attorney:
- (A) The child's caregiver, or any individual, may refer the child to an attorney for the purposes of filing a motion to request appointment of an attorney at public expense; or
- 32 (B) The child or any individual may retain an attorney for the 33 child for the purposes of filing a motion to request appointment of 34 an attorney at public expense.
- 35 (ii) Nothing in this subsection changes or alters the 36 confidentiality provisions of RCW 13.50.100.
- 37 (c) The department and the child's guardian ad litem shall each 38 notify a child of the child's right to request an attorney and shall 39 ask the child whether the child wishes to have an attorney. The

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department and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

(i) The date of the child's 12th birthday; or

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- (ii) Assignment of a case involving a child age 12 or older.
- (d) The department and the child's guardian ad litem shall repeat the notification and inquiry at least annually and upon the filing of any motion or petition affecting the child's placement, services, or familial relationships.
- 9 (e) The notification and inquiry is not required if the child has 10 already been appointed an attorney.
 - (f) The department shall note in the child's individual service and safety plan, and the guardian ad litem shall note in his or her report to the court, that the child was notified of the right to request an attorney and indicate the child's position regarding appointment of an attorney.
 - (g) At the first regularly scheduled hearing after:
 - (i) The date of the child's 12th birthday; or
- 18 (ii) The date that a dependency petition is filed pursuant to 19 this chapter on a child age 12 or older;
 - the court shall inquire whether the child has received notice of his or her right to request an attorney from the department and the child's guardian ad litem. The court shall make an additional inquiry at the first regularly scheduled hearing after the child's 15th birthday. No inquiry is necessary if the child has already been appointed an attorney.
 - (3) Subject to the availability of amounts appropriated for this specific purpose:
 - (a) Pursuant to the phase-in schedule set forth in (b) of this subsection (3), the court must appoint an attorney for every child in a dependency proceeding. Appointment must be made at the same time that counsel is appointed for the child's parent, guardian, or legal custodian. If no appointment of counsel is made for the child's parent, guardian, or legal custodian, then appointment must be made at or before the commencement of the shelter care hearing.
 - (b) The statewide children's legal representation program shall develop a schedule for court appointment of attorneys for every child in dependency proceedings that will be phased in on a county-by-county basis over a six-year period. The schedule required under this subsection must:
 - (i) Prioritize implementation in counties that have:

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- 1 (A) No current practice of appointment of attorneys for children 2 in dependency cases; or
 - (B) Significant prevalence of racial disproportionality or disparities in the number of dependent children compared to the general population, or both;
 - (ii) Include representation in at least:

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- (A) Three counties beginning January 1, 2022;
- (B) Eight counties beginning January 1, 2023;
- (C) Fifteen counties beginning January 1, 2024;
 - (D) Twenty counties beginning January 1, 2025; and
- 11 (E) Thirty counties beginning January 1, 2026;
- 12 (iii) Achieve full statewide implementation by January 1, 2027.
 - (c) The statewide children's legal representation program is responsible for the recruitment, training, and oversight of attorneys providing standards-based representation pursuant to (a) and (b) of this subsection as provided in RCW 2.53.045.
 - (4) Attorneys representing children pursuant to this section must provide legal services according to the rules of professional conduct, the Washington state bar association standards for indigent defense services, the standards of practice, caseload limits, and training guidelines adopted by the children's representation work group established by the Washington state supreme court commission on children in foster care as provided in section 9 of this act.
 - Sec. 7. RCW 2.53.045 and 2018 c 21 s 3 are each amended to read as follows:
 - (1) Money appropriated by the legislature for legal services provided by an attorney appointed pursuant to ((RCW 13.34.100)) section 5 of this act must be administered by the office of civil legal aid established under RCW 2.53.020.
 - (2) The ((office of civil legal aid)) statewide children's legal representation program shall enter into contracts with attorneys and agencies for the provision of legal services under ((RCW 13.34.100)) section 5 of this act to remain within appropriated amounts.
- 34 (3) Prior to distributing state funds under subsection (2) of
 35 this section, the ((office of civil legal aid)) statewide children's
 36 legal representation program must verify that attorneys providing
 37 legal representation to children under ((RCW 13.34.100)) section 5 of
 38 this act meet the standards of practice, ((voluntary training, and))
 39 caseload limits ((developed and recommended by the statewide)

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- 1 children's representation work group pursuant to section 5, chapter
- 180, Laws of 2010. Caseload limits described in this subsection must 2
- be determined as provided in RCW 13.34.100(6)(c)(ii)), and training 3
- guidelines adopted by the children's representation work group 4
- established by the Washington state supreme court commission on 5
- 6 children in foster care as provided in section 9 of this act.
- 7 NEW SECTION. Sec. 8. A new section is added to chapter 2.53 RCW to read as follows: 8
- 9 (1) The Washington state center for court research shall convene 10 stakeholders, including youth and young adults, to identify the 11 relevant outcome measures and data collection methods that appropriately protect attorney-client privilege to effectively 12 13 assess:
- (a) The number of youth for whom attorneys are appointed pursuant 14 15 to section 6(3) of this act; and

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- (b) The short and longitudinal impact of standards-based legal representation on case outcomes including family reunification, number of placement changes, and placement with kin of appointment of standards-based representation disaggregated by race, ethnicity, age, disability status, sexual and gender identity, and geography.
- (2) By November 30, 2022, and in compliance with RCW 43.01.036, 21 22 the Washington state center for court research shall submit an annual report to the appropriate committees of the legislature and the 23 24 governor outlining the outcome measures identified under this 25 section.
- 26 NEW SECTION. Sec. 9. A new section is added to chapter 2.53 RCW 27 to read as follows:
- (1) The legislature recognizes that substantial changes have 29 occurred that inform the best practices related to representation of 30 children and youth in dependency cases, including new understandings 31 relating to equity, disproportionality, cultural competency, and trauma-informed representation. The legislature further recognizes 32 the role that training, supportive supervision, and competitive 33 compensation structures play in recruiting and retaining a diverse 34 pool of well-qualified attorneys. The legislature further recognizes 35 that standards-based representation continues to be necessary to 36 37 ensure effective representation of the stated and legal interests of 38 children and youth involved in the child welfare system.

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- 1 (2) The legislature therefore respectfully requests that the supreme court's commission on children in foster care review and update, where appropriate, the standards of practice, caseload limits, and training guidelines, referenced in RCW 2.53.045 and section 6 of this act. The updated standards shall be developed by December 31, 2021.
 - (3) This section expires July 1, 2022.

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