

# HOUSE BILL REPORT

## HB 1278

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**As Reported by House Committee On:**  
Human Services, Youth, & Early Learning  
Appropriations

**Title:** An act relating to supporting guardianships and voluntary placement with nonrelative kin.

**Brief Description:** Supporting guardianships and voluntary placement with nonrelative kin.

**Sponsors:** Representatives Ortiz-Self, Senn, Callan, Simmons, Davis, Reeves, Reed, Fey, Cortes and Ormsby; by request of Department of Children, Youth, and Families.

**Brief History:**

**Committee Activity:**

Human Services, Youth, & Early Learning: 1/24/23, 2/3/23 [DPS];  
Appropriations: 2/13/23, 2/22/23 [DP2S(w/o sub HSEL)].

**Brief Summary of Second Substitute Bill**

- Expands guardianship assistance subsidies provided by the Department of Children, Youth, and Families to include children who are placed with certain nonrelative guardians.
- Expands placement options under a voluntary placement agreement to include "suitable persons."

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### HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Callan, Goodman, Ortiz-Self and Rule.

**Minority Report:** Do not pass. Signed by 1 member: Representative Walsh.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Couture, Assistant Ranking Minority Member; Dent.

**Staff:** Luke Wickham (786-7146).

**Background:**

*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 Department of Children, Youth, and Families (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 with 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 the 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 statute. 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 Guardianship Assistance Program.*

The Relative Guardianship Assistance Program (RGAP) operated by the DCYF provides a subsidy for children placed in a guardianship (either the dependency-specific guardianship or the limited guardianship of a minor) with a qualified, licensed relative. To qualify for the RGAP, a person must:

- have cared for the child for at least six consecutive months and have been a licensed foster parent for at least six consecutive months;

- be eligible according to federal funding criteria; and
- be a relative or care for a sibling who is receiving assistance through the RGAP.

The RGAP subsidy payments cannot exceed the foster care maintenance payments for the child had the child remained in a licensed foster home during the same period.

An RGAP subsidy may be provided for youth age 16 until their twenty-first birthday when the youth qualifies for extended foster care. To qualify for extended foster care, a youth must have been dependent at the time the youth reaches age 18 and:

- enrolled in a secondary education program;
- enrolled in a postsecondary education program;
- participating in an employment program;
- employed for 80 hours or more per month; or
- not able to engage in any of the above activities due to a documented medical condition.

A "suitable person" is defined to mean a nonrelative with whom the child or the child's family has a preexisting relationship, who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child, and with whom the child has been placed pursuant to a dependency court order.

For purposes of the RGAP, a relative includes any:

- blood relative, including those of half-blood, and including first and second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;
- stepfather, stepmother, stepbrother, and stepsister;
- person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents;
- spouses of any persons named above, even after the marriage is terminated;
- relatives, as named above of any half sibling of the child; or
- extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached age 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a 24-hour basis to an Indian child.

#### *Voluntary Placement Agreements.*

The DCYF may enter into a voluntary placement agreement (VPA) with a parent to place a child with a relative or in a licensed foster home when:

- a safety threat exists, that cannot be managed in the home, and services provided for 90 days are likely to eliminate the need for court intervention;
- a safety threat exists, that cannot be managed in the home, after business hours and the child is not placed in protective custody by law enforcement;
- parents or legal guardians need temporary care for a child while undergoing medical

- care or treatment and there are no alternative placement resources; or
- the child's parent is not immediately available to provide care.

Parental approval is required for a VPA. A VPA may occur for a child under age 18, or for a youth under age 21, if the youth is being served by the extended foster care program.

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**Summary of Substitute Bill:**

The eligibility for guardianship subsidies is expanded to include any guardian who is a licensed foster parent, instead of just relatives licensed as foster parents.

The eligibility for guardianship subsidies is further expanded to apply to a child placed:

- for at least six consecutive months with a guardian who has been licensed for at least six consecutive months; or
- with a guardian who is already receiving a guardianship assistance subsidy for the benefit of the child's sibling.

A child does not need to be eligible for federal foster care reimbursement to qualify for state-funded guardianship assistance.

The Department of Children, Youth, and Families (DCYF) is authorized to provide subsidies for eligible guardians who are appointed as guardian of an Indian child by a tribal court.

The DCYF is authorized to accept custody of children from parents through a voluntary placement agreement (VPA) to provide child welfare services, and the DCYF may place the child with a relative, a suitable person, or a licensed foster home. In seeking a placement following a VPA, the DCYF should consider the preferences of the parents and attempt to place with relatives or suitable persons over licensed foster care.

The DCYF is authorized to provide guardianship subsidies on behalf of a youth ages 18 to 21 who meet the existing eligibility criteria.

**Substitute Bill Compared to Original Bill:**

The substitute bill specifies that the Department of Children, Youth, and Families has the authority to provide subsidies on behalf of youth ages 18 to 21 who achieved permanency through guardianship and meets existing criteria and makes technical changes to reflect the expansion of the guardianship subsidy to nonrelatives.

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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) There are licensed foster families who have a preexisting relationship with a family and should be supported by the Relative Guardianship Assistance Program (RGAP). Many people who are part of a church community or who are fictive kin should be supported in every way possible.

The more children can be kept together with family, fictive family, and communities that serve them, the more these children know that they are loved.

The psychology of a child in foster care is not unlike the psychology of a child from a blended family. If the adults work together to do right for what is in the best interest of the children, generally that leads to the best result.

Licensed foster families routinely do childcare for and celebrate holidays with the families of the foster care alum who spent time in their homes.

It is unfortunate when adoption is the only option at the end of a case because adults have been building relationships over the course of a child's time in care.

Only a small number Apple Health Core Connections program members have been eligible for the RGAP. Any disruption or unexpected change can perpetuate the trauma faced by these youth.

Demographic data for Apple Health Core Connections members shows a disproportionate number of nonwhite members relative to Washington's overall population. Many youth would prefer placement with individuals whom they know and are comfortable with.

Kinship caregivers know that there is no warning before a child may arrive at the doorstep. Sacrifice, resources, commitment, sacrifice, and money are things that come to mind when a person takes over care of a child. What does not come to mind is whether that person will qualify for a guardianship subsidy. The state should provide as much support for caregivers as possible and not just rely on federal funding requirements.

This bill supports families, and when families are supported, children are supported.

Subsidized guardianships provides stability and permanence for the child while also providing flexibility for the caregiver.

Right now, when children exit the dependency system, reunification is the priority and happens for over 60 percent of families. Other exits happen through adoption or guardianship. This bill would allow families to be supported through additional guardianships without requiring the termination of parental rights accompanying an adoption.

(Opposed) None.

**Persons Testifying:** Representative Lillian Ortiz-Self, prime sponsor; Marissa Ingalls, Coordinated Care; Allison Krutsinger, Department of Children, Youth, and Families; Shrounda Selivanoff, Children's Home Society of Washington; and Ray Deck III, Skookum Kids.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services, Youth, & Early Learning. Signed by 28 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Couture.

**Staff:** Jackie Wheeler (786-7125).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Human Services, Youth, & Early Learning:**

The Appropriations Committee recommends adding a null and void clause, making the act null and void unless funded in the omnibus appropriations act, referencing the act by bill or chapter number, by June 30, 2023.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, this bill is null and void unless funded

in the budget.

**Staff Summary of Public Testimony:**

(In support) There is no warning when a child is dropped off at a doorstep of a kinship caregiver. When this life changing moment does happen, the caregiver is thinking about the time commitment, resources, and support necessary to raise a healthy child, not about whether the child is eligible for the state to receive federal funding. This can determine whether the child is placed within their community to maintain familial connections or put into alternative care. The costs to care for the child are there whether the child is eligible for federal funding or not. Without the state funded RGAP payment, non-needy Temporary Assistance for Needy Families is the only financial support for families and that amount is insufficient to truly provide for the needs of the child.

This bill also provides cost-saving opportunities. Research shows that children placed with relatives have fewer placement disruptions. When stability is provided to children through guardianship, the costs associated with trauma are mitigated. This will also lead to less conflict and less litigation in cases. Many of the families that currently enter into termination of parental rights and adoption would avail themselves to a guardianship if these assistance payments were available to them. If they can enter into a guardianship instead of termination and adoption, there would be savings from the hassle of a termination trial.

This bill also expands options under voluntary placement agreements. There are families who find themselves in situations where it is in the family's best interests to sign a voluntary placement agreement so their child can reside somewhere safe while they work outside the court system to get back on their feet, such as in an inpatient treatment facility. Often times, they would want to find someone within their network of people to place their child with, but this is not an option because of current law that this bill would change.

(Opposed) None.

**Persons Testifying:** Jarel Sanders, Partners for Our Children; Tara Urs, King County Department of Public Defense; and Shrounda Selivanoff, Children's Home Society of Washington.

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