

HOUSE BILL REPORT

HB 1295

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

Title: An act relating to providing legal counsel for parents before the filing of a dependency petition, including when the department of children, youth, and families proposes a voluntary placement agreement.

Brief Description: Concerning voluntary placement agreements with the department of children, youth, and families.

Sponsors: Representatives Ortiz-Self, Eslick, Lekanoff, Reeves and Reed.

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 1/24/23, 2/3/23 [DPS].

Brief Summary of Substitute Bill

- Requires the Office of Public Defense to provide parents with a legal consultation when the Department of Children, Youth, and Families proposes a voluntary placement agreement and ongoing legal representation (through a phased-in implementation schedule) beginning July 1, 2024.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Senn, Chair; Cortes, Vice Chair; Taylor, Vice Chair; Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Callan, Dent, Goodman, Ortiz-Self, Rule and Walsh.

Staff: Luke Wickham (786-7146).

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:

Voluntary Placement Agreements.

The Department of Children, Youth, and Families (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. To qualify for extended foster care, a youth must have been dependent at the time the youth reaches age 18 and be:

- 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.

The VPAs may not be used to place with someone other than a relative or licensed foster parent and may not be used for placement outside Washington.

Office of Public Defense.

The Office of Public Defense (OPD) administers state-funded services for representation of indigent parents qualified for counsel in dependency and termination of parental rights cases, among other duties. To carry out this function, the OPD Parents Representation Program contracts with attorneys for representation of indigent parents in all 39 Washington counties. The OPD Parents Representation Program establishes caseload limits, establishes professional standards, provides training and support, and provides access to expert services.

Summary of Substitute Bill:

The OPD is authorized to provide legal counsel for parents when the DCYF proposes a VPA.

Beginning July 1, 2024, when the DCYF proposes a VPA when there is no pending

dependency proceeding, the child's parent, guardian, or legal custodian has the right to consult with counsel by telephone or video conference, provided through contract with the OPD.

The OPD must provide representation by counsel if requested by a parent, legal guardian, or legal custodian after the remote consultation according to the following implementation schedule:

- by July 1, 2024, for at least one-third of anticipated requests for attorneys;
- by July 1, 2025, for at least two-thirds of anticipated requests for attorneys; and
- full statewide implementation by July 1, 2026.

Substitute Bill Compared to Original Bill:

The substitute bill limits the expanded authority provided to the OPD to provide legal counsel in situations when the DCYF proposes a VPA.

The substitute bill modifies the definition of "voluntary placement agreement" to specify that it applies to a "child" instead of "youth" and includes a statutory reference.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Counsel should be provided for parents when the DCYF proposes an out-of-home placement. A child's removal from the home should only be based on legitimate safety concerns because it is known that the act of removal creates trauma. There are some concerns that have been expressed by the DCYF, but there is confidence that those concerns can be addressed through amendments.

Parents who are confronted with a VPA are in a moment of panic and are in fear of being confronted by the DCYF who has experience with the law. Often these parents are forced to discuss a VPA without an ally or anyone to explain their rights or options.

The OPD will need time and funding to provide attorneys, but those attorneys can help encourage parents to engage in services and prevent a dependency from being filed.

The OPD envisions the attorney consultation and representation requirements in the bill will be accomplished by allowing a parent to call a hotline to get immediate advice and then

handing the case off to a local attorney.

The central problem that this bill addresses is the problem of hidden foster care where the state agency proposes a VPA. Many of these family separations do not need to happen. Attorneys can counsel parents not to agree to these placement proposals and advise parents when these proposals appear appropriate.

(Opposed) None.

(Other) The DCYF is very supportive of a consultation model. The main concern is from section one of the bill, which establishes as a new right to counsel using a term that is quite vague—when a parent is under investigation by the DCYF. The term is left undefined, and that could mean up to nearly 40,000 parents may be entitled to that right to counsel before the DCYF can begin or move forward with a 24- or 72-hour response.

Persons Testifying: (In support) Representative Lillian Ortiz-Self, prime sponsor; Gabriel Cisneros-Lassey, Washington State Parent Advocacy Committee; Samuel Martin, The Mockingbird Society; and Amelia Watson, Washington State Office of Public Defense.

(Other) Allison Krutsinger, Department of Children, Youth and Families.

Persons Signed In To Testify But Not Testifying: None.