

HOUSE BILL REPORT

ESSB 5124

As Passed House:

April 10, 2023

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

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

Sponsors: Senate Committee on Human Services (originally sponsored by Senators Trudeau, Randall, Dhingra, Frame, Kauffman, Kuderer, Nguyen, Wellman and Wilson, C.; by request of Department of Children, Youth, and Families).

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 3/14/23, 3/17/23 [DP];

Appropriations: 3/31/23, 4/3/23 [DP].

Floor Activity:

Passed House: 4/10/23, 98-0.

Brief Summary of Engrossed 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."

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: 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.

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.

Staff: Luke Wickham (786-7146).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 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, Chopp, Connors, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Jackie Wheeler (786-7125).

Background:

Guardianship.

There are two types of guardianships that are recognized during child welfare proceedings: (1) a guardianship restricted to parties in a dependency case; and (2) 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 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
- unable 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.

Summary of 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.

An annual report required from the DCYF is modified to require data and information concerning the DCYF's success in:

- placing children with relatives;
- prompting supports to kinship caregivers including guardianship assistance payments;
- supporting relatives to pass home studies and become licensed caregivers; and
- meeting the need for nonrelative family foster homes when children cannot be placed with relatives.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Human Services, Youth, & Early Learning):

(In support) This bill has been a unifying conversation, providing an opportunity to keep families together and allow families to remain together with the goal of reunification.

This bill passed unanimously off the Senate floor.

Sometimes families enter into a voluntary placement agreement in an attempt to find a temporary placement solution while the family takes care of a certain issue like substance use disorder. This bill expands the placement options available through a voluntary placement agreement.

There are current cases where all the parties involved in a child welfare case would like to end the case using a guardianship. However, there is no financial subsidy available through a guardianship because the family does not meet federal reimbursement requirements. So the family is faced with a difficult question—whether the family should pursue termination of parental rights or pursue a guardianship without the financial support of a guardianship subsidy.

This bill removes financial obstacles that allow judges to have additional options to consider in determining the permanent plan for children.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill would align Washington's practices with those in many other states that have already taken a similar policy move. The bill would create additional options for how relatives and other people who care about children can resolve dependency cases. By creating additional options, we can reduce some of the conflict that happens in dependency and termination cases. When a child is dropped off at a doorstep of a kinship caregiver,

they are 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. The costs to care for the child are there whether the child is eligible for federal funding or not. 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 bill does not address the criteria for where children are placed or who will care for them, but instead creates options for subsidies for those who want to care for a child long-term when a judge has made that determination.

(Opposed) None.

(Other) While the bill is well intended, the financial incentive may add to the already risky environment that children are forced to be returned to because many risk factors have been removed as a way to facilitate reunification. We must raise the bar instead of lowering our standards. Evidence-based research has shown that certain types of mental and behavioral health issues in the presence of biologically unrelated caregivers are one of the strongest predictors of fatal child maltreatment. This financial incentive may deter non-related caregivers from reporting child neglect.

Persons Testifying (Human Services, Youth, & Early Learning): Senator Yasmin Trudeau, prime sponsor; Jarel Sanders, Partners for Our Children; Shelly Willis, Family Education and Support Services; and Tara Urs, King County Office of Public Defense.

Persons Testifying (Appropriations): (In support) Shrounda Selivanoff, Children's Home Society of Washington; and Tara Urs, King County Department of Public Defense.

(Other) Sylvia Draper.

Persons Signed In To Testify But Not Testifying (Human Services, Youth, & Early Learning): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.