

HOUSE BILL REPORT

SB 5805

As Passed House:
February 27, 2024

Title: An act relating to developing a schedule for court appointment of attorneys for children and youth in dependency and termination proceedings.

Brief Description: Developing a schedule for court appointment of attorneys for children and youth in dependency and termination proceedings.

Sponsors: Senators Frame, Boehnke, Kuderer, Nguyen, Nobles, Trudeau and Wilson, C..

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/14/24, 2/20/24 [DPA].

Floor Activity:

Passed House: 2/27/24, 58-36.

Brief Summary of Bill

- Extends by one year the schedule for full statewide implementation of the right to appointed counsel for children and youth in dependency proceedings.
- Limits the number of additional dependent children for whom representation will be made available to no more than 1,250 per calendar year.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno

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.

and Cheney.

Staff: Yelena Baker (786-7301).

Background:

The Department of Children, Youth, and Families (DCYF) or any person may file a petition in court to determine if a child should be a dependent of the state due to abuse, neglect, abandonment, or because there is no parent or custodian capable of caring for the child. If the court determines the child is dependent, the court conducts periodic reviews and makes determinations about the child's placement and the progress of the parties, as well as whether supervision should continue. The court, under certain circumstances, may order the filing of a petition for the termination of parental rights. If a child has been in out-of-home placement for 15 of the most recent 22 months, the court must order the DCYF to file a petition for termination, absent a good-cause exception.

In dependency proceedings, the DCYF is represented by an assistant attorney general. Parents, guardians, and legal custodians have the right to counsel and, if indigent, they have the right to have counsel appointed by the court. The Office of Public Defense (OPD) contracts with attorneys to represent indigent parents, guardians, and legal custodians involved in child dependency and termination of parental rights proceedings.

Historically, whether a court appointed an attorney for a child in a dependency proceeding depended upon the age of the child, the stage of the proceeding, and was, in most cases, a matter of court discretion. Under state law enacted in 2021 and subject to appropriation, court appointment of counsel for every child in dependency proceedings is required in accordance with a phase-in county-by-county basis over a six-year period as follows:

- at least 3 counties beginning January 1, 2022;
- at least 8 counties beginning January 1, 2023;
- at least 15 counties beginning January 1, 2024;
- at least 20 counties beginning January 1, 2025;
- at least 30 counties beginning January 1, 2026; and
- full statewide implementation by January 1, 2027.

The Statewide Children's Legal Representation Program (Program) established within the Office of Civil Legal Aid (OCLA) is responsible for the development of the phase-in schedule, as well as the recruitment, training, and oversight of attorneys providing representation. The phase-in schedule must prioritize counties that have either no current practice of appointment of attorneys in dependency cases or have a significant prevalence of racial disproportionality or disparities in the number of dependent children compared to the population, or both.

A budget proviso in the 2023-25 Operating Budget bill directed the OCLA to "develop a revised implementation schedule based on a caseload assumption of adding no more than

1,250 new dependency cases to the program each fiscal year for consideration by the governor and the legislature."

Summary of Bill:

The phase-in schedule for full statewide implementation of the right to appointed counsel for children and youth in dependency proceedings is revised as follows:

- The schedule must not add more than 1,250 cases each fiscal year.
- Beginning January 1, 2027, the schedule must include representation in at least 36 counties.
- The schedule for full statewide implementation is extended by one year to January 1, 2028.

It is specified that prioritization of certain counties as required by current law must occur to the extent practicable.

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:

(In support) It took several years to pass legislation that implemented the policy of providing legal representation to all children in dependency. This bill simply delays the implementation of the phase-in schedule. Recruiting attorneys has been a challenge because of the very specific aspects of legal representation of children in dependency proceedings, so more time is needed.

(Opposed) None.

(Other) The OCLA is charged with implementing the children's representation program and takes great care regarding the quality of counsel provided for children in dependency proceedings. There is a dearth of qualified counsel available in Washington right now, which presents implementation challenges. Under the current implementation schedule, the most rural and the most populous counties are being brought in at the same time. The bill gives the OCLA the flexibility to create cohorts of counties that just make a little bit more sense in terms of staffing and do not put so much pressure to find a vast number of qualified attorneys in a very small pool of available attorneys.

Persons Testifying: (In support) Senator Noel Frame, prime sponsor.

(Other) Bailey Zydek, Washington State Office of Civil Legal Aid.

Persons Signed In To Testify But Not Testifying: None.