

# SENATE BILL REPORT

## ESSB 5124

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As Passed Senate, March 3, 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: 1/24/23, 2/02/23 [DPS-WM].

Ways & Means: 2/14/23, 2/22/23 [DPS (HS)].

**Floor Activity:** Passed Senate: 3/3/23, 48-0.

**Brief Summary of Engrossed First Substitute Bill**

- Provides that guardianship subsidies are available to any guardian who is a licensed foster parent at the time a guardianship is established.
- Authorizes the Department of Children, Youth and Families (DCYF) to accept custody of children from parents through a voluntary placement agreement to provide child welfare services.
- Directs DCYF to provide specific data to the Legislature and Governor annually.

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### SENATE COMMITTEE ON HUMAN SERVICES

**Majority Report:** That Substitute Senate Bill No. 5124 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Boehnke, Ranking Member; Frame, Nguyen, Warnick and Wilson, J..

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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.*

**Staff:** Alison Mendiola (786-7488)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5124 as recommended by Committee on Human Services be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Joshua Hinman (786-7281)

**Background:** Guardianship. There are two types of guardianships recognized during child welfare proceedings: a guardianship restricted to parties in a dependency case, and a broader guardianship 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.

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 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.

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 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 the law. 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.

Indian Children in the Care of Federally Recognized Tribe or a Tribally Licensed Child-Placing Agency. Subject to funds appropriated for foster care services, DCYF has the authority to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from statutory performance based contracting requirements, and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and is subject to the same eligibility standards and rates of support applicable to other children for whom DCYF purchases care.

Relative Guardianship Assistance Program. The Relative Guardianship Assistance Program (R-GAP) provides a subsidy for children placed with a qualified licensed relative when it is determined during a shared planning meeting that a guardianship is in the child's best interest, and that relative has been the child's foster parent for a minimum of six consecutive months preceding the guardianship order, subject to appropriation. DCYF has the authority to establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines for expenditure of federal funds.

Voluntary Placement Agreements. Pursuant to the Washington Administrative Code and DCYF policy, a child's parent may sign a Voluntary Placement Agreement (VPA) to voluntarily place a child in foster care. The consent for voluntary placement must agree with child welfare services as described in statute.

Foster Care Reporting. DCYF is to report annually to the Governor and Legislature concerning DCYF's success in:

- meeting the need for adoptive and foster home placements;
- reducing the foster parent turnover rate;
- completing home studies for legally free children; and
- implementing and operating the passport program required by RCW 74.13.285. The report includes a section entitled "Foster Home Turn-Over, Causes and Recommendations."

**Summary of Engrossed First Substitute Bill: Guardianship.** DCYF is to adopt rules consistent with federal regulations for the receipt and expenditure of state and federal funds, and implement a subsidy program for eligible guardians appointed by the court under Title 11 or 13 of the Revised Code of Washington, or guardians of an Indian child who receive guardianship subsidies as provided in statute.

Guardianship Subsidy. Any guardian who is a licensed foster parent at the time a guardianship is established is eligible for a guardianship subsidy on behalf of the child.

A child is eligible for guardianship subsidies when:

- the child has been placed for at least six consecutive months with a guardian who has been licensed for at least six consecutive months; or
- the child is placed 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 payments. There is no entitlement to guardianship subsidies.

Voluntary Placement Agreements. DCYF may accept custody of children from parents through a VPA to provide child welfare services. DCYF may place children with a relative, a suitable person, or a licensed foster home under a VPA. In seeking a placement for a VPA, DCYF should consider the preferences of the parents and attempt to place with relatives or suitable persons over licensed foster care.

Foster Care Data. Annually, DCYF is to provide data and information to the Governor and the Legislature concerning DCYF's success in:

- placing children with relatives;
- providing 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.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Human Services):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill expands guardianship subsidies by allowing non-relatives to also receive guardianship assistance. We all know that support for kids on the front end reduces costs on the back end. For parents and children involved with DCYF, the issue is not going to be resolved in the timeline provided, so guardianship provides an option where the parent is still the parent but permanency for the child doesn't require people to become the parent on the child's birth certificate. This will reduce litigation and tension in cases. When there is a relationship between the parent and the foster family, the child has better outcomes. Guardianship leaves possibility for the future as opposed to adoption.

**Persons Testifying (Human Services):** PRO: Senator Yasmin Trudeau, Prime Sponsor; Allison Krutsinger, Dept of Children, Youth, and Families; Tara Urs, Defender Association Division; Ray Deck III, Skookum Kids.

**Persons Signed In To Testify But Not Testifying (Human Services):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: Guardianship support keeps families together and reduces costs to the state short-term and long-term. Testifier faced a crisis when in law school and had to take care of a 6 year old relative. Testifier had to face the choice of continuing education versus quitting school to focus on the child. In-laws provided support, while subsidy would have provided further support. Doing the right thing truly does reduce state costs.

This bill creates a good policy to support families in a way that creates more processes efficiency. Children will not need to stay in the foster care system as long.

One of the most vulnerable populations is kinship and foster families. Financial challenges are a top three concern. When testifier raised her niece, she did not plan, financially, to care for an additional child. Finances were a struggle, while addressing trauma was the number one priority. State support to ensure more relatives are able to take in children is needed.

This bill creates incredible opportunity for financial stability. Guardianship subsidy is a mechanism for stability. State programs should compliment each other and this allows more families to stay with Apple Health.

Whether a child is Title IV-E eligible should not influence whether a guardian receives subsidy. That funding distinction can determine if a child is placed in one setting versus another. This bill will present a cost savings opportunity, and children will have less behavioral challenges.

OTHER: The bill requires a small change. This bill relates partially to adult guardianships, which authorize youth adults from 18 to 21. Under the Uniform Guardianship Act, less restrictive options are preferred over guardianships. This bill authorizes DCYF to use money for guardianships which should be used for alternatives to guardianships.

**Persons Testifying (Ways & Means):** PRO: Senator Yasmin Trudeau, Prime Sponsor; Shelly Willis, Exec. Director, Family Education and Support Services; Marissa Ingalls, Coordinated Care; Shrounda Selivanoff, Kinship caregiver; Children's Home Society of WA.

OTHER: David Lord, No affiliation.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.