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## Judiciary Committee

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### HB 1251

**Title:** An act relating to the appointment of counsel for youth in dependency court proceedings.

**Brief Description:** Concerning the appointment of counsel for youth in dependency court proceedings.

**Sponsors:** Representatives Frame, Rodne, Goodman, Stokesbary, Jinkins, Haler, Kagi, Muri, Reeves, Tarleton, Kilduff, Appleton, Ormsby, Senn, Blake, McBride, Fey, Doglio, Ryu, Pollet, Dolan, Gregerson and Bergquist.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Provides that a child has the right to be represented by counsel, and have counsel appointed by the court, at all stages of a dependency proceeding.</li></ul>
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**Hearing Date:** 1/24/17

**Staff:** Cece Clynch (786-7195).

**Background:**

Dependency Proceedings Generally.

The Department of Social and Health Services (DSHS) 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 parent's progress in correcting parental deficiencies. 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 DSHS to file a petition for termination, absent a good-cause exception.

The court must appoint a guardian ad litem (GAL) for a child in a dependency proceeding unless the court finds the appointment unnecessary. The GAL requirement may be deemed unnecessary

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if the child is represented by an independent attorney in the proceedings. A GAL represents the best interests of the child.

In dependency proceedings, the DSHS is represented by an assistant attorney general. Parents and guardians 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, custodians, and legal guardians involved in child dependency and termination of parental rights proceedings in 31 of Washington's 39 counties.

Whether or not a court appoints an attorney for a child in a dependency proceeding depends upon the age of the child, the stage of the proceeding, and is, in most cases, a matter of court discretion. In the 2012 case of *In re Dependency of MSR*, the Washington Supreme Court held that "children of parents subject to dependency and termination proceedings have due process rights that must be protected and, in some cases, must be protected by appointment of counsel, but that the right to appointment of counsel is not universal." The court found this "constitutionally adequate to protect the right of counsel for such children."

#### Discretionary Appointment of Counsel for Children.

The court *may* appoint an attorney to represent the child's position at any point in a dependency action on its own initiative, or upon the request of a parent, the child, a GAL, a caregiver, or the DSHS.

If the court has not already appointed an attorney for a child or the child is not represented by a privately retained attorney: a child's caregiver or other individual may refer the child to an attorney for purposes of filing a motion to request appointment of an attorney at public expense; or, a child or another individual may retain an attorney for the child for such purposes.

The DSHS and the child's GAL must notify a child who is age 12 years or older of the child's right to request an attorney and must ask the child whether he or she wants an attorney. If the child requests an attorney and is age 12 years or older, or if the GAL or the court determines that the child needs to be independently represented, the court may appoint an attorney to represent the child's position.

There are ongoing requirements with respect to notification of the right to request an attorney:

1. The DSHS and the GAL must notify the child every year and upon the filing of any motion affecting the child's placement, services, or familial relationships.
2. The DSHS must note in the child's service and safety plan, and the GAL must note in his or her report to the court, the child's position regarding appointment of an attorney.
3. The GAL must provide the court with the GAL's recommendation regarding whether appointment of an attorney is in the child's best interests.
4. The court must also ask a child who is age 12 years or older whether he or she has been informed by the DSHS and the GAL regarding the child's right to request an attorney.
5. The court must make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday.

#### Mandatory Appointment of Counsel for Children in Some Circumstances.

The court *must* appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship when there is no remaining parent with parental rights.

Legal services provided by an attorney so appointed do not include representation of the child in any appellate proceedings related to the termination of parental rights. The court may appoint one attorney to represent a group of siblings unless there is a conflict of interest or it would be inconsistent with rules of professional conduct.

Subject to the availability of amounts appropriated for this specific purpose, the state pays the costs of attorneys appointed following termination of parental rights if the legal services are provided in accordance with standards of practice, training, and caseload limits developed and recommended by the Statewide Children's Representation Workgroup. The Office of Civil Legal Aid is responsible for implementation and administration of state moneys appropriated for appointment of attorneys.

**Summary of Bill:**

Mandatory Appointment of Counsel for Children at All Stages.

A child has the right to be represented by counsel, and have counsel appointed by the court, at all stages of a dependency proceeding. Counsel must be appointed prior to the initial shelter care hearing.

The court may appoint one attorney to a group of siblings. Subject to the availability of amounts appropriated for this specific purpose, the state pays the costs of appointed attorneys if the legal services are provided in accordance with standards of practice, training, and caseload limits developed and recommended by the Statewide Children's Representation Workgroup. The Office of Civil Legal Aid is responsible for implementation and administration of state moneys appropriated for appointment of attorneys.

Provisions regarding the following are stricken:

- discretionary appointment of counsel for children;
- associated, periodic requirements about notification of the right to request an attorney; and
- the express limitation on representation in appellate proceedings.

The provision affording indigent parents and guardians the right to have counsel appointed by the court is amended to also include indigent legal custodians.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/19/17.

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