

SENATE BILL REPORT

SB 5363

As of January 30, 2017

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: Senators Walsh, Frockt, Rivers, Fain, Carlyle, Darneille, Miloscia, Warnick and Kuderer.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/30/17.

Brief Summary of Bill

- Requires the court to appoint an attorney to represent every child who is alleged dependent in a dependency case, regardless of the child's age.
- Continues the child's right to appointed counsel during all stages of the dependency case.
- Requires the attorney's appointment to represent the child before the initial shelter care hearing.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Melissa Burke-Cain (786-7755)

Background: 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. When a child is removed from her home due to alleged abuse or neglect, decisions about where the child will live, the services received, and the family relationships maintained are no longer made by the child's parents. If the court determines that the child is dependent, then the court will conduct periodic reviews and make determinations about the child's placement and the parents' progress in correcting parental deficiencies. Under certain circumstances, the court may order the filing of a petition for the termination of parental

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rights. According to an August 2016 University of Washington Law School Report (Report), approximately 9000 Washington children are in foster care at any given time. If a child has been in out-of-home placement for 15 of the most recent 22 months, then the court must order DSHS to file a petition for termination, in the absence of 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.

Children over 12 years old must be notified of their right to request counsel. Under current law, the court has discretion to appoint an attorney for the child at any stage of the proceeding on its own initiative or upon the request of a parent, the child, a GAL, a caregiver, or DSHS. The child, or any individual, may retain an attorney for the purpose of filing a motion requesting appointment of an attorney at public expense. However, if the child is not already represented by court-appointed counsel, the court must appoint an attorney six months after an order terminating parental rights and when there is no remaining parent with parental rights. The court may appoint one attorney to represent a sibling group, unless joint representation is a conflict of interest, or violates the rules of professional conduct. Appointed attorneys must meet practice standards, training requirements, and caseload limits.

According to the Report, the practices around appointing attorneys for children who are alleged dependent varies from county-to-county. Currently, twelve Washington counties automatically appoint an attorney for a child in a dependency proceeding. Two counties make an automatic appointment at eight years old: Benton and Franklin. Ten counties make an automatic appointment at twelve years old: Clark, Cowlitz, Grays Harbor, Island, King, Mason, Snohomish, Spokane, Thurston, and Walla Walla. The remaining 27 counties have no automatic appointment process.

Summary of Bill: The court must appoint an attorney to represent any child alleged dependent in a dependency proceeding. There is no minimum age triggering the child's right to appointed counsel. The appointment must occur prior to the initial shelter care hearing. The right to an appointed attorney for a child extends throughout the dependency proceeding including any appeals related to termination of parental rights.

Appropriation: None.

Fiscal Note: Available.

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

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