

HOUSE BILL REPORT

2SHB 1205

As Passed House:

March 6, 2023

Title: An act relating to responsibility for providing service by publication of a summons or notice in dependency and termination of parental rights cases.

Brief Description: Responsibility for providing service by publication of a summons or notice in dependency and termination of parental rights cases.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Taylor, Reed and Senn).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/24/23, 2/3/23 [DPS];

Appropriations: 2/22/23, 2/24/23 [DP2S(w/o sub CRJ)].

Floor Activity:

Passed House: 3/6/23, 95-0.

Brief Summary of Second Substitute Bill

- Provides that in a child dependency or termination of parental rights proceeding, the petitioner, rather than the court clerk, is responsible for publishing notice in a legal newspaper where notice by publication is required.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

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: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 30 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, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Jackie Wheeler (786-7125).

Background:

Under child dependency laws, any person or the Department of Children, Youth, and Families (DCYF) may file a court petition alleging that a child is dependent due to alleged abuse or neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. A court will hold a shelter care hearing within 72 hours of the child's removal and determine if the child can return home. If the child remains out of the home, a dependency fact-finding hearing is held. If the child is found to be dependent, the court will conduct periodic reviews. During the court process, a social worker provides services to the family and assists the child in reunification and permanency efforts. In some circumstances after a dependent child has been removed from the custody of a parent for at least six months, a petition for termination of parental rights may be filed.

After filing a dependency or termination petition, the petitioner (typically the DCYF) must issue a summons to the child if the child is 12 years old or older, and another summons to the parents, guardian, or custodian, and other necessary parties, requiring them to appear personally for the hearing on the petition. If the party is within the state, the summons must be personally served on the party, or if personal service is not possible, the summons may be served by certified mail. If a party is without the state but can be found or the address is known, service of the summons may be made either by delivering a copy to the party personally or by certified mail.

Notice of the petition is provided by publication when there is a petition or verified statement that: the parent or guardian does not reside in the state or the whereabouts of the parent is unknown; and after due diligence, the person attempting service has been unable to make service, and a copy of the notice has been sent by mail to the person's last known place of residence.

In these circumstances, the court must direct the clerk to publish the notice in a legal

newspaper printed in the county that is qualified to publish summons. The notice must be published once a week for three consecutive weeks, and the first publication must be at least 25 days before the hearing date. The cost of publication is paid by the county.

Summary of Second Substitute Bill:

In a dependency or termination of parental rights proceeding where notice by publication is required, the petitioner, rather than the clerk of court, is responsible for publishing notice of the petition and hearing date in a legal newspaper once a week for three consecutive weeks. The petitioner must pay for the cost of publication, except if the petitioner is a minor, the Office of Civil Legal Aid (OCLA) must pay for or reimburse the publication costs, and if the petitioner is an indigent parent or legal guardian, the Office of Public Defense (OPD) must pay for or reimburse the publication costs. The requirement that the publication be in a legal newspaper "printed in the county" is eliminated.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2024. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The bill transfers responsibility for publication of dependency notices from clerks to the petitioner. Counties have no other role in the process, so this creates legal risks associated with errors in the publication process. Responsibility for dependency cases was removed from the counties over 30 years ago. The publication requirement is the last duty left with the counties. The bill allows for better coordination across the state, reduces the risk of errors, and alleviates counties of costs and legal risk associated with publication. This is the only known instance in which clerks, acting in a purely ministerial capacity, are required to publish the notice and bear the associated costs and risks.

The statute indicates legal newspapers must be printed in the county, but most legal newspapers in the state are not printed in the county. There are about eight printing sites in the state, and there are legal newspapers in all 39 counties. The bill would conform the law to actual practice.

(Opposed) The bill sweeps too broadly because it covers not only cases where the DCYF is the petitioner, but also cases where the youth is the petitioner. Publication costs are expensive, and the bill would place this financial burden on youth or other family members who are petitioning for dependency. It is highly inappropriate to transfer any expense onto a child who is seeking stability and protection from their own parents.

Staff Summary of Public Testimony (Appropriations):

(In support) Currently, Washington residents are paying for costs that the federal government could be paying. The Department of Children, Youth, and Families assumes that approximately 18 percent of the cost for this work is eligible for federal funding reimbursement, but only if the state is responsible for the work. The responsibility for these publications is currently with the counties even though they are not parties to the legal case. This legislation gives the state the appropriate responsibility and stewardship of taxpayers' dollars that comes with paying the bill for the publication.

(Opposed) None.

(Other) An amendment changing the effective date to January 1, 2024, would provide the Attorney General's Office with more time to hire and train the staff necessary to perform the work required in the bill as they are unable to meet this increased workload with current staffing levels. Not changing the effective date could have the unintended consequence of increasing the length of stay in foster care for children.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Jamila Taylor, prime sponsor; Timothy Grisham, Washington Association of County Officials; Lisa Henderson, Washington Association of County Clerks; and Rowland Thompson, Allied Daily Newspapers of Washington and Washington Newspaper Publishers Association.

(Opposed) Kelly Vomacka, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Testifying (Appropriations): (In support) Barbara Miner, Washington State Association of County Clerks.

(Other) Carissa Greenberg, Attorney General's Office.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

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