Seattle Journal for Social Justice

Volume 11 | Issue 2 Article 9

12-2013

An Inconsistent Invitation: Am I Invited to Be a Party? How Not Affording Party Status to Youth in Washington Dependency Hearings Can Be a Violation of Due Process

Laura Baird

An Inconsistent Invitation: Am I Invited to Be a Party? How Not Affording Party Status to Youth in Washington Dependency Hearings Can Be a Violation of Due Process

Laura Baird

I. INTRODUCTION

Trauma is not a strong enough term to describe the torment, confusion, and uncertainty suffered by children[1] participating in Washington State's dependency system. The fact that children are not guaranteed some of the basic due process rights in dependency proceedings is one barrier to unraveling the confusion caused by the system. Currently, children are not guaranteed the due process rights that could help expedite their journeys to permanent home situations and that could help ensure that they remain aware of, and involved in, the judicial proceedings that determine their future placements.

Washington is one of the few states that do not explicitly grant full—or even partial—party status to children in dependency hearings. There are many persuasive reasons why this needs to change. Children, not parents, are often the most affected by the outcomes of their dependency hearings—the Washington Supreme Court,[2] federal courts,[3] and countless child

[1] "Child" means "[a]ny individual under the age of eighteen years." WASH. REV. CODE § 13.34.030(2)(a) (2012). For the purposes of this article, the author includes "youth" in this general category as well.

[2] *See In re* Dependency of MSR, 271 P.3d 234 (Wash. 2012).

[3] *See, e.g.*, Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353 (N.D. Ga. 2005).

advocacy organizations have affirmed this point.[4] As a result of dependency, children are uprooted and forced to live in uncertainty, sometimes without a say in, or even knowledge of, the proceedings that determine their future.

Importantly, the Washington Supreme Court has recognized that children have liberty interests equal to, if not greater than, their parents' liberty interests because, in part, when dependencies break up families it is the children who are required to relocate, not the parents.[5]

> Unlike the parent, the child in a dependency or termination proceeding may well face the loss of a physical liberty interest both because the child will be physically removed from the parent's home and because if the parent-child relationship is terminated, it is the child who may become a ward of the State. It is the child, not the parent, who may face the daunting challenge of having his or her person put in the custody of the State as a foster child, powerless and voiceless, to be forced to move from one foster home to another.[6]

This recent Washington Supreme Court ruling affirms the mantra that children's advocates have been preaching for years: "The children who are the subjects of these proceedings are usually the most profoundly affected by the decisions made in these proceedings."[7] Unfortunately, it is often the case that those same children "are also usually the least able to voice their views effectively on their own."[8]

---

[4] *See, e.g.*, *Policy Agenda*, NAT'L ASS'N OF COUNSEL FOR CHILDREN, http://www.naccchildlaw.org/?page=Policy_Agenda&hhSearchTerms=parties (last visited Sept. 28, 2012).

[5] Jaclyn Jean Jenkins, Note, *Listen to Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings*, 46 FAM. CT. REV. 163, 167 (2008).

[6] *In re* Dependency of MSR, 271 P.3d at 242.

[7] *Policy Agenda*, *supra* note 5.

[8] *Id.*

Furthermore, "[i]n a dependency or termination proceeding, the parent is at risk of losing the parent-child relationship, but the child is at risk of not only losing a parent but also relationships with sibling[s], grandparents, aunts, uncles, and other extended family."[9]

Generally, having party status in a dependency hearing ensures that individuals receive notice and an opportunity to be heard, and, in Washington, party status reaffirms the individual's opportunity to receive appointed legal counsel.[10] Securing party status for children would also expedite a child's search for permanency by guaranteeing that involved children have a say in their placement. This would also likely increase judicial efficiency because courts will not have to reconsider poorly conceived permanent placement plans.[11]

The status of children in Washington dependency and termination proceedings is unclear. While children in Washington are not clearly labeled as non-parties, legislative amendments over the years have invariably grouped children together with other named parties, such as parents.[12] This adds ambiguity to an already complicated web of statutes that legal advocates and judges are left to interpret, which misappropriates valuable resources (e.g., time, manpower)[13] and distracts from the most

---

[9] *In re* MSR, 271 P.3d at 242.

[10] *See* WASH. REV. CODE § 13.34.090(1) (2012).

> Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.

Id. Designating children as parties to their dependency hearings would settle a reoccurring issue brought before the Washington Supreme Court over whether children should be guaranteed the right to counsel.

[11] *See generally* Jenkins, *supra* note 6, at 167–69.

[12] *See* sources cited *infra* notes 91–101.

[13] *See* Gail Chang Bohr, *Children's Access to Justice*, 28 WM. MITCHELL L. REV. 229, 238 (2001).

important goal of a dependency: finding the best permanent solution for the child.[14] In an effort to combat statutory uncertainty and the consequent misallocation of resources, the legislature should amend the state law governing dependencies to include children among those who have party status.

While there has been great movement both nationally and locally to further the rights of children, this article argues that future gains made in Washington cannot be based on a flawed and inconsistent procedural/statutory gap that excludes children from being named parties in dependency hearings. This article argues that the unclear party status of Washington's dependent youth should be clarified by a legislative amendment to chapter 13.34 of the Revised Code of Washington (RCW)—the chapter that governs dependency and parental terminations—that clearly states that dependent children are parties.[15]

To understand the context of Washington's dependency system, Part I of this article first discusses what dependency hearings and termination hearings are.

Part II of this article describes what a dependency hearing entails by outlining what it takes to establish a dependency, the purpose of a dependency, and subsequent steps that are sometimes necessary to create stable home situations for children, up to and including the termination of

[14] *See* WASH. REV. CODE § 13.34.136 (2012). The ultimate goal for any child involved in a dependency proceeding is a permanent placement. *See id.*

[15] As an initial step, the legislature could grant party status to children ages twelve years old and older, and leave party status for children younger than twelve years old to the discretion of the court. The best solution is to afford all youth party status, which most states have done. However, the Washington legislature has continually granted more rights to those youth who are at least twelve years old; in keeping with statutory consistency, it is most realistic to recommend keeping Washington State's default of twelve years of age, with leave to reconsider its validity at a later date.

parental rights.[16]

Part III of this article recounts a brief history of the children's rights movement and of the right of children to participate in the dependency process by comparing national trends with those in Washington State. This part also briefly examines Washington's gains in the children's rights field, including the most recent Washington Supreme Court decision affirming some due process rights.[17]

Part IV of this article specifically discusses how the failure to grant children party status has added to Washington's low ranking in the area of children's rights on the national scale. It also examines how legislative amendments to RCW chapter 13.34 made in the 1990s removed any mention of children as parties to Washington dependencies. This part specifically discusses the omission of party status and how there has been no affirmative intent to completely divest children of party status. Finally, this part examines how Washington state law sheds little light on the debate as to whether or not children are parties, and compares steps that other states have taken to ensure that children are explicitly granted that right.

Part V of this article addresses why party status is important for ensuring due process protections, such as notice, opportunity to be heard, and the right to participate in dependency hearings. It also addresses concerns voiced by the opposition. In response to the opposition's concerns, Part V stresses that granting party status helps to create consistency for children and furthers the end goal of lasting permanent placements, a goal that is not inconsistent with remedying parental deficiencies. Furthermore, Part V discusses how many current rights are conditioned on the appointment of counsel. It then examines the inconsistency and unfairness of the fact that children are subject to the burden of punishment as if they were parties, but

---

[16] *See* WASH. REV. CODE § 13.34.132 (2012) (addressing the termination of parental rights).

[17] *See In re* Dependency of MSR, 271 P.3d 234 (Wash. 2012).

that children do not enjoy any of the benefits and rights that party status affords. Also, Part V stresses that Washington would not be alone if it were to amend its laws to include children as parties because the majority of states already afford children some form of party status.[18]

Finally, Part VI proposes several amendments to the RCW chapter 13.34 that would explicitly grant children party status. Most notably, this part advocates for RCW chapter 13.34 to include a definition of who a party is. It also provides additional examples of how the language of RCW chapter 13.34 could be amended and highlights key sections on which the legislature should focus.

II. WHAT IS A DEPENDENCY?

Washington State faces the daily challenge of mandating steps to remedy parental deficiencies in order to help create the best possible home situations for Washington children. While "[d]ependency proceedings are intended to protect children, to help parents alleviate problems and, where appropriate, to reunite families," [19] children, "as the subject of the proceeding, [have] an interest in the outcome of the proceeding."[20] This part provides a brief overview of the most common steps in a dependency hearing.

The dependency system in Washington State is a complicated civil process [21] that requires the cooperation of court systems, child welfare

---

[18] *See* FIRST STAR & THE CHILDREN'S ADVOCACY INST., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN (3d ed. 2012) [hereinafter FIRST STAR, 3d ed.]. As of 2012, only fifteen states and the District of Columbia withhold party status, or its legal equivalent, from dependent children. *See id.*

[19] *In re* K.R., 880 P.2d 88, 93 (Wash. Ct. App. 1994), *rev'd sub nom*., *In re* Dependency of K.R. 904 P.2d 1132 (Wash. 1995).

[20] Bohr, *supra* note 14, at 232.

[21] *Id.* (outlining that "[j]uvenile protection proceedings are civil proceedings where the state/county is the petitioner and the parent is the respondent").

organizations, and the Attorney General's Office.[22] All groups theoretically work towards the same goals: remedying parental deficiencies, obtaining the best results for the involved children, and reuniting families.[23] In Washington, the process to establish a dependency is a lengthy ordeal—but perhaps it should be. After all, creating a dependency means possibly divesting families of their constitutionally presumed right to be together.[24]

The first step in a dependency begins with the filing of a petition both alleging that the "child's health, safety, and welfare will be seriously endangered if [he or she is] not taken into custody" and showing that reasonable grounds exist for demonstrating "imminent harm" to the child.[25] "Imminent harm" includes sexual abuse and exploitation, as well as "a parent's failure to perform basic parental functions, obligations, and duties as the result of substance abuse."[26]

---

[22] *See generally Seattle Social & Health Services Division*, WASH. STATE OFFICE OF THE ATT'Y GEN., http://www.atg.wa.gov/Divisions/SocialHealthServicesSeattle.aspx (last visited Aug. 5, 2012) [hereinafter WASH. ATT'Y GEN., *Seattle Social & Health Services*].

[23] For example, the goal of reuniting families is evident in efforts such as King County's participation in national reunification days. Sharon Osborne, *People Change. Families Reunite.*, SEATTLE PI, June 10, 2011, 12:38 PM, http://blog.seattlepi.com/sharonosborne/2011/06/10/people-change-families-reunite/. Reunification days are "part of a national initiative to recognize the accomplishments and dedication of families who have regained custody of their children" as well as educating "the community with the reality that safely bringing families together is appropriately the primary goal of the child welfare system." *Id.*

[24] *See In re* Dependency of TSR, 271 P.3d 234, 241 (Wash. 2012).

> The right of a natural parent to the companionship of his or her child must be included within the bundle of rights associated with marriage, establishing a home and rearing children. This right must therefore be viewed as "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

Id. (quoting Snyder v. Massachusetts, 29 U.S. 97, 105 (1934)).

[25] WASH. REV. CODE § 13.34.050(1) (2012).

[26] *Id.* Notably, there has been a 30 percent increase in dependency petitions in Washington State since 2009, a significant spike over previous years. Furthermore, the most recent fiscal report from the Washington State Attorney General's Office reports 800 new dependency petitions between July 1, 2011, and June 30, 2012. WASH. ATT'Y GEN., *Seattle Social & Health Services*, *supra* note 23.

If a child is removed from the home, a shelter care hearing, which must take place within seventy-two hours of the child's removal, is commenced.[27] The judge presiding over the shelter care hearing decides whether it is in the best interests of the child to return home or to remain in temporary care.[28] If the child is not returned home, he or she usually is placed with a relative.[29]

Following the initial seventy-two-hour hearing, a "case conference" can be held to determine the expectations of the department—"the department" is a colloquial term referring to caseworkers and the assistant attorney generals who represent them—and the parent(s), and to begin developing a plan for services for the parent(s).[30] Case conferences (which in practice are similar to mediations) occur whether or not the child is returned from temporary care and are intended to address overarching issues including services for the child and parents and other outstanding legal issues.[31]

Furthermore, if a parent contests a dependency, the department may initiate a fact-finding hearing to determine whether a dependency is warranted.[32] After the fact-finding hearing, if it has been proven by a preponderance of the evidence, the judge may decide that the child is dependent.[33]

If a dependency is established, the court is then within its rights to enter dispositional orders that mandate steps that the parent(s) must take in order to work on remedying his or her parental defects.[34] Adherence to those steps will be used later to determine whether said parent is in compliance with his

---

[27] WASH. REV. CODE § 13.34.065 (2012).
[28] *Id.*
[29] *See id.* (recognizing a preference for relative placement).
[30] WASH. REV. CODE § 13.34.067 (2012).
[31] *See, e.g.*, KING CNTY. LOC. JUV. CT. R. 3.3. *See also* WASH. REV. CODE § 13.34.067 (2012).
[32] WASH. REV. CODE § 13.34.110 (2012).
[33] WASH. REV. CODE § 13.34.130 (2012).
[34] *Id. See also* WASH. REV. CODE § 13.34.141 (2012).

or her treatment plan.[35] If established, a dependency can result in the permanent loss of parental rights or in serious restrictions of the natural parents' rights.[36] Subsequent to a finding of dependency, the court must work with the parties to establish a permanent plan, whether it is to reunite children with one or more parent, to establish a guardianship, or to terminate parental rights.[37]

The identification of party status is important in dependency hearings in Washington. Party status guarantees that an individual will receive notice that a dependency petition has been filed and a summons relating to when and where hearings are to be held.[38] Party status grants the right to be heard at a hearing, and, in Washington, it affords the right to counsel.[39] Importantly, it affords the right to be heard not only by granting an individual a forum in which to be heard, but also by allowing an individual to present evidence and take the testimony of others.[40]

III. A SHIFT IN THE UNITED STATES: FROM MERELY PROTECTING YOUTH TO CONSIDERING THE RIGHTS OF CHILDREN

Granting youth the right to participate in hearings ranging from juvenile criminal cases to dependency hearings has been of national concern for many years.[41] Part III provides a brief history of the children's legal rights movement and specifically examines the right of children to participate in the dependency process.

---

[35] WASH. REV. CODE § 13.34.141 (2012).
[36] *Information of Rights: Dependency Proceedings*, WASH. STATE OFFICE OF THE ATT'Y GEN., http://www.atg.wa.gov/DPY.aspx (last visited Aug. 5, 2012) [hereinafter WASH. ATT'Y GEN., *Information of Rights*].
[37] *See* WASH. REV. CODE § 13.34.136 (2012); *see also* WASH. REV. CODE § 13.34.134 (2012).
[38] WASH. REV. CODE § 13.34.092 (2012).
[39] WASH. REV. CODE § 13.34.090(1) (2012).
[40] WASH. REV. CODE § 13.34.090 (2012).
[41] MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 1, 1 (2005).

Overall, the United States has made significant gains in the area of children's rights in the past few decades.[42] As a result, the rights of children have been the "focus of political discussion, [and] struggles to improve the lives of children invariably have been fierce."[43] A notable shift in the framing of children's rights occurred when advocates began asking what rights children have—or should have—instead of considering only the paternalistic notion of what is good for children.[44]

Another huge shift in the framing of children's rights is the US government's recognition that it has a duty to protect children, even if that means interfering at times with the rights of parents.[45] This important ideal is also enshrined in Washington's dependency law.[46] Overall, while "[i]t has long been recognized that parents have a fundamental liberty, protected by the Constitution, to raise children as they choose,"[47] the government has adopted the notion of *parens patriae*, which affirms that the government can and should have a role in protecting the rights of children.[48] Specifically, "in 1912, the Federal Government established the Children's Bureau to guide Federal Programs that were designed to support state child welfare programs as well as to direct federal aid to families, which began with the passage of the Social Security Act."[49] Furthermore, the passage of and

---

[42] *Id.*
[43] *Id.*
[44] *See id.*
[45] U.S. DEP'T HEALTH & HUMAN SERVS. ADMIN. FOR CHILDREN & FAMILIES, THE CHILD ABUSE PREVENTION AND TREATMENT ACT 4 (2003) [hereinafter ADMIN. FOR CHILDREN & FAMILIES].
[46] *See* WASH. REV. CODE § 13.34.020 (2012). "When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail." *Id.*
[47] ADMIN. FOR CHILDREN & FAMILIES, *supra* note 48.
[48] *Id.*
[49] *Id.* The term *parens patriae* is also described as the process in which the government steps in as the parental figure in a child's life. *Id.* For a very articulate description of this legal status, see FIRST STAR, 3d ed., *supra* note 19, at 5.

subsequent amendments to the Child Abuse Prevention and Treatment Act (CAPTA)[50] were a significant leap forward for the voice of children in dependency actions. One of the results of CAPTA's mandates has been that "all United States jurisdictions have some statutory provisions for the representation of a child's best interests in deprivation cases."[51]

In addition to the passage of CAPTA, which laid the foundation for state dependency laws, the American Bar Association (ABA) recently passed a comprehensive Model Act Governing the Representation of Children in Abuse, Neglect, and Proceedings.[52] The Model Act, although not binding, sets forth a detailed statutory scheme for children's lawyers to reference and is heavily focused on children's rights. Notably, the Act specifies that "the child in these proceedings is a party."[53]

The due process rights of children have also been upheld in legal proceedings other than dependencies. The first ruling affirming rights in children proceedings was the US Supreme Court ruling *In re Gault,* which established that children have a fundamental right to representation in delinquency hearings.[54] Unfortunately, no other US Supreme Court case has since unequivocally held that children should have the same rights in dependency hearings as in delinquency proceedings.[55]

While most other states are inclined to be more liberal than Washington in their grant of due process rights to children, the trend in Washington is promising. Notably, in the Washington Supreme Court's March 2012 ruling in *In re Dependency of MSR*, the court held that while the child's liberty

---

[50] *See generally* ADMIN. FOR CHILDREN & FAMILIES, *supra* note 48.
[51] CARL VINSON INST. GOV'T, YOUTH CAPACITY TO ENGAGE IN DEPRIVATION HEARINGS 8 (2008), *available at* http://www.fcs.uga.edu/childfamilypolicy/proj/capacity_participating.pdf.
[52] MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS (2011).
[53] *Id.* at § 2(b).
[54] *See In re* Gault, 387 U.S. 1 (1967).
[55] Jenkins, *supra* note 6.

interest in a dependency hearing may be different from that of the parent, it is "at least as great as[] the parent's."[56] This ruling indicates an incredible step forward for Washington's dependent children, reaffirming the national trend towards granting children more rights.

However, in spite of recent gains, Washington still struggles with affording dependent children the most basic rights. The exclusion of dependent children as parties is by no means the only lapse of the Washington legislature, but it does show that Washington is lagging behind other states in the children's rights field.

IV. WHY WASHINGTON RECEIVES LOW SCORES FOR DEPENDENT CHILDREN'S RIGHTS AND HOW WASHINGTON LEGISLATIVE INTENT SHEDS LITTLE LIGHT ON STATUTORY INCONSISTENCIES THAT CONTRIBUTE TO THOSE LOW RANKINGS

Washington is in a substantial minority of states that do not expressly grant full legal party status to children.[57] In fact, Washington ranks in the bottom fifth of all states, scoring an "F" on the most recent national report card compiled by the national children's advocacy organization, First Star.[58] For example, Massachusetts [59] and Connecticut [60] (among others) unequivocally grant children party status, whereas Washington neither grants children legal party status nor guarantees them the right to counsel.[61] Granting party status in Washington would not only be in line with the practices of most other states, but would also emulate growing national movements that have focused on increasing the rights afforded to youth in legal proceedings.

---

[56] *In re* Dependency of MSR, 271 P.3d 234, 243 (Wash. 2012).
[57] *See* FIRST STAR, 3d ed., *supra* note 19.
[58] *See Id.* at 18, 124. See Part V, *infra*, for a more detailed analysis of how other states address the party status of dependent youth.
[59] FIRST STAR, 3d ed., *supra* note 19, at 71.
[60] *Id.* at 40.
[61] *See generally* WASH. REV. CODE § 13.34 (2012).

Washington ranks remarkably low compared to other states when examining the rights of dependent children. This part examines why Washington lags behind other states and compares Washington's shortcomings with the policies of other more "successful" states. This part then examines Washington's past legislative amendments and unclear legislative intent, which compound and distract from the issues facing Washington's dependent children.

A. Examining Why Washington Ranks Low Compared to Other States

In 2012, First Star, along with the Children's Advocacy Institute at the University of San Diego School of Law, completed a comprehensive analysis of the fifty states and Washington, DC in order to rate them in terms of the quality of representation for children in legal proceedings.[62] National experts carefully crafted First Star's criteria.[63] One category rated was whether children were expressly given party status, including all of the legal rights granted to other parties or just some of them.[64] Based on that analysis, Washington ranks very low on a national scale, specifically in the rights afforded to children in dependency hearings. While Washington does provide some rights to children over the age of twelve in dependencies, such as the right to receive a court summons, it does not explicitly make children "parties" in dependency proceedings.[65]

Currently, thirty-five states either explicitly name children as parties or

---

[62] FIRST STAR, 3d ed., *supra* note 19, at 12.
[63] *Id.*
[64] *Id.* at 14. The other categories included are as follows: (1) whether state law required the appointment of attorneys in dependency proceedings; (2) whether the duration of such an appointment was defined; (3) whether an appointed attorney was required to "advocate for the expressed wishes of the child in a client-directed manner"; (4) whether special education and/or training was mandated by state law; and (5) whether a state's rules of professional conduct, specifically "regarding immunity from liability and confidentially," would be applied to attorneys that represented children. *Id.* at 12–14.
[65] *Id.* at 124.

grant them the equivalent of legal party standing.[66] No states affirmatively

[66] Specifically, Alabama ("A child is a party to the proceedings"); Alaska ("'[p]arty' means the child"); Arizona ("[r]eference to a party to the action means a child"); California ("[e]ach minor who is the subject of a dependency proceeding is a party to that proceeding"); Connecticut ("Connecticut law recognizes children as parties to dependency proceedings"); Florida ("[t]he terms 'party' and 'parties' shall include . . . the child"); Georgia ("[t]he court . . . shall appoint a guardian ad litem for a child who is a party to the proceeding"); Hawaii ("'Party' means . . . a child who is subject to a proceeding under this chapter"); Illinois ("the rights of children are listed in [the] Illinois statute . . . which is titled 'Rights of parties to proceedings'"); Indiana ("[c]hildren 'are parties to the proceedings described in the juvenile law and have all rights of parties under the Indiana Rules of Trial Procedure'"); Iowa ("[u]nder Iowa law, the [dependency] petition recognizes the child as a party to the proceedings"); Kansas ("'Party' means . . . the child"); Kentucky ("[a]ny interested party including the . . . child"); Maryland ("'party' means . . . [a] child who is the subject of a petition"); Massachusetts ("Party—any person, including a juvenile, in a civil matter in which the person has a right to counsel"); Michigan ("'[p]arty' includes . . . the child . . . in a protective proceeding"); Minnesota ("[a] child who is the subject of a juvenile protection matter shall have the right to intervene as a party"); Mississippi ("'[p]arty' means the child"); Missouri ("'party' means the juvenile who is the subject of the proceeding"); Montana ("Montana law gives children party status in dependency proceedings"); Nebraska ("[p]arties means the juvenile"); Nevada ("[i]f the child is represented by an attorney, Nevada law affords children the rights of a party to the proceedings"); New Hampshire ("'party having an interest' means the child"); New Mexico ("the child alleged to be neglected or abused or in need of court ordered services" is a party to "proceedings on petitions alleging neglect or abuse or a family in need of court ordered services"); North Carolina ("[t]he juvenile is a party in all actions"); North Dakota ("party means the child"); Ohio ("'[p]arty' means a child who is the subject of a juvenile court proceeding"); Oklahoma ("[t]he child is 'a party to the proceeding, [and] shall be given the opportunity to cross examine witnesses and to present a case in chief if desired'"); Oregon ("[p]arties to proceedings in the juvenile court . . . are . . . the child or the ward"); Pennsylvania ("[p]arty is a person who is legally entitled to participate in the proceedings" and "[i]n any permanency hearing held with respect to the child, the court shall consult with the child regarding the child's permanency plan in a manner appropriate to the child's age and maturity"); Rhode Island (under Rhode Island law, children are considered to be parties to the legal proceedings); South Carolina ("'[p]arty in interest' includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board"); Vermont ("'[p]arty' includes the child with respect to whom the proceedings are brought"); West Virginia ("'[p]arties' mean the petitioner, the respondent or respondents, and the child or children"); Wyoming ("'[p]arties' include the child, his parents, guardian, or custodian, the state of Wyoming and any other person

deny party status to children, but Washington is in the minority in its failure to grant children even partial party status in dependencies.[67]

However, this is not the only reason that Washington ranks so low in this national evaluation.[68] Notably, Washington's requirement for children to receive appointed counsel is inconsistent and is at the discretion of the court.[69] Furthermore, while the Washington Supreme Court hopefully seemed to affirm that dependent children have some due process rights,[70] it is unlikely that the recent ruling in *In re Dependency of MSR* will help Washington's rankings in future evaluations. First, the court is still notably vague in its opinion. While the court notes that in some cases denial of counsel may rise to the level of a constitutional violation, it provides little guidance as to when these situations will arise and leaves that determination to the lower courts.[71] Second, the ruling does not specifically remedy any of the categories that the rankings are based on because the rankings are based on state statutory law.

B. An Incidental Omission: How Legislative Amendments in the 1990s Removed Any Mention of Children as Parties to Washington Dependencies

Children were referred to as parties when the Washington legislature first codified RCW chapter 13.34 in the 1970s.[72] Through subsequent

made a party by an order to appear, or named by the juvenile court"). *See* FIRST STAR, 3d ed., *supra* note 19, at 32–132 (citations omitted).

[67] *See* FIRST STAR, 3d ed., *supra* note 19.

[68] *Id.* at 124–25.

[69] Maureen O'Hagan, *Court Rules on Children, Their Right To Attorney,* SEATTLE TIMES, Mar. 1, 2012, http://seattletimes.nwsource.com/html/localnews/2017641976_counsel02m.html. When grappling with whether children have the right to appointed counsel, the answer in most states is "yes." However, in "Washington dependency courts, it's been a matter of debate for years." *See id.*

[70] *See generally In re* Dependency of MSR, 271 P.3d 234 (Wash. 2012).

[71] *Id.*

[72] The title of this chapter is the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship." WASH. REV. CODE § 13.34.010 (1977).

amendments in the 1990s, language indicating that children were parties was removed.[73] However, legislative history suggests that it was not the legislature's intent to divest children of party status, but instead to ensure that children received competent representation through the appointment of guardians ad litem (GALs).[74]

When the original RCW chapter 13.34 was passed into law in 1979, RCW 13.34.100 set forth the process for appointing an attorney and/or GAL. [75] While the original provision still left the appointment of representation to the discretion of the court,[76] it unequivocally referred to dependent children as parties.[77] The original language of the statute read:

> The court, at any state of the proceeding under this chapter, may appoint an attorney and/or guardian ad litem for *a child who is a party to the proceedings* . . . . Such attorney and/or guardian ad litem shall receive all notice contemplated for a parent in all proceedings under this chapter.[78]

In 1993, the Washington legislature amended RCW 13.34.100 to read

---

[73] *See* Erin S. McCann & Casey Trupin, *Kenny A. Does Not Live Here: Efforts in Washington State to Improve Legal Representation for Children in Foster Care,* 36 NOVA L. REV. 363, 369 (2012).

[74] Act effective July 25, 1993, ch. 241, 1993 Wash. Sess. Laws 864–866 (codified as amended at WASH. REV. CODE §§ 13.34,030, 13.34.100 (1993)).

[75] WASH. REV. CODE § 13.34.100 (1979).

[76] WASH. REV. CODE § 13.34.100 (1979). In fact, the language in the 1979 version regarding appointment of counsel for children was much stronger as well. *See* McCann & Trupin, *supra* note 77, at 365.

> Prior to 1993, the statute specifically articulated that the court could appoint an attorney to represent the child—with no mention of age—but that year the legislature amended the dependency chapter and struck the provision articulating that '[t]he court shall . . . appoint an attorney and/or a [GAL] for a child.'

Id.

[77] McCann & Trupin, *supra* note 77, at 365.

[78] WASH. REV. CODE § 13.34.100 (1979) (emphasis added).

"[t]he court shall in all contested cases appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary."[79] The bill's summary made no mention of removing party status for children; rather, its intent was to "revis[e] provisions relating to guardians ad litem for juveniles," as well as to declare that a GAL appointed under RCW chapter 13.34 should be a full party to the proceedings.[80] However, the final note to this 1993 amendment in the Washington Senate Bill Report indicated that full party status was not extended to GALs because of fear that it would make them full attorneys:[81] "The guardian ad litem is not granted equal status as a party in dependency and child abuse cases. The GAL is authorized, through an attorney, or as otherwise authorized by the court to present evidence, examine and cross-examine witnesses and to be present at all hearings."[82]

A year later, in 1994, the Washington legislature again amended RCW 13.34.100, this time to rid the chapter of the limitation of appointing GALs only during contested hearings.[83] However, once again, there was no

---

[79] Act effective July 25, 1993, ch. 241, 1993 Wash. Sess. Laws 865 (codified as amended at WASH. REV. CODE § 13.34.100(1) (1993)).

[80] H.B. REP. 53-1165, 1st Reg. Sess., at 1 (Wash. 1993). *See also* WASH. REV. CODE § 13.34.100(5) (2012).

> A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

Id. See also McCann & Trupin, *supra* note 77, at 370 ("the amendment removed the explicit provision that children were parties to the proceedings, and made them 'subjects' of the proceeding—though it likely did not truly remove their party status").

[81] S.B. REP. 53-1165, 1st Reg. Sess., at 1–2 (Wash. 1993).

[82] *Id.*

[83] S.H.B. 2180, 53d Leg., Reg. Sess. (Wash. 1994) (codified as amended at WASH. REV. CODE § 13.34.100(1) (1994)).

explicit mention of divesting children of party status.[84]

In sum, the outcome of both the 1993 and 1994 amendments was the removal of the only definitional mention of children as parties in RCW chapter 13.34. However, when examined on the whole, it appears as if the intent of the amendments was to clarify a child's legal relationship with his or her GAL, not to completely divest the child of party status. Because the legislative history is not determinative, the statutes relating to juveniles are inconsistent and other sections of the RCW imply that children could (sometimes) be parties by grouping them with individuals who are unequivocally considered parties (parents, attorneys).[85] The next part identifies some of the key situations where children are treated as parties but not given corresponding party rights.

C. Parties or Not, Current Washington State Law Sheds Little Light on the Debate

In Washington law, there is a great deal of confusion over whether or not children have legal party status in their own dependency hearings.[86] The following subsections highlight a few examples of this confusion.

1. You're in Contempt!

One notable example of the confusion surrounding party status of children stems from the process of entering a contempt order. The RCW groups children together with other parties when it says:

> [W]henever the court finds probable cause to believe . . . that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte

---

[84] *Id.*
[85] *See infra* notes 91–102 and accompanying text.
[86] *See generally* McCann & Trupin, *supra* note 77, at 367.

without prior notice *to the child or other parties*.[87]

Under the canons of statutory construction, a plain language reading seems to imply that by grouping "the child" with "other parties" the child itself is considered a party; otherwise the statute would have read "children or parties." If a child is not a party, the word "other" is rendered meaningless. Under the basic tenets of statutory construction, however, all words must be given meaning.

2. I Have to Be There, but I'm Not a Party?

Related to contempt order, RCW 13.34.070 (referring to the dissemination of the initial court summons) requires that the "[s]ummons shall advise the *parties* of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel."[88] This provision is interesting for two reasons. First, any child who is twelve years or older is entitled to a summons, and that summons informs the *parties* that they have the right to counsel.[89] Plainly read: if one is summoned then one is a party, and if one is a party then one has a right to counsel. Second, and described fully below, any individual who fails to obey a summons can be held in contempt of court.[90] Thus, even though some may argue that a child is not a legal party to the dependency hearing, this provision allows for punishments without legal redress.

3. If I Have a Lawyer, Am I a Party?

In some parts of the RCW, individuals that are represented by counsel are referred to as parties (remember that the appointment of counsel is still at

---

[87] WASH. REV. CODE § 13.34.165(5) (2012) (emphasis added).
[88] WASH. REV. CODE § 13.34.070(3) (2012) (emphasis added).
[89] WASH. REV. CODE § 13.34.070(1), (3) (2012).
[90] WASH. REV. CODE § 13.34.070(7) (2012).

the ultimate discretion of the court).[91] For example, RCW 13.34.090 (which outlines the rights under the chapter) says the following:

> Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.[92]

In this example, the RCW appears to state that if a child is a party, he or she has the right to counsel.

In addition, in RCW 13.34.067, which outlines the process for case conferences after the initial shelter care hearing,[93] children's counsel are grouped with other parties. One of the parties to be included in the case conference is the child's counsel, and at the termination of the conference, any agreement reached "must be agreed to and signed by the *parties*."[94]

Both examples beg the question: Why would only children who are lucky enough to be granted counsel have full party status?

4. If I'm in Extended Foster Care, Am I a Party?

In 2011, the Washington legislature expanded the foster care system to accommodate children eighteen years old and older who would have traditionally "aged out" of the system.[95] If the foster child in question is involved in a dependency, the dependency is extended for six months if the youth "is enrolled in a secondary education program or a secondary education equivalency program."[96] This provision was enacted with the intent to allow "a reasonable window of opportunity for an eligible youth

---

[91] *See* sources cited *infra* notes 105–11.
[92] WASH. REV. CODE § 13.34.090(1) (2012).
[93] WASH. REV. CODE § 13.34.067(1)(a) (2012).
[94] *See* WASH. REV. CODE § 13.34.067(1)(b), (d) (2012) (emphasis added).
[95] *See* 2011 Wash. Sess. Laws 2159.
[96] WASH. REV. CODE § 13.34.267(1) (2012).

who reaches the age of eighteen to request extended foster care services."[97]

Interestingly, "[a] youth receiving extended foster care services is a party to the dependency proceeding."[98] So, it would appear that a youth who was involved in the dependency system off and on for his or her entire life is suddenly granted official party status at the sunset of his or her dependency.

5. Does Where I Live Determine Whether I'm a Party?

In addition to inconsistencies in Washington state law, special proceedings and local court rules complicate the debate further.[99] For example, in King County, children are explicitly referred to as parties when the court outlines its rules for agreed orders:

> If all *parties* to a dependency, *including the child*, approve the proposed permanency planning review order in writing individually or through counsel, an in-court hearing shall not be required. An agreed order requires that a CASA and/or attorney for the child must sign for a child under 12 years of age.[100]

The best way to resolve all inconsistencies would be an amendment to Washington state law. If Washington law was updated, local jurisdictions would be required to act in accord, and juveniles across the state would be treated consistently.

D. Other Recent Amendments to RCW Chapter 13.34 Continue to Affirm Notice of the Right to Counsel, but Do Not Indicate Legislative Intent to Divest Children of Party Status

The appointment of counsel for children is left to the discretion of the

---

[97] WASH. REV. CODE § 13.34.267(2)(a) (2012).
[98] WASH. REV. CODE § 13.34.267(4) (2012).
[99] Individual courts have leave to create specific rules that govern local proceedings. *See generally* Wash. R. Civ. P. 1, 83.
[100] KING CNTY. LOC. JUV. CT. R. 3.9.

court.[101] This is stated in the RCW and has been re-affirmed by the Washington Supreme Court.[102]

In 2010, due to a growing concern over the lack of adequate representation for children in dependency hearings and a realization that children had not been receiving notice of their right to ask for the appointment of counsel, the legislature again amended RCW 13.14.100 to add notice provisions for children.[103] House Bill 2735 added language stating that "the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request counsel and shall ask the child whether he or she wishes to have counsel."[104] Such an inquiry begins after the child turns twelve years old.[105]

The 2010 amendment was enacted in part because "the legislature recognize[d] that inconsistent practices in and among counties in Washington [had] resulted in few children being notified of their right to request legal counsel in their dependency and termination proceedings."[106] The legislature also opined that appointing counsel can "ensure that the child's voice is considered in judicial proceedings."[107] This comment in particular speaks volumes to the fact that the legislature may give deference to amendments that further increase a child's opportunity to be heard, such as granting party status.

While the language of the 2010 amendment provides only a glimpse into the legislative intent at the time, present inconsistencies in the language of RCW chapter 13.34 suggest that the legislature could not have intended to

---

[101] WASH. REV. CODE § 13.34.100(6) (2012); *see also In re* Dependency of MSR, 271 P.3d 234 (Wash. 2012).
[102] *Id.*
[103] Act effective June 10, 2010, ch. 180, 2010 Wash. Sess. Laws 1456.
[104] WASH. REV. CODE § 13.34.100(6)(a) (2012).
[105] WASH. REV. CODE § 13.34.100(6)(a)(i) (2012).
[106] Act effective June 10, 2010, ch. 180, 2010 Wash. Sess. Laws 1456.
[107] *Id.*

completely divest children of all the rights afforded to parties. Furthermore, current Washington state law provides little guidance as to whether children have the legal status of parties.

V. WHY PARTY STATUS MATTERS: HOW GRANTING PARTY STATUS WILL ENSURE NOTICE, PARTICIPATION, AND OTHER DUE PROCESS PROTECTIONS

Party status is important because it affects whether or not dependent children have full "access to justice."[108] Access to justice includes the right to a full and fair opportunity to be heard and to participate in proceedings. If Washington's dependent children are granted party status to their dependency hearings, the court can truly consider the best interests of the child.[109]

Granting party status in dependency hearings will ensure that children receive notice and the *opportunity* to be heard and to participate in proceedings. In addition, granting party status to children will create consistency and help ensure lasting, permanent solutions, imprinting upon them a sense of responsibility and control. At a time when a child's whole world is turned upside down, having a say in his or her own future can be affirming and can lend a sense of agency. [110] Granting party status will have a positive effect on both the physical and mental health of Washington's dependent youth. [111] Actively participating in a proceeding that

---

[108] *See* Bohr, *supra* note 14, at 235 (addressing a statutory change that reduced children's status from party status to "participant" status). However, participants are able to intervene as parties. *Id.* at 237.

[109] *See, e.g.*, FIRST STAR & CHILDREN'S ADVOCACY INST., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN 18 (2d ed. 2009) [hereinafter FIRST STAR, 2d ed.] (asserting that "[a]s the individual who is the subject to dependency proceedings, a child should always be considered a party to the proceedings").

[110] Jenkins, *supra* note 6, at 169.

[111] *Id.* at 168–69.

fundamentally affects one's life can have positive psychological implications.[112]

Granting party status to children in order to achieve the best results for the child is important. Imagine the following hypothetical situation:[113] A child wants to object to an agreed termination of parental rights. As the law is currently written, it is highly unlikely that the youth would be granted standing to object. The agreed order would be entered and the child's relationship with his or her parents would be forever severed without the child ever having a day in court to object. Although it may seem natural to wonder why a child might object to his or her parents agreeing to abrogate rights, this inquiry is off the mark. The better inquiry is, when a fundamental constitutional relationship is severed, why do not all the participants in that relationship get a say?

Making the court listen to the child does not necessarily mean that the outcome of the court's decision would be any different. The point of party status is, first, to make sure that the judge has a full and fair opportunity to view all the "evidence" before making a ruling, and, second, to reaffirm to the child that his or her voice matters. GALs have a vital and important role, and having them speak for children is valuable. However, nothing can truly substitute for the voice of the child. In a state where the rights of dependent children are supposed to be held above all others, it is a shame that most judges will never even meet the child whom they are charged with protecting. It is important for the court system to recognize that the most profoundly impacted party is the child, the silent and unasked child. This needs to change.

In Washington, the rights of dependent children are held as paramount, to

---

[112] *Id.*

[113] This hypothetical is based loosely on the author's conversations with children's advocates during the summer of 2011.

be protected above even parental rights.[114] Also, the Washington Supreme Court has recently held that children have at least an equal—if not greater—interest in dependency hearings.[115] Thus, it would seem that making children parties would be consistent with the goals of Washington's legislature and its courts.

This philosophy is followed in other jurisdictions as well. Other courts have also held that the liberty interests of the children involved in the dependency outweighed all others, and could be considered higher than even those of their parents.[116] Further, "[d]ependency proceedings implicate a child's liberty interest because at stake for the child is his safety, his familial relationships, his 'emotional and social interests,' and his interest in a 'stable and permanent home' and 'the State has an affirmative duty to provide the child with constitutionally adequate due process.'"[117]

The bottom line is that "[a]rguing whether the child should or should not be a party detracts from the main issues before the juvenile court, such as termination of parental rights, sibling visits, where and with whom the child will live, and access to services."[118] The main focus should be on a speedy resolution of the child's dependency proceedings, and upholding the child's best interests in the course of correcting parental deficiencies.

A. What Rights Are Denied to Children Without Party Status?

Granting party status to children will insure that they receive proper notice and the opportunity to be heard at their dependency hearings. It will also help ensure full participation, thus leading to efficient and permanent

---

[114] *See* WASH. REV. CODE § 13.34.020 (2012).
[115] *In re* Dependency of MSR, 271 P.3d 234, 242 (Wash. 2012).
[116] *See generally* Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005) (applying the *Matthews* test in weighing the child's liberty interest versus that of the parent and the government).
[117] Jacob E. Smiles, *A Child's Due Process Rights to Legal Counsel in Abuse and Neglect Dependency Proceedings*, 37 FAM. L.Q. 485, 493–95 (2003).
[118] Bohr, *supra* note 14, at 238.

results. Some may argue that dependency hearings are solely meant to remedy parental defects; therefore, children are not necessary participants or are already allowed to participate as necessary. However, this section illustrates that predicating rights on the basis of procedural discretion should not be considered an adequate substitute for procedural safeguards, which would be implemented if party status was granted to children.

1. Proper Notice and the Opportunity to Be Heard

The first step that youths must take to be active participants in dependency is to know when and where they have to be in order to voice their opinion. According to the Washington State Center for Court Research, notifying children of their court dates "is an imperative threshold step in the effort to elicit the voice of dependent youth."[119] While experts and concerned adults have valuable insight, it is children who are most affected by the dependency, and only they really know what they are experiencing. Only a youth can testify as to what he or she believes his or her best interests are.[120] Thus, if a court is to make a fully informed decision based on the opinions of all individuals with an interest in the proceeding, it must consider the views of the child. There is presently nothing concrete in place that outright prohibits the child from being heard, but the fundamental issue is that there is no guarantee that *each* child will even know that being heard is an option. Being treated as equal to all other participating parties will ensure this.

Currently, some children receive notice of their dependency hearings. However, those who receive consistent notice are those who are notified by their counsel, and, as previously discussed, the appointment of counsel

[119] JANET MCLANE, WASH. STATE CTR. CT. RESEARCH, DEPENDENT YOUTH INTERVIEWS PILOT PROGRAM 5 (2010) (describing a pilot project primarily designed to instigate interviews between youth and judges).
[120] Jenkins, *supra* note 6, at 172.

remains at the discretion of the court.[121] While children twelve years old and older are entitled to receive a summons for the initial dependency proceeding, subsequent notifications are not guaranteed:

> Upon the filing of the petition, the clerk of the court shall issue a summons, *one directed to the child,* if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition.[122]

This inconsistent notice provision would be remedied if youths were parties and courts were legally obligated to provide notice to them.

Of course, there is probably no black and white standard for inviting children to become active participants in the courtroom, and it is likely that if juveniles were granted party status, the court would have to be flexible to accommodate the unique circumstances of each child.

2. Participation in Dependency Hearings

Granting party status will increase participation in dependency hearings because, when given the opportunity, many youths do participate in their dependencies.[123] This is contrary to the prevalent misconception that children do not want to be involved in their dependency hearings or that they are too immature or disinterested to properly engage in them.

> Historically the child has been viewed and presumed as lacking the capacity to understand judicial proceedings, the ability to meaningfully participate in the deprivation action, the ability to express [his or her] unique views, and the ability to make decisions

---

[121] *See* WASH. REV. CODE §§ 13.34.090(1), 13.34.100(6)(e) (2012).
[122] WASH. REV. CODE § 13.34.070(1) (2012) (emphasis added).
[123] MCLANE, *supra* note 123, at 2.

> about [his or her] daily life or long term objectives.[124]

However, research has demonstrated the opposite to be true.[125] In Washington, youth have expressed positive feelings when invited to participate.[126] A 2008 study performed by the Washington State Center for Court Research examined the impact of inviting youths to come to court and participate in their hearings by gauging their reactions.[127] Of youths who came to court, 77 percent were glad they did and 91 percent said they had a positive experience at the hearing.[128] Importantly, most youths who participated in the study indicated that they understood what was transpiring.[129]

Other states have conducted studies that mirror the results found in Washington.[130] A recent Georgia study used a more scientific approach in examining whether children can be expected to make meaningful decisions in dependency hearings. It found that while they may require alternative modes of communication at times, and may sometimes need the assistance of others when making decisions, "they can still participate in the process to varying degrees."[131]

Based on national research, if the Washington legislature took steps to invite children to their dependency hearings, and if children felt as though their voices would be valued and heard, it is likely that the number of youths who participate in dependency hearings would increase.

While it is important to be concerned about the impact court proceedings

---

[124] CARL VINSON INST. GOV'T, *supra* note 54, at 11. In Georgia, dependency hearings are referred to as deprivations. *See id.* at 7.
[125] MCLANE, *supra* note 123, at 2.
[126] *Id.*
[127] *Id.* at 3.
[128] *Id.* at 14–15.
[129] *Id.* at 2.
[130] *See, e.g.*, CARL VINSON INST. GOV'T, *supra* note 54, at 7.
[131] *Id.* at 11.

may have on the emotional well being of children, children who have reached the dependency stage have already been through immense trauma. [132] Protecting children is a valuable consideration, but it is outweighed by the need to grant children a voice in their future.

The opportunity to participate also impacts important access to justice concerns. Of the 1.5 million children who live in Washington, nearly ten thousand are in the foster care system at any given time.[133] Generally, "the children who are taken from parents and placed in foster care come from the poorest and least politically influential families in the country." [134] Unfortunately, in Washington, it is also typical that around 8 percent of children are moved three or more times during their placements.[135]

Washington, as a matter of justice, owes victims of abuse and neglect the full and fair opportunity to be active participants in their futures. Affording children the affirmative right to be heard, and to feel as though their voices are valued and considered, will create an immense sense of self-worth among Washington's dependent youth, and will help break the cycle of dependency.[136]

3. Efficient and Permanent Results

Allowing children a voice in their dependencies will have a positive

---

[132] *See* Jenkins, *supra* note 6, at 168.
[133] CHILDREN'S DEFENSE FUND, CHILDREN IN WASHINGTON 2 (2011), *available at* http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cits/2011/children-in-the-states-2011-washington.pdf.
[134] GUGGENHEIM, *supra* note 44, at 175.
[135] *See* BRAAM OVERSIGHT PANEL, MONITORING REPORT—JULY–DECEMBER 2011, app. A, § 6 (May 2012) (Placement Stability), *available at* http://www.braampanel.Org/MonRptMay12AppA.pdf.
[136] As observed by the author, a notable number of dependent youth will likely grow up to be parents in the dependency system. *See also* Jenkins, *supra* note 6, at 169 (discussing how dependency hearings can sometimes help "better the future of a child by presenting an opportunity to mold behaviors that can be used outside the courtroom and in life" as well as make children "more responsible for the course his or her life takes.").

impact on the overall efficiency of dependency hearings. If youth are more engaged, outcomes will be achieved more quickly and will more likely have a lasting result.[137] As previously asserted, granting children party status will help ensure that the court has a full record from which to make its decision. In order to make the best decision, the judge should have all the information before him or her, and one of the best ways to ensure that full information is available is to have the youth present.[138] If youth participation is increased in the proceedings prior to a finding of dependency or termination,[139] it follows that those youth might be less likely to petition for the reinstatement of parental rights.

Washington state law currently allows children twelve years old and older (or children under the age of twelve who can show "good cause") the ability to move for the reinstatement of parental rights three years after the rights of the parents have been terminated if the child has not found permanency.[140] Interestingly, a child who seeks to petition for reinstatement is guaranteed the right to counsel.[141] In its consideration of the motion to reinstate parental rights, the court looks to "[t]he age and maturity of the child, and the ability of the child to express his or her preference."[142] In arguing for judicial efficiency, it does not make sense that an order of termination could be entered without adequate input from the child, but later that same child could move the court for reinstatement of parental rights. It seems that allowing children to have a voice in the reinstatement and termination of those same rights is not only fair, but it could also lead to more permanent solutions.

If a child is mature enough to want his or her parents' rights reinstated, it

---

[137] *See* Jenkins, *supra* note 6, at 170.
[138] *Id.*
[139] *Id.*
[140] *See* WASH. REV. CODE § 13.34.215(1) (2012).
[141] WASH. REV. CODE § 13.34.215(3) (2012).
[142] WASH. REV. CODE § 13.34.215(7)(b) (2012).

makes sense to allow the child the standing to be a full and active participant in the hearings that led to the termination in the first place.

B. Current Rights Are Largely Contingent on the Courts' Discretionary Appointments of Counsel

Some argue that party status is unnecessary because children are already afforded due process rights.[143] However, any purported rights cannot be substituted for party status because current rights are dependent upon the child first being granted legal counsel.[144]

For example, in the initial stages of a dependency, a child's counsel—if appointed—is included in case conferences.[145] Case conferences, an initial step in a dependency, are designed to gather all the parties together with the hope of lessening the need for courtroom time.[146] Children's attorneys are explicitly referred to as parties in the description of case conferences. The RCW states that "[t]he case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the *parties*."[147] Also, at the conclusion of the case conference, any agreement made "must be agreed to and signed by the *parties*."[148]

However, children are not presently guaranteed the right to counsel in Washington, as they are not specifically granted the right to request counsel until the age of twelve, and, even then, the appointment of counsel remains

---

[143] *See, e.g.*, Smiles, *supra* note 121, at 494–95.
[144] Even after the recent Washington Supreme Court ruling, children are still only guaranteed the right to counsel at the discretion of the court. *In re* Dependency of MSR, 271 P.3d 234, 245 (Wash. 2012).
[145] WASH. REV. CODE § 13.34.067(1)(b) (2012).
[146] *See* KING CNTY. SUPERIOR CT., 2011 ANNUAL REPORT 2 (David Reynolds ed. 2011). In King County, case conferences are referred to as meditations. *Id.*
[147] WASH. REV. CODE § 13.34.067(1)(b) (2012) (emphasis added).
[148] WASH. REV. CODE § 13.34.067(1)(d) (2012) (emphasis added).

at the discretion of the court.[149] Presumably, without the explicit grant of party status, if a child has not been appointed counsel in the early stages of a dependency, he or she would have little opportunity to be heard in the initial stages of the proceedings.

Additional inconsistencies in Washington include when and how children are granted representatives, either GALs or appointed counsel, and how, when granted those representatives, children are sometimes treated as parties with standing. RCW chapter 13.34, for example, says,

> A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.[150]

While GAL's may seem to have the rights of parties, it appears as though they have very limited standing.[151] Also, the Washington Supreme Court recently affirmed that GAL's are not a substitute for legal counsel when it stated,

> We recognize that GALs and CASAs are not trained to, nor is it their role to, protect the legal rights of the child. Unlike GALs or CASAs, lawyers maintain confidential communications, which are privileged in court, may provide legal advice on potentially complex and vital issues to the child, and are bound by ethical

[149] *In re* Dependency of MSR, 271 P.3d 234, 245 (Wash. 2012).
[150] WASH. REV. CODE § 13.34.100(5) (2012).
[151] *See* sources cited *supra* notes 82–87.

duties.[152]

Again, the right of a child to present evidence and receive notice of the proceedings in dependency hearings is dependent on whether or not the child has been appointed representation—through a GAL or appointed counsel.

Currently, RCW chapter 13.34 does not include a definition listing who the parties in a case can be.[153] While coupling children with other participants and referring to all relevant actors as "the parties" may lend credence to the argument that children are already parties in Washington, the Washington legislature needs to take the additional step to formally add children as listed parties. There have been similar movements to affirmatively name children as parties in other states,[154] and it is an important step for Washington to take.

C. Punishments but Not Rights

One of the most interesting, and arguably unfair, inconsistencies in denying children party status is the fact that while children are not explicitly parties to dependency hearings, they can still be held in contempt for failing to comply with a court order and may even be subject to sanctions.[155] Specifically, if a party does not adhere to a court order, they can be subject to civil contempt.[156] The RCW states,

> If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person

---

[152] *In re MSR*, 271 P.3d at 245.
[153] *See* WASH. REV. CODE § 13.34.030 (2012).
[154] *See* Bohr, *supra* note 14, at 231.
[155] WASH. REV. CODE §§ 7.21.030(2)(e), 13.34.165(1) (2012). *See also* McCann & Trupin, *supra* note 77, at 367.
[156] WASH. REV. CODE § 13.34.165(1) (2012).

to juvenile detention . . . .[157]

It is not fair to subject children to court sanctions, which appear to be reserved for parties,[158] when children are considered non-parties in other circumstances and have no legal opportunity to object to the sanctions. If the Washington legislature is truly invested in considering the best interests of the child, first and foremost, it should not hold a child accountable under sanctions without giving the child the right to be heard. If the judicial system is committed to empowering youth, and truly considers their opinions to be of value, it should explicitly afford children a legal right to challenge contempt orders; otherwise, youth face a burden without a corresponding benefit.

D. Washington Would Not Be Alone in Granting Children Party Status

While Washington trails other states in its delineation of rights to children in dependency hearings, it is certainly not alone in both its efforts to determine whether or not children should be parties to their dependencies and in the efforts of advocates to present legislation that affords children party status.

Two states in particular, Connecticut and Massachusetts, have enacted statutes that are examples of the type of legislative amendments that Washington ought to emulate when considering amendments to state law.[159]

Connecticut scores an A+ (compare this with Washington's disappointing F grade) when rated on the rights afforded to children in dependency hearings.[160] Specifically, "Connecticut law recognizes children as parties to dependency proceedings."[161] In addition, children are also provided with

[157] WASH. REV. CODE § 7.21.030(4) (2012).
[158] WASH. REV. CODE § 13.34.165 (2012) ("[f]ailure by a party to comply with an order entered under this chapter is civil contempt of court").
[159] FIRST STAR, 3d ed., *supra* note 19, at 39, 71.
[160] *Id.* at 39, 123.
[161] *Id.* at 40.

"several explicit rights, such as the right to notice."[162]

In Massachusetts, children are explicitly afforded party status in civil matters in which they have a right to counsel.[163] This grant of party status is clearly delineated: "[the] child shall have and be informed of the right to counsel in all hearings and . . . the court shall appoint counsel for that . . . child if the . . . child is not able to retain counsel."[164]

Other good examples of states granting specific rights to youth include New Mexico and Maryland.[165] In New Mexico, "[i]n proceedings on petitions alleging neglect or abuse or a family in need of court ordered services, the parties to the action [include] . . . the child alleged to be neglected or abused or in need of court ordered services."[166] Maryland even more explicitly grants party status by referring to parties as including children who are the "subject of a petition."[167]

Minnesota is another state engaging in a debate as to whether youth should be parties to their dependencies. In Minnesota, there was affirmative action taken to change children's party status to "participants"[168] who are then explicitly allowed to intervene as parties:[169]

> A child who is a party has all the rights usually associated with those involved in litigation, including: the right to receive notice, have legal representation, be present at all hearings, conduct discovery, bring motions before the court, participate in settlement agreements, and otherwise participate in the action. In contrast, the

---

[162] *Id.*
[163] *Id.* at 71.
[164] FIRST STAR, 2d ed., *supra* note 113, at 72.
[165] *Id.* at 70, 92.
[166] N.M. R. CHILD. CT. R. 10-121. *See also* FIRST STAR, 2d ed., *supra* note 113, at 92.
[167] MD. CODE ANN., CTS. & JUD. PROC. § 3-813 (2001); *see also* FIRST STAR, 3d ed., *supra* note 19, at 68–69.
[168] Bohr, *supra* note 14, at 235 (addressing a statutory change that reduced children's party status to "participant." However, participants are able to intervene as parties).
[169] MINN. R. JUV. PROT. P. 23.01, subd. 1 (2003).

> rights of a participant are limited to receiving notice, attending hearings, and offering information at the discretion of the court.[170]

Although the law appeared to grant Minnesota children very similar status as full parties on its face, advocates still pushed for children to be moved from participants to parties because party status is of such vital importance.[171]

Similar parallels can be drawn in the way that Washington treats children. While Washington's dependent youth are guaranteed some due process provisions, such as notice and summons of initial proceedings, the rest of the rights guaranteed to other parties are extended to children only based on the appointment of representation, which is a factor determined by the court in each case.[172]

VI. AMENDMENTS THAT SHOULD BE PROPOSED TO RCW CHAPTER 13.34

The only way to guarantee procedural rights is to codify them, and "the only way to ensure consistent, enforceable, and accountable legal representation for abused and neglected children is to enact state law to that effect."[173]

The Washington legislature should look both to similarly situated states that grant children's party status and to the current ABA Model Act, which affirmatively lists children as parties to their dependency hearings,[174] to determine which sections of the RCW to amend.

---

[170] Bohr, *supra* note 14, at 235–36.
[171] *See id.* at 235–39.
[172] *See In re* Dependency of MSR, 271 P.3d 234, 244–45 (Wash. 2012).
[173] FIRST STAR, 2d ed., *supra* note 113, at 8.
[174] The recently amended ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings has adopted the standard that all children should be parties to their dependencies. *See* MODEL ACT GOVERNING REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS § 2(b) (2011).

The Washington legislature should revise RCW chapter 13.34 to add children as named parties. Because this is a substantial change in the governing structure and influence of the law, such amendments could be adopted gradually. For example, the first step could be granting automatic party status to youth ages twelve and over, with the discretion of the court to grant party status to children younger than twelve years old.[175] This part contains a non-exhaustive list of proposed amendments.[176]

A. Proposed Amendments to RCW 13.34.030: Definitions

Currently, there is no definition of who the parties to a dependency are, although the term is used frequently in subsequent chapters. Thus, the language of RCW 13.34.030, outlining the definitions that are used throughout the chapter, should be amended to list and define all parties—including children. A new provision should be added to the law: Party' or 'parties' shall mean all participants in a dependency hearing including the department, child's parent, guardian, or legal custodian, counsel for the parents, the child if over twelve years of age, and the child's counsel.[177]

An additional subsection (modeled on the ABA Model Act) should be added and should state: "Nothing in this chapter shall diminish or otherwise change the attorney-client privilege of the child, nor shall the child have any lesser rights than any other party in regard to this or any other evidentiary privilege."[178] This is an important clarification because it would not only further clarify that children are parties to their dependencies, but it would also unequivocally state that their grant of party status is equal to all others.

---

[175] *See* WASH. REV. CODE § 13.34.132 (2012) (addressing the termination of parental rights).
[176] Proposed statutory amendments presented in the following sections are underlined accordingly.
[177] *See supra* note 70, and accompanying text.
[178] MODEL ACT GOVERNING REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS § 8(b) (2011).

B. Proposed Amendments to RCW 13.34.110: Hearings

RCW 13.34.110 outlines the process for agreeing to a dependency and describes the right to waive a fact-finding hearing.[179] Children should be named as parties who must agree to these provisions, especially since there is already reference to their representatives having to receive notice in this section. Currently, this section does not include children who are parties. Section 1 should be amended to add the following:

> The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor<u>e</u>. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, ~~or~~ legal custodian of the child, <u>and children who are named parties under 13.34.030(15)</u> shall have all of the rights provided in RCW 13.34.090(1).[180]

This proposed amendment would ensure that children have the right to be present and heard at fact-finding hearings, and that they have the opportunity to object (or consent) to their waiver.

In addition, section 3(a) of RCW 13.34.110 should also be amended to include the child as a party who must waive his or her right to a fact-finding hearing:

> The parent, guardian, ~~or~~ legal custodian of the child, <u>or children who are named parties under RCW 13.34.030(15)</u>, may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is

---

[179] WASH. REV. CODE § 13.34.110 (2012).

[180] The cross-referenced WASH. REV. CODE § 13.34.090(1) stipulates,

> Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.

WASH. REV. CODE § 13.34.090(1) (2012).

> dependent within the meaning of RCW 13.34.030. The parent, guardian, ~~or~~ legal custodian, or children who are named parties under RCW 13.34.030(15) may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, ~~or~~ legal custodian, or children who are named parties under RCW 13.34.030(15), and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney appointed for the child, guardian ad litem, or court-appointed special advocate for the child, if any. If the department of social and health services is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.[181]

Similar amendments should follow for the remainder of RCW 13.34.110. For example, the court should revise RCW 13.34.100(1) to change the language "shall appoint a guardian ad litem for a child who is the subject of an action under this chapter"[182] to "shall appoint a guardian ad litem for a child who is a party to the action under this chapter."

Other sections that warrant amendments include: RCW 13.34.115 (the child is currently not included in the group exempt from decisions to exclude the public);[183] RCW 13.34.125 (the consideration of preferences for a proposed voluntary adoption placement do not currently include the preference of the child); [184] and RCW 13.34.136 (a provision should be included giving deference to the child's wishes when considering the

---

[181] WASH. REV. CODE § 13.34.110(3)(a) (2012). Suggested additions to the existing statute are underlined.
[182] WASH. REV. CODE § 13.34.100(1).
[183] *See* WASH. REV. CODE § 13.34.115 (2012). Judges have discretion to determine that an open courtroom is not in the best interests of the child, and to exclude the public from the hearing. Generally however, relatives of the child, his or her foster parents, and "any individual requested by the parent" are allowed to remain. WASH. REV. CODE § 13.34.115(3) (2012).
[184] *See* WASH. REV. CODE § 13.34.125 (2012).

permanent plan of care).[185] While this list is by no means exhaustive, it provides a good starting point for future Washington legislators.

VII. CONCLUSION

The Washington legislature should grant children party status in their dependency proceedings. National and local trends support increased youth rights, and Washington would finally join the majority of states that already grant party status to youth in dependency proceedings.

Children have an equal, if not greater, interest in participating in their dependency hearings than their parents. Children are the ones who must relocate, and, under current Washington State law, they may not even have a say in the crafting of their permanent plans. If the interests of children are truly paramount in Washington, it does not follow that they are also the least likely to be granted a voice in hearings that profoundly impact their future interests.

Current Washington law does little to unravel the mystery as to whether or not children are intended to be treated as parties. While Washington law does not state that children are *not* parties, it is frustratingly inconsistent with the way it refers to them in conjunction with other parties. The inconsistent treatment of children as parties has stemmed from confusing statutory language, unclear intent behind amendments in RCW chapter 13.34 over the past forty years, and the inconsistent grouping of children with other parties. These inconsistencies need to be clarified as they distract from the goal of reaching permanent and nurturing placements for children.

Granting children party status will uphold the fundamental due process right to a full and fair hearing, including notice and the opportunity to be heard and to participate in that hearing. Party status will also expedite a child's search for permanency by guaranteeing that he or she will have a say

[185] *See* WASH. REV. CODE § 13.34.136 (2012).

in where he or she is placed. Making the best permanent placement decision in a way that is truly in the best interests of each child will increase judicial efficiency because poorly conceived permanent plans will not require reconsideration. Only the individual child can truly represent himself or herself, and ensuring that the child has the opportunity to be heard in every stage of a dependency proceeding will protect the child's wishes.

Spending precious resources on debating whether or not children are already parties in dependency proceedings detracts from the important issues to be addressed by a dependency. This energy should be directed back to the real issue: advocating for permanent and safe placement of children. Washington should amend RCW chapter 13.34 to include children as among those who have party status in Washington dependency hearings. The Washington legislature should take a lesson from local and national advocacy organizations, scholars, and the practices of other states, and take steps to grant children party status through amendments to RCW chapter 13.34.