

## **Summary of Legal Issues Related to 2SHB2106 (Child Welfare Design Transformation Committee)**

### **1. Representation by Attorney General of private agencies**

- a. Is it an unconstitutional gift of public funds?
- b. Is there a conflict of interest when Children's Administration is monitoring the contract and the Attorney General is representing Children's Administration?
- c. What is the scope of representation to be provided by the Attorney General?
- d. Will the State be providing training for private attorneys representing contractors and/or the contractors themselves?
- e. What is the cost of representation?

### **2. Placement and care authority**

- a. Does federal law allow the State to contract away placement and care authority to a private contractor? Will there still be IV-E reimbursement? Can Washington receive a waiver of this requirement?
- b. What about when there is no court proceeding? Will the contractor have placement and care authority?
- c. Will the contractor or Children's Administration file dependency petitions? If Children's Administration files the petition, can they substitute the contractor before the shelter care?
- d. If Children's Administration files, how is the case handed off to the contractor?

### **3. Hearing process**

- a. If the Attorney General is the legal representative, process will be substantially the same as currently.
- b. If the Attorney General is not the legal representative, most likely there will be no notice to the Attorney General.

- c. Can the Court still hold Children's Administration responsible for statutory mandates? Perhaps Children's Administration could be show-caused in particular cases.
- d. Can an Office of Public Defense attorney demand transfer of the case either to a contractor or back to Children's Administration?
- e. Does the contractor file the termination petition in appropriate cases? Most likely they will and Children's Administration will monitor only loosely.

### **Issues for opinion of Solicitor-General**

1. Is representation of a private contractor by the Attorney General an unconstitutional gift of public funds?
2. Is representation of a private contractor by the Attorney General an inherent conflict of interest, given that Attorney General represents Children's Administration in contract process and monitoring of contract.
3. Would existing statutes create a right of indemnification for private workers acting in the role of public social workers? Does representation by the Attorney General create a right of indemnification?
4. Is there joint and several liability under Washington law for tortious conduct of the contractor and the State?

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