

2 **HB 1165** - S COMM AMD (S-3077.1)
3 By Committee on Health & Human Services

4 ADOPTED AS AMENDED BY S-3172.2 - 4/12/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 13.34.030 and 1988 c 176 s 901 are each amended to
8 read as follows:

9 For purposes of this chapter:

10 (1) "Child" and "juvenile" means any individual under the age of
11 eighteen years;

12 (2) "Dependent child" means any child:

13 (a) Who has been abandoned; that is, where the child's parent,
14 guardian, or other custodian has evidenced either by statement or
15 conduct, a settled intent to forego, for an extended period, all
16 parental rights or all parental responsibilities despite an ability to
17 do so;

18 (b) Who is abused or neglected as defined in chapter 26.44 RCW by
19 a person legally responsible for the care of the child;

20 (c) Who has no parent, guardian, or custodian capable of adequately
21 caring for the child, such that the child is in circumstances which
22 constitute a danger of substantial damage to the child's psychological
23 or physical development; or

24 (d) Who has a developmental disability, as defined in RCW
25 71A.10.020 and whose parent, guardian, or legal custodian together with
26 the department determines that services appropriate to the child's
27 needs can not be provided in the home. However, (a), (b), and (c) of
28 this subsection may still be applied if other reasons for removal of
29 the child from the home exist;

30 (3) "Guardian ad litem" means a person, appointed by the court to
31 represent the best interest of a child in a proceeding under this
32 chapter, or in any matter which may be consolidated with a proceeding
33 under this chapter. A "court-appointed special advocate" appointed by
34 the court to be the guardian ad litem for the child, or to perform
35 substantially the same duties and functions as a guardian ad litem,

1 shall be deemed to be guardian ad litem for all purposes and uses of
2 this chapter;

3 (4) "Guardian ad litem program" means a court-authorized volunteer
4 program, which is or may be established by the superior court of the
5 county in which such proceeding is filed, to manage all aspects of
6 volunteer guardian ad litem representation for children alleged or
7 found to be dependent. Such management shall include but is not
8 limited to: Recruitment, screening, training, supervision, assignment,
9 and discharge of volunteers.

10 **Sec. 2.** RCW 13.34.100 and 1988 c 232 s 1 are each amended to read
11 as follows:

12 (1) The court shall in all contested cases appoint ((an attorney
13 and/or)) a guardian ad litem for a child who is ((a party to the
14 proceedings in all contested proceedings)) the subject of an action
15 under this chapter, unless a court((7)) for good cause((7)) finds the
16 appointment unnecessary. ((An attorney and/or)) A guardian ad litem
17 may be appointed at the discretion of the court in uncontested
18 proceedings((:—PROVIDED, That)). The requirement of a guardian ad
19 litem shall be deemed satisfied if the child is represented by
20 independent counsel in the proceedings. ((A))

21 (2) If the court does not have available to it a guardian ad litem
22 program with a sufficient number of volunteers, the court may appoint
23 a suitable person to act as guardian ad litem for the child under this
24 chapter. Another party to the proceeding or the party's employee or
25 representative shall not be so appointed. ((Such attorney and/or))

26 (3) Each guardian ad litem program shall maintain a background
27 information record for each guardian ad litem in the program. The
28 background file shall include, but is not limited to, the following
29 information:

- 30 (a) Level of formal education;
- 31 (b) Training related to the guardian's duties;
- 32 (c) Number of years' experience as a guardian ad litem;
- 33 (d) Number of appointments as a guardian ad litem; and
- 34 (e) Criminal history, as defined in RCW 9.94A.030.

35 The background information report shall be updated annually. As a
36 condition of appointment, the guardian ad litem's background
37 information record shall be made available to the court. If the
38 appointed guardian ad litem is not a member of a guardian ad litem

1 program the person shall provide the background information to the
2 court.

3 (4) The appointment of the guardian ad litem shall remain in effect
4 until the court discharges the appointment or no longer has
5 jurisdiction, whichever comes first. The guardian ad litem may also be
6 discharged upon entry of an order of guardianship.

7 (5) A guardian ad litem through counsel, or as otherwise authorized
8 by the court, shall have the right to present evidence, examine and
9 cross-examine witnesses, and to be present at all hearings. A guardian
10 ad litem shall receive copies of all pleadings and other documents
11 filed or submitted to the court, and notice of all hearings according
12 to court rules. The guardian ad litem shall receive all notice
13 contemplated for a parent or other party in all proceedings under this
14 chapter. ((A report by the guardian ad litem to the court shall
15 contain, where relevant, information on the legal status of a child's
16 membership in any Indian tribe or band.))

17 (6) If the child requests legal counsel and is age twelve or older,
18 or if the guardian ad litem or the court determines that the child
19 needs to be independently represented by counsel, the court may appoint
20 an attorney to represent the child's position.

21 (7) For the purposes of child abuse prevention and treatment act
22 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
23 or any related state or federal legislation, a person appointed
24 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
25 represent the best interests of the minor in proceedings before the
26 court.

27 NEW SECTION. Sec. 3. A new section is added to chapter 13.34 RCW
28 to read as follows:

29 (1) Unless otherwise directed by the court, the duties of the
30 guardian ad litem include but are not limited to the following:

31 (a) To represent and be an advocate for the best interests of the
32 child;

33 (b) To collect relevant information about the child's situation;

34 (c) To monitor all court orders for compliance and to bring to the
35 court's attention any change in circumstances that may require a
36 modification of the court's order; and

37 (d) To report to the court information on the legal status of a
38 child's membership in any Indian tribe or band.

1 (2) The guardian ad litem shall be deemed an officer of the court
2 for the purpose of immunity from civil liability.

3 (3) Except for information or records specified in RCW
4 13.50.100(4), the guardian ad litem shall have access to all
5 information available to the state or agency on the case. Upon
6 presentation of the order of appointment by the guardian ad litem, any
7 agency, hospital, school organization, division or department of the
8 state, doctor, nurse, or other health care provider, psychologist,
9 psychiatrist, police department, or mental health clinic shall permit
10 the guardian ad litem to inspect and copy any records relating to the
11 child or children involved in the case, without the consent of the
12 parent or guardian of the child, or of the child if the child is under
13 the age of thirteen years, unless such access is otherwise specifically
14 prohibited by law.

15 (4) The guardian ad litem shall release case information in
16 accordance with the provisions of RCW 13.50.100.

17 **Sec. 4.** RCW 26.44.053 and 1987 c 524 s 11 and 1987 c 206 s 7 are
18 each reenacted and amended to read as follows:

19 (1) In any contested judicial proceeding in which it is alleged
20 that a child has been subjected to child abuse or neglect, the court
21 shall appoint a guardian ad litem for the child: PROVIDED, That the
22 requirement of a guardian ad litem (~~(shall)~~) may be deemed satisfied if
23 the child is represented by counsel in the proceedings.

24 (2) At any time prior to or during a hearing in such a case, the
25 court may, on its own motion, or the motion of the guardian ad litem,
26 or other parties, order the examination by a physician, psychologist,
27 or psychiatrist, of any parent or child or other person having custody
28 of the child at the time of the alleged child abuse or neglect, if the
29 court finds such an examination is necessary to the proper
30 determination of the case. The hearing may be continued pending the
31 completion of such examination. The physician, psychologist, or
32 psychiatrist conducting such an examination may be required to testify
33 concerning the results of such examination and may be asked to give his
34 or her opinion as to whether the protection of the child requires that
35 he or she not be returned to the custody of his or her parents or other
36 persons having custody of him or her at the time of the alleged child
37 abuse or neglect. Persons so testifying shall be subject to cross-
38 examination as are other witnesses. No information given at any such

1 examination of the parent or any other person having custody of the
2 child may be used against such person in any subsequent criminal
3 proceedings against such person or custodian concerning the abuse or
4 neglect of the child.

5 (3) A parent or other person having legal custody of a child
6 alleged to be (~~(a child subjected to abuse or neglect)~~) abused or
7 neglected shall be a party to any proceeding that may (~~(as a practical~~
8 ~~matter)~~) impair or impede such person's interest in and custody or
9 control of (~~(his or her)~~) the child.

10 NEW SECTION. Sec. 5. If any part of this act is found to be in
11 conflict with federal requirements that are a prescribed condition to
12 the allocation of federal funds to the state, the conflicting part of
13 this act is inoperative solely to the extent of the conflict and with
14 respect to the agencies directly affected, and this finding does not
15 affect the operation of the remainder of this act in its application to
16 the agencies concerned. The rules under this act shall meet federal
17 requirements that are a necessary condition to the receipt of federal
18 funds by the state."

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21 ADOPTED 4/12/93

22 On page 1, line 1 of the title, after "litem;" strike the remainder
23 of the title and insert "amending RCW 13.34.030 and 13.34.100;
24 reenacting and amending RCW 26.44.053; adding a new section to chapter
25 13.34 RCW; and creating a new section."

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