

HOUSE BILL REPORT

HB 2180

As Reported By House Committee On:
Judiciary

Title: An act relating to appointment of guardians ad litem.

Brief Description: Revising provisions relating to appointment of guardians ad litem.

Sponsors: Representatives H. Myers, Ogden, Thibaudeau and J. Kohl.

Brief History:

Reported by House Committee on:
Judiciary, February 1, 1994, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Pat Shelledy (786-7149).

Background: The federal Child Abuse Prevention and Treatment Act requires the states to provide that, in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem must be appointed to represent the child during the proceedings. Washington's eligibility to receive federal funds under the Child Abuse and Neglect Basic State Grant Program and the Children's Justice Act Program is contingent upon the state's compliance with the guardian ad litem requirement. The requirement applies in dependency proceedings or in shelter care proceedings but does not apply in domestic relations actions or criminal actions in which allegations of child abuse or neglect are made.

Last year, a bill passed the Legislature that inadvertently jeopardized Washington's compliance with federal law by providing that guardians ad litem only had to be appointed in "contested" judicial proceedings in which allegations of child abuse and neglect are made. Prior to passage of that

law, Washington statutes provided that guardians ad litem must be appointed in every judicial proceeding in which allegations of child abuse and neglect are made.

After the bill was passed last year, the federal Department of Health and Human Services notified the state that the 1993 enactment violated the requirements under federal law. The secretary of Social and Health Services declared that the law is inoperative because of a clause in the bill that provided it would be inoperative if it conflicted with federal law. Nevertheless, apparently some judges are only appointing guardians ad litem in contested judicial proceedings according to the terms of the statute.

Two statutes govern appointment of guardians ad litem. One of those statutes is contained in the chapter which governs the requirement of certain persons to report suspected incidences of child abuse and neglect to authorities. The other statute specifically applies to dependency proceedings. One statute provides that the requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel. The other statute provides that the requirement of counsel shall be deemed satisfied if the child is represented by counsel.

Summary of Substitute Bill: In any judicial proceeding in which it is alleged that a child has been subjected to child abuse or neglect, the court must appoint a guardian ad litem for the child. In those dependency actions which do not involve allegations of child abuse or neglect, the court must appoint a guardian ad litem unless the court finds for good cause that the appointment is unnecessary. The court may consider the requirement of appointment of a guardian ad litem to be satisfied if the child is represented by an attorney. "Judicial proceedings" are dependencies and hearings following reports of abuse and neglect and do not include domestic relations cases and criminal cases.

Substitute Bill Compared to Original Bill: The bill is technically rewritten to comport with the proponent's intent. A provision directing the Supreme Court to establish court rules relating to the establishment and operation of guardian ad litem programs is deleted.

Fiscal Note: Requested January 27, 1994.

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

Testimony For: This legislation is necessary to bring Washington State in compliance with federal law so that we do not jeopardize our federal funding. The judges in Clark

County are not appointing guardians ad litem in many cases under the interpretation of the law passed last year. Representation by an attorney should not necessarily satisfy the guardian ad litem requirement; that should be within the court's discretion. The court rules provision should be stricken.

Testimony Against: None.

Witnesses: Representative Holly Myers, prime sponsor (pro); Richard Winters, Department of Social and Health Services (pro); Sheila Homchick, Clark County Coalition Against Sexual Assault Program (pro); and Kathy Wheeler, Clark County Coalition Against Sexual Assault Program (pro).