
HOUSE BILL 1165

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Riley, Cooke, Leonard, Appelwick and Johanson

Read first time 01/20/93. Referred to Committee on Human Services.

1 AN ACT Relating to guardians ad litem; amending RCW 13.34.030 and
2 13.34.100; reenacting and amending RCW 26.44.053; adding a new section
3 to chapter 13.34 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

7 For purposes of this chapter:

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

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

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

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

18 (c) Who has no parent, guardian, or custodian capable of adequately
19 caring for the child, such that the child is in circumstances which

1 constitute a danger of substantial damage to the child's psychological
2 or physical development; or

3 (d) Who has a developmental disability, as defined in RCW
4 71A.10.020 and whose parent, guardian, or legal custodian together with
5 the department determines that services appropriate to the child's
6 needs can not be provided in the home. However, (a), (b), and (c) of
7 this subsection may still be applied if other reasons for removal of
8 the child from the home exist;

9 (3) "Guardian ad litem" means a person, appointed by the court to
10 represent the best interest of a child in a proceeding under this
11 chapter, or in any matter which may be consolidated with a proceeding
12 under this chapter. A "court-appointed special advocate" appointed by
13 the court to be the guardian ad litem for the child, or to perform
14 substantially the same duties and functions as a guardian ad litem,
15 shall be deemed to be guardian ad litem for all purposes and uses of
16 this chapter;

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

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

26 (1) The court shall in all contested cases appoint ~~((an attorney~~
27 ~~and/or))~~ a guardian ad litem for a child who is ~~((a party to the~~
28 ~~proceedings in all contested proceedings))~~ the subject of an action
29 under this chapter, unless a court((7)) for good cause((7)) finds the
30 appointment unnecessary. ((An attorney and/or)) A guardian ad litem
31 may be appointed at the discretion of the court in uncontested
32 proceedings((:— PROVIDED, That)). The requirement of a guardian ad
33 litem shall be deemed satisfied if the child is represented by
34 independent counsel in the proceedings. ((A))

35 (2) If the court does not have available to it a guardian ad litem
36 program with a sufficient number of volunteers, the court may appoint
37 a suitable person to act as guardian ad litem for the child under this

1 chapter. Another party to the proceeding or the party's employee or
2 representative shall not be so appointed. ((Such attorney and/or))

3 (3) 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 (4) A guardian ad litem is a party to the proceedings for all
8 purposes, including the right to present evidence, examine and cross-
9 examine witnesses, and to be present at all hearings. A guardian ad
10 litem shall receive copies of all pleadings and other documents filed
11 or submitted to the court, and notice of all hearings according to
12 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 (5) 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 (6) 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 The guardian ad litem appointed under this chapter shall be a full
30 party to the proceedings.

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

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

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

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

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

3 (2) The guardian ad litem shall be deemed an officer of the court
4 for all purposes of immunity from civil liability.

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

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

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

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

1 child may be used against such person in any subsequent criminal
2 proceedings against such person or custodian concerning the abuse or
3 neglect of the child.

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

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

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