

HOUSE BILL REPORT

SSB 6217

As Reported By House Committee On:

Law & Justice

Title: An act relating to guardians ad litem.

Brief Description: Changing provisions relating to guardians ad litem.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin, Long, Hargrove, Goings, Rasmussen, B. Sheldon, Fraser, Schow and Winsley).

Brief History:

Committee Activity:

Law & Justice: 2/26/98, 2/27/98 [DPA].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Staff: Edie Adams (786-7180).

Background: A guardian ad litem (GAL) is a person appointed in a court proceeding to represent the best interests of a party to the proceeding or to investigate and report to the court on relevant matters. A GAL position is temporary and expires when the case is completed or dismissed. A GAL may be appointed in three types of cases: guardianship proceedings, child dependency proceedings, and family law proceedings such as divorces and third-party custody actions.

GALs in Guardianship Proceedings (Chapter 11.88 RCW): Some people are unable to manage their financial affairs or their basic needs without help. These "incapacitated" persons may be elderly, disabled, or children. A guardianship may be established for an incapacitated person to help the person manage their personal or financial affairs. To establish a guardianship, a person must file a petition with the court that states the reasons a guardianship is sought, the petitioner's interest in the appointment, and why an alternative to guardianship is not appropriate.

If a petition for guardianship is filed, the court appoints a GAL to represent the best interests of the alleged incapacitated person. The GAL is appointed from a GAL registry on a rotational basis. The court may choose a GAL who is not next on the registry list if there are extraordinary circumstances, such as the need for expertise, that requires the appointment of a different GAL.

To be eligible for the registry and appointment as a GAL, the person must have completed a model training program developed by the Department of Social and Health Services. In addition, the person must provide a written statement of background and qualifications that includes education, training, experience, prior appointments, and evidence of the person's knowledge and training in relevant areas. The written statement of qualifications must also include a statement of the number of times the GAL has been removed for failure to perform his or her duties.

The court establishes procedures for review of persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform GAL duties.

A GAL receives a fee determined by the court for his or her services in the case.

GALs in Child Dependency and Family Law Proceedings (Chapter 13.34 RCW and Title 26): In child dependency and family law proceedings, the GAL represents the best interests of the child who is the subject of the dependency proceeding or the child affected in the family law proceeding. Some GALs are paid for their services and are attorneys or other professionals. Other GALs are volunteers that work through a GAL program or are court-appointed special advocates (CASA) that work through the CASA program.

The Office of the Administrator for the Courts (OAC) must develop a comprehensive statewide curriculum for persons who act as GALs and make this curriculum available to all superior court judges, court personnel, and GALs.

Compensated GALs must be appointed based on a rotational registry system, unless the court finds there are extraordinary circumstances, or if a joint recommendation of a GAL is made by the parties. Volunteer GAL programs and CASAs are not subject to the rotational registry system. Each compensated GAL sets his or her own hourly fee. An appointment of a GAL through the rotational registry system may be challenged based on an excessive hourly fee charged by that GAL, lack of expertise, or conflict of interest.

Each GAL program must maintain a background information file on all GALs that must include specified information, including education, training, experience, number of prior appointments, and criminal history. Upon appointment, this information must be made available to the court and to the parties.

Summary of Amended Bill: A number of changes are made to provisions affecting guardians ad litem (GALs) in guardianship cases, child dependency cases, and family law cases.

The Office of the Administrator for the Courts (OAC) must develop a model grievance procedure for use by the superior court when handling complaints against GALs, court-appointed special advocates (CASAs), and parenting investigators. The OAC must maintain a list of all GALs who have been removed from the GAL registry in any superior court pursuant to a founded grievance action.

GALs in Guardianship Proceedings: The Department of Social and Health Services must establish training and continuing education requirements for GALs, and all appointed GALs must comply with these training and continuing education requirements unless the GAL is appointed for the limited purpose of assessing a personal injury settlement.

To be eligible for a GAL registry, a GAL must meet the required training and continuing education requirements and include in the written statement of qualifications the names of any counties in which the GAL was removed from a pending case or from a registry pursuant to a founded grievance.

In each order of appointment of a GAL, the court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval. In cases of personal injury settlements, the GAL fees must be negotiated between the parties.

If a GAL is appointed in a case involving a personal injury settlement, the report the GAL submits to the court must include information relevant to the court's analysis of the proposed settlement. The information that is relevant to this issue may be established by local court rule.

GALs are prohibited from engaging in ex parte communications with any judicial officer regarding the matter for which the GAL is appointed unless approved. The court may remove a GAL that violates this prohibition from a pending case or the rotational registry. If the GAL is removed, the court may require the GAL to forfeit any fees claimed on pending cases.

GALs in Child Dependency and Family Law Proceedings: The GAL curriculum developed by the OAC must include training requirements and continuing education requirements. These requirements must be updated on a yearly basis to reflect changes in statutes, court rules, or case law. The requirements do not apply to the attorney general or prosecutors functioning as the GAL in a paternity action.

All GALs, except volunteers or CASAs, must comply with the OAC training requirements prior to their appointment. CASAs and volunteers must comply with

alternative training requirements approved by the OAC. All GALs and CASAs must comply with the OAC continuing education requirements.

The background information file maintained by each GAL program on all GALs in the program must include the names of any counties in which the GAL was removed from a pending case or a registry pursuant to a founded grievance. Upon appointment, the GAL must provide this information to the parties.

In each order of appointment of a GAL, the court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval.

In a judicial district with a population over 100,000, the court may remove a compensated GAL from a pending case upon the motion of a party if the GAL was not selected from a rotational registry system, and if the GAL was not appointed under authorized exceptional circumstances or as a result of the joint recommendation of the parties. The court may remove a GAL from a rotational registry if the court finds that the GAL charges an unreasonable fee for his or her services.

A subregistry of GALs under contract with DSHS may be created that may be used only for appointment of a GAL in a state-initiated paternity case.

The duties of a GAL are amended to include the duty to investigate and advocate, rather than represent, for the best interests of the child. In child dependency cases, the GAL's duties include reporting to the court on the best interests of the child, and in family law cases, the GAL's duties include reporting on the wishes of a child who is 12 years old or older.

The provision that deems GALs officers of the court for the purpose of immunity from civil liability is amended to apply only to a GAL who is selected from a registry or appointed under exceptional circumstances, or who is a CASA, unless the GAL or CASA has been removed from a case pursuant to a founded grievance.

Information, records, and reports obtained or created by a GAL, CASA, or parenting investigator in a family law case is discoverable to the parties to the proceeding and their attorneys, but is confidential with respect to third parties. A GAL may request that the court seal the court file to protect information from disclosure to third parties.

Nothing in the chapters relating to child dependency actions or family law actions shall be construed to prohibit a GAL or CASA from providing confidential information, records, or reports to the Office of the Family and Children's Ombudsman for the purposes of carrying out that office's duties.

GALs are prohibited from engaging in ex parte communications with any judicial officer regarding the matter for which the GAL is appointed unless approved. The court may

remove a GAL that violates this prohibition from a pending case or the rotational registry. If the GAL is removed, the court may require the GAL to forfeit any fees claimed on pending cases.

Amended Bill Compared to Substitute Bill: The original bill did not include the following provisions: authorization for the creation of a subregistry of GALs under contract with the DSHS for state-initiated paternity actions; nothing in the child dependency and family law chapters shall prevent a GAL or CASA from providing confidential information or records to the Office of the Family and Children's Ombudsman; and authorization for a court to remove a GAL from a rotational registry, in child dependency or family law cases, if the court finds the GAL charges an unreasonable fee.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 1998, except for Sections 4 and 7, which take effect January 1, 2000.

Testimony For: This bill is a follow-up to the major revisions made in 1996 and adopts the recommendations of the guardian ad litem report of the Office of the Administrator for the Courts. It maintains the important rotational registry system and judicial flexibility in exceptional circumstances. It is an important step in putting integrity into the system that is created to protect individuals. Training and oversight of GALs are very important to help protect people. The bill holds GALs to professional training requirements and other professional obligations. The rotational registry system is important to prevent abuse of the system and to keep fresh faces and ideas involved. Judges should not be able to pick and choose GALs. Attorneys should not be GALs, and there should be a provision that says that GALs do not engage in the practice of law.

Testimony Against: GALs need to be able to engage in ex parte communications in emergency situations or if there is a difficult ethical issue. Ex parte communication issues should be left to discretion under the circumstances. The cap on GAL fees is not a good idea, because this will be imposed at the beginning of the process when nobody has any idea of the extent of the risks and issues involved and could actually result in increased costs. The registry system can result in inequity and has diluted the quality of GALs available to parties in proceedings. The Legislature should not be combining GALs issued under all the different types of proceedings they are involved in because there are different duties and needs in these different cases.

Testified: Senator Franklin, prime sponsor; Leota Peters and Linda Burk, ARCH (pro); Mandy Carlson, citizen (pro); Cindy Iversen, citizen (pro); Jo Kearney, citizen (pro); Elizabeth Morgan, Division of Child Support, Department of Social and Health Services

(pro, with amendment); Donald Barovic, citizen (pro); Seth Dawson, Common Ground for Children and Washington State CASA/GAL (pro); Lawrence Hutt, citizen (pro, in part); Rick Bartholomew, Washington State Bar Association, Family Law Section (con); Raven Lidman, citizen (con); Colby Parks, Tacoma Pierce County Bar Association (con); George Mattson, Superior Court Judges Association (con); Tom O'Brien, Washington Association of Professional Guardians (con); Chris Neil, citizen (con); and Douglas Schafer, attorney (con).