

HOUSE BILL ANALYSIS

SSB 6217

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).

HOUSE COMMITTEE ON LAW & JUSTICE

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. 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. A GAL must be appointed in a dependency proceeding but not in a 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) develops a comprehensive statewide curriculum for persons who act as GALs and makes 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 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 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.

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.

Fiscal Note: Available.

Effective Date: The act takes effect July 1, 1998, except for Sections 4 and 7, which take effect January 1, 2000.

Office of Program Research