

HOUSE BILL REPORT

ESSB 6305

As Reported By House Committee On:
Judiciary

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 and Kohl-Welles).

Brief History:

Committee Activity:

Judiciary: 2/24/00, 2/25/00 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Requires all guardians ad litem (GALs) and investigators to complete training requirements.
- Requires a GAL to disclose whether he or she has been removed from a registry pursuant to a grievance or from a case for cause.
- Requires the court to remove a GAL from a registry for misrepresenting his or her qualifications.
- Requires GAL reports to be submitted prior to the hearing and allows the parties to file written responses which the court must consider.
- Prohibits a GAL, court-appointed special advocate (CASA), or investigator from engaging in ex parte communications.
- Requires courts to specify the hourly rate and maximum amount a GAL may charge and to adopt rules that establish grievance procedures for GALs.
- Provides that, in family law proceedings, the records and information of a GAL, CASA, or investigator are discoverable by the parties but confidential with respect to third parties.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

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 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 guardianship proceedings, child dependency proceedings, and family law proceedings.

Guardianship Proceedings: 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 GAL receives a fee determined by the court which is charged to the alleged incapacitated person unless that would result in substantial hardship, in which case the county is responsible for the costs. If a guardian is not appointed, the court may charge the GAL fee to the petitioner, the alleged incapacitated person, or both.

To be eligible for the registry and appointment as a GAL, the person must have completed a model training program and must provide a written statement of background and qualifications. The written statement of qualifications must 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.

Child Dependency and Family Law Proceedings: The GAL represents the best interests of a child who is the subject of a dependency proceeding or a child affected in a family law proceeding. Some GALs are paid for their services while others are volunteers that work through a GAL program or are court-appointed special advocates (CASAs) that work through the CASA program. In dissolution proceedings, the court may appoint an investigator who serves a purpose similar to a GAL.

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. Each compensated GAL sets his or her own hourly fee.

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 GALs in guardianship cases, child dependency cases, and family law cases.

Guardianship Proceedings: All appointed GALs must comply with the training program adopted by the Department of Social and Health Services (DSHS) unless the GAL is appointed for the limited purpose of assessing a settlement.

To be eligible for a GAL registry, a GAL must include in the written statement of qualifications the counties where the GAL was removed from a registry pursuant to a grievance and the court and cause number of any case from which the GAL was removed for cause. The court must remove a GAL who misrepresents his or her qualifications from the registry pursuant to a grievance process.

The court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval except as provided in court rule. The fees of a GAL may be charged to the petitioner, the alleged incapacitated person, or any other person who appears in the proceeding.

GALs are prohibited from engaging in ex parte communications with any judicial officer regarding the matter for which the GAL is appointed, except as permitted for ex parte motions. Ex parte motions must be heard in open court on the record. The court may remove a GAL who violates this prohibition from a pending case or from the registry and if removed, the court may require the GAL to forfeit any fees claimed on the pending case.

Child Dependency and Family Law Proceedings: All GALs and investigators must comply with the training requirements prior to their appointment, except that volunteer GALs or CASAs may comply with alternative training approved by the Administrator for the Courts. Investigators must be included in the rotational registry system and selected from the registry.

The background information file maintained by each GAL program must include the counties where the GAL was removed from a registry pursuant to a grievance process and the court and cause number of any case from which the GAL was removed for cause. Upon appointment, the GAL must provide this information to the parties. The court must remove a GAL who misrepresents his or her qualifications from the registry pursuant to a grievance process.

In dependency proceedings, the GAL's or CASA's report must be filed with the court and parties prior to the hearing, and parties may file written responses prior to the hearing. The report must include a list of persons interviewed and reports or documentation considered. The report must include specific information on which the GAL or CASA relied in making a particular recommendation. The court must consider the responses to a GAL or CASA report.

In family law proceedings, the parties may file written responses to the GAL's or investigator's report, and the court must consider these responses.

In family law proceedings, the GAL must report any preferences expressed by a child regarding the parenting plan.

The court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval, except as provided in court rule. Each superior court is required to adopt court rules establishing procedures for filing, investigating, and adjudicating grievances made by or against a GAL.

GALs, CASAs, and parenting investigators are prohibited from engaging in ex parte communications under the same restrictions and conditions specified for GALs in guardianship proceedings.

In family law proceedings, the information, records, and reports obtained or created by a GAL, CASA, or parenting investigator are discoverable pursuant to statute and court rule, but are confidential with respect to third parties unless disclosure is authorized by court order.

A sub-registry of GALs who are under contract with the DSHS may be created, and GALs on this sub-registry may be appointed only in state-initiated paternity cases.

Amended Bill Compared to Engrossed Substitute Bill: The engrossed substitute bill allowed GALs and CASAs to advocate for the child only in nonjudicial proceedings--the amended bill restores current law with respect to a GAL's role. The engrossed substitute bill did not contain provisions requiring GAL reports to be submitted prior to the hearing and allowing the parties to submit written responses.

The engrossed substitute bill also did not require superior courts to adopt rules establishing grievance procedures.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill results from several years of effort to improve the GAL system and from recommendations of a stakeholder study of the system. Concerns that were brought up last year have been addressed. The bill has a lot of good provisions, including increased accountability, but there are concerns with the removal of the ability of GALs to advocate on behalf of children. The amendment is better because it restores the advocacy role of GALs which is needed because if the child has no advocate, he or she has no voice.

Testimony Against: The bill will give GALs powers they should not have, including the ability to make recommendations to the court. GALs should not make recommendations and should not be involved in judicial proceedings. The GAL system is broken. Judges just rubberstamp GAL recommendations, even when the GAL has no supporting facts.

Testified: (In support) Senator Franklin, prime sponsor; Gail Stone, Washington State Bar Association, Family Law and Elder Law Sections; Edith Owen; and Lori and Sean Cameron.

(In support with concerns) Meg Sollenberger, Department of Social and Health Services, Division of Child Support.

(In support with amendments) Karen Pillar, Washington State Association of Court-appointed Special Advocates; Majken Ryherd, Washington State Association of Court-appointed Special Advocates; Richard King, King County Dependency Court-appointed Special Advocates; and Daniel Erker, Washington Association of Juvenile Court Administrators.

(Opposed) Leota Peters, Alliance for the Rights of Children.