

SENATE BILL REPORT

SB 5447

As Reported By Senate Committee On:
Human Services & Corrections, February 25, 1999

Title: An act relating to guardians ad litem.

Brief Description: Changing provisions relating to guardians ad litem.

Sponsors: Senators Franklin, Long, Hargrove, Stevens, Winsley, Costa and Rasmussen.

Brief History:

Committee Activity: Human Services & Corrections: 2/11/99, 2/25/99 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5447 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Franklin, Kohl-Welles, Long, Patterson, Sheahan, Stevens and Zarelli.

Staff: Joan K. Mell (786-7447)

Background: In 1996, legislation passed making improvements to guardian ad litem (GAL) programs currently in place (ESSB 6257). GALs are appointed by the court to provide information to the court to aid the court in its decision making. GALs are appointed for minors or other incapacitated persons in probate cases, child custody cases, and child dependency cases. GALs serve for a short period of time, usually the course of the lawsuit. GALs can be distinguished from guardians appointed long-term in probate cases. A statewide curriculum was established for GALs and other language was included that was designed to improve GAL accountability. The bill established a steering committee to review Washington State courts' GAL systems. King County Superior Court Judge George Mattson agreed to chair the steering committee. The committee conducted a ten-month review and issued a final report dated August 1997 that included recommended statutory changes to the GAL provisions.

This bill in a similar form passed through the Senate in 1998 and died in the House (SSB 6217).

Summary of Substitute Bill: The Office of Administrator for the Courts (OAC) is required to develop comprehensive training and continuing education requirements for dependency and child custody guardians ad litem. OAC is required to maintain a list of all guardians ad litem and parenting investigators removed from a county registry and develop a model grievance procedure for probate, dependency, and child custody guardians ad litem.

All guardians ad litem are required to complete the training and continuing education requirements, unless appointed solely for the purposes of evaluating a personal injury

settlement or appointed in a probate matter as a person with special expertise for limited purposes.

Superior courts are authorized to remove any guardian ad litem from the registry if the guardian ad litem misrepresents his or her qualifications. All guardians ad litem are required to disclose their qualifications to the parties, including the cause number of any case the guardian ad litem has been removed from for failing to perform his or her duties as well as removal from any registry.

Guardians ad litem are prohibited from engaging in ex parte contact, but are permitted to utilize appropriate court rules to hear emergency matters.

The courts are authorized to set the guardian ad litem's hourly rate and maximum fee. The initial order can be modified with additional court review and approval.

The role of the guardian ad litem is clarified. Guardians ad litem investigate and report factual information to the court. The court, not the guardian ad litem, renders opinions on the factual information presented. Advocacy is the role of counsel. An attorney guardian ad litem can be appointed to take on an advocacy role for an incapacitated person, under the exceptional circumstances provisions of the rotational registry system, if the case requires an attorney to make motions, call witnesses, or otherwise act as a litigant. Court Appointed Special Advocates (CASA) may make recommendations to the court in dependency cases, which the court may consider in conjunction with the recommendations of the other parties.

Parenting investigators are added to the training and continuing education requirements.

Child custody guardians ad litem's files are discoverable pursuant to rules on discovery.

Substitute Bill Compared to Original Bill: The Children's and Family Services Ombudsman (OFCO) may obtain the guardian ad litem's records. The CASAs are allowed to make recommendations to the court in dependency cases. Immunity provisions are excluded.

Appropriation: None.

Fiscal Note: Requested on January 22, 1999.

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

Testimony For: Incapacitated people require competent assistance from guardian ad litem. Many GALs have victimized families, children, and the elderly. Immunity is not appropriate for GALs.

Testimony Against: None.

Testified: Donald Barovid, C. June Campbell, ALSO; Jody Rosentswieg, Washington State CASA.