
ENGROSSED SUBSTITUTE SENATE BILL 5447

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin, Long, Hargrove, Stevens, Winsley, Costa and Rasmussen)

Read first time 03/01/1999.

1 AN ACT Relating to guardians ad litem; amending RCW 2.56.030,
2 11.88.090, 13.34.100, 13.34.102, 13.34.105, 26.12.175, and 26.12.177;
3 adding new sections to chapter 11.88 RCW; adding new sections to
4 chapter 13.34 RCW; adding new sections to chapter 26.12 RCW; providing
5 effective dates; and declaring an emergency.

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

7 **Sec. 1.** RCW 2.56.030 and 1997 c 41 s 2 are each amended to read as
8 follows:

9 The administrator for the courts shall, under the supervision and
10 direction of the chief justice:

11 (1) Examine the administrative methods and systems employed in the
12 offices of the judges, clerks, stenographers, and employees of the
13 courts and make recommendations, through the chief justice, for the
14 improvement of the same;

15 (2) Examine the state of the dockets of the courts and determine
16 the need for assistance by any court;

17 (3) Make recommendations to the chief justice relating to the
18 assignment of judges where courts are in need of assistance and carry

1 out the direction of the chief justice as to the assignments of judges
2 to counties and districts where the courts are in need of assistance;

3 (4) Collect and compile statistical and other data and make reports
4 of the business transacted by the courts and transmit the same to the
5 chief justice to the end that proper action may be taken in respect
6 thereto;

7 (5) Prepare and submit budget estimates of state appropriations
8 necessary for the maintenance and operation of the judicial system and
9 make recommendations in respect thereto;

10 (6) Collect statistical and other data and make reports relating to
11 the expenditure of public moneys, state and local, for the maintenance
12 and operation of the judicial system and the offices connected
13 therewith;

14 (7) Obtain reports from clerks of courts in accordance with law or
15 rules adopted by the supreme court of this state on cases and other
16 judicial business in which action has been delayed beyond periods of
17 time specified by law or rules of court and make report thereof to
18 supreme court of this state;

19 (8) Act as secretary of the judicial conference referred to in RCW
20 2.56.060;

21 (9) Submit annually, as of February 1st, to the chief justice, a
22 report of the activities of the administrator's office for the
23 preceding calendar year including activities related to courthouse
24 security;

25 (10) Administer programs and standards for the training and
26 education of judicial personnel;

27 (11) Examine the need for new superior court and district judge
28 positions under a weighted caseload analysis that takes into account
29 the time required to hear all the cases in a particular court and the
30 amount of time existing judges have available to hear cases in that
31 court. The results of the weighted caseload analysis shall be reviewed
32 by the board for judicial administration which shall make
33 recommendations to the legislature. It is the intent of the
34 legislature that weighted caseload analysis become the basis for
35 creating additional district court positions, and recommendations
36 should address that objective;

37 (12) Provide staff to the judicial retirement account plan under
38 chapter 2.14 RCW;

1 (13) Attend to such other matters as may be assigned by the supreme
2 court of this state;

3 (14) Within available funds, develop a curriculum for a general
4 understanding of child development, placement, and treatment resources,
5 as well as specific legal skills and knowledge of relevant statutes
6 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,
7 interviewing skills, and special needs of the abused or neglected
8 child. This curriculum shall be completed and made available to all
9 juvenile court judges, court personnel, and service providers and be
10 updated yearly to reflect changes in statutes, court rules, or case
11 law;

12 (15) Develop, in consultation with the entities set forth in RCW
13 2.56.150(3), a comprehensive state-wide curriculum, training
14 requirements, and continuing education requirements for persons who act
15 as guardians ad litem under Title 13 or 26 RCW except these
16 requirements do not apply to the attorney general or any prosecuting
17 attorney functioning as the guardian ad litem pursuant to RCW
18 74.20.310. The curriculum, training requirements, and continuing
19 education requirements shall ((be made available July 1, 1997, and))
20 include specialty sections on child development, child sexual abuse,
21 child physical abuse, child neglect, clinical and forensic
22 investigative and interviewing techniques, family reconciliation and
23 mediation services, and relevant statutory and legal requirements. The
24 curriculum, training requirements, and continuing education
25 requirements shall be made available to all superior court judges,
26 court personnel, and all persons who act as guardians ad litem and be
27 updated yearly to reflect changes in statutes, court rules, or case
28 law;

29 (16) Develop a curriculum for a general understanding of crimes of
30 malicious harassment, as well as specific legal skills and knowledge of
31 RCW 9A.36.080, relevant cases, court rules, and the special needs of
32 malicious harassment victims. This curriculum shall be made available
33 to all superior court and court of appeals judges and to all justices
34 of the supreme court;

35 (17) Develop, in consultation with the criminal justice training
36 commission and the commissions established under chapters 43.113,
37 43.115, and 43.117 RCW, a curriculum for a general understanding of
38 ethnic and cultural diversity and its implications for working with
39 youth of color and their families. The curriculum shall be available

1 to all superior court judges and court commissioners assigned to
2 juvenile court, and other court personnel. Ethnic and cultural
3 diversity training shall be provided annually so as to incorporate
4 cultural sensitivity and awareness into the daily operation of juvenile
5 courts state-wide;

6 (18) Authorize the use of closed circuit television and other
7 electronic equipment in judicial proceedings. The administrator shall
8 promulgate necessary standards and procedures and shall provide
9 technical assistance to courts as required;

10 (19) Maintain a list of all guardians ad litem or investigators
11 under RCW 26.09.220 appointed pursuant to Titles 11, 13, and 26 RCW,
12 who have been removed from the guardian ad litem registry in any
13 superior court within the state pursuant to a grievance action that
14 orders removal from the registry. Superior courts shall report to the
15 administrator for the courts any order removing a guardian ad litem,
16 investigator under RCW 26.09.220 from the registry; and

17 (20) Develop a model grievance procedure for use by the superior
18 courts when dealing with complaints against: A guardian ad litem under
19 chapter 11.88, 13.34, or 26.12 RCW; a court-appointed special advocate
20 appointed under chapter 13.34 or 26.12 RCW; or an investigator
21 appointed under RCW 26.09.220.

22 **Sec. 2.** RCW 11.88.090 and 1996 c 249 s 10 are each amended to read
23 as follows:

24 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
25 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
26 11.92.180 shall affect or impair the power of any court to appoint a
27 guardian ad litem to defend the interests of any incapacitated person
28 interested in any suit or matter pending therein, or to commence and
29 prosecute any suit in his or her behalf.

30 (2) Upon receipt of a petition for appointment of guardian or
31 limited guardian, except as provided herein, the court shall appoint a
32 guardian ad litem to represent the best interests of the alleged
33 incapacitated person, who shall be a person found or known by the court
34 to:

35 (a) Be free of influence from anyone interested in the result of
36 the proceeding; and

37 (b) Have the requisite knowledge, training, or expertise to perform
38 the duties required by this section.

1 The guardian ad litem shall within five days of receipt of notice
2 of appointment file with the court and serve, either personally or by
3 certified mail with return receipt, each party with a statement
4 including: His or her training relating to the duties as a guardian ad
5 litem; his or her criminal history as defined in RCW 9.94A.030 for the
6 period covering ten years prior to the appointment; his or her hourly
7 rate, if compensated; whether the guardian ad litem has had any contact
8 with a party to the proceeding prior to his or her appointment; and
9 whether he or she has an apparent conflict of interest. Within three
10 days of the later of the actual service or filing of the guardian ad
11 litem's statement, any party may set a hearing and file and serve a
12 motion for an order to show cause why the guardian ad litem should not
13 be removed for one of the following three reasons: (i) Lack of
14 expertise necessary for the proceeding; (ii) an hourly rate higher than
15 what is reasonable for the particular proceeding; or (iii) a conflict
16 of interest. Notice of the hearing shall be provided to the guardian
17 ad litem and all parties. If, after a hearing, the court enters an
18 order replacing the guardian ad litem, findings shall be included,
19 expressly stating the reasons for the removal. If the guardian ad
20 litem is not removed, the court has the authority to assess to the
21 moving party, attorneys' fees and costs related to the motion. The
22 court shall assess attorneys' fees and costs for frivolous motions.

23 No guardian ad litem need be appointed when a parent is petitioning
24 for a guardian or a limited guardian to be appointed for his or her
25 minor child and the minority of the child, as defined by RCW 11.92.010,
26 is the sole basis of the petition. The order appointing the guardian
27 ad litem shall recite the duties set forth in subsection (4) of this
28 section. The appointment of a guardian ad litem shall have no effect
29 on the legal competency of the alleged incapacitated person and shall
30 not overcome the presumption of competency or full legal and civil
31 rights of the alleged incapacitated person.

32 (3)(a) The superior court of each county shall develop and maintain
33 a registry of persons who are willing and qualified to serve as
34 guardians ad litem in guardianship matters. The court shall choose as
35 guardian ad litem a person whose name appears on the registry in a
36 system of consistent rotation, except in extraordinary circumstances
37 such as the need for particular expertise. A person appointed under
38 exceptional circumstances because of a particular expertise may be
39 exempt from the training and continuing education requirements by the

1 court if the court limits the scope of the person's appointment and
2 finds the training and continuing education requirements are unrelated
3 to the tasks the court has assigned to the person. The court shall
4 develop procedures for periodic review of the persons on the registry
5 and for probation, suspension, or removal of persons on the registry
6 for failure to perform properly their duties as guardian ad litem. In
7 the event the court does not select the person next on the list, it
8 shall include in the order of appointment a written reason for its
9 decision.

10 (b) To be eligible for the registry a person shall:

11 (i) Present a written statement outlining his or her background and
12 qualifications. The background statement shall include, but is not
13 limited to, the following information:

14 (A) Level of formal education;

15 (B) Training related to the guardian ad litem's duties;

16 (C) Number of years' experience as a guardian ad litem;

17 (D) Number of appointments as a guardian ad litem and the county or
18 counties of appointment;

19 (E) Criminal history, as defined in RCW 9.94A.030; and

20 (F) Evidence of the person's knowledge, training, and experience in
21 each of the following: Needs of impaired elderly people, physical
22 disabilities, mental illness, developmental disabilities, and other
23 areas relevant to the needs of incapacitated persons, legal procedure,
24 and the requirements of chapters 11.88 and 11.92 RCW.

25 The written statement of qualifications shall include ~~((a statement~~
26 ~~of the number of times the guardian ad litem has been removed for~~
27 ~~failure to perform his or her duties as guardian ad litem))~~ the names
28 of any counties in which the person was removed from a guardian ad
29 litem registry pursuant to a grievance action that orders removal from
30 the registry, and the cause number of any case in which the court
31 orders removal of the person because the person fails to perform his or
32 her duties as guardian ad litem; and

33 (ii) Complete the ~~((model))~~ training ~~((program))~~ and continuing
34 educational requirements as described in ~~((d))~~ (e) of this
35 subsection. The training and continuing education requirements are not
36 applicable to guardians ad litem appointed pursuant to court rule
37 solely for the limited purpose of assessing a personal injury
38 settlement.

1 (c) Superior court shall remove any person from the guardian ad
2 litem registry who misrepresents his or her qualifications.

3 (d) The background and qualification information shall be updated
4 annually.

5 ~~((d))~~ (e) The department of social and health services shall
6 convene an advisory group to develop a model guardian ad litem training
7 program and establish training and continuing educational requirements.
8 The department, in consultation with the advisory group, shall update
9 the model training program biennially. The advisory group shall
10 consist of representatives from consumer, advocacy, and professional
11 groups knowledgeable in developmental disabilities, neurological
12 impairment, physical disabilities, mental illness, aging, legal, court
13 administration, the Washington state bar association, and other
14 interested parties.

15 ~~((e))~~ (f) The superior court shall require ~~((utilization of the~~
16 ~~model program developed by the advisory group as))~~ that any guardian ad
17 litem appointed pursuant to this chapter comply with the training and
18 continuing education requirements described in ~~((d))~~ (e) of this
19 subsection~~((, to assure that candidates applying for registration as a~~
20 ~~qualified guardian ad litem shall have satisfactorily completed~~
21 ~~training to attain these essential minimum qualifications to act as~~
22 ~~guardian ad litem))~~, unless the guardian ad litem is appointed solely
23 for the limited purposes of assessing a personal injury settlement.

24 (4) The guardian ad litem appointed pursuant to this section shall
25 have the following duties:

26 (a) To meet and consult with the alleged incapacitated person as
27 soon as practicable following appointment and explain, in language
28 which such person can reasonably be expected to understand, the
29 substance of the petition, the nature of the resultant proceedings, the
30 person's right to contest the petition, the identification of the
31 proposed guardian or limited guardian, the right to a jury trial on the
32 issue of his or her alleged incapacity, the right to independent legal
33 counsel as provided by RCW 11.88.045, and the right to be present in
34 court at the hearing on the petition;

35 (b) To obtain a written report according to RCW 11.88.045; and such
36 other written or oral reports from other qualified professionals as are
37 necessary to permit the guardian ad litem to complete the report
38 required by this section;

1 (c) To meet with the person whose appointment is sought as guardian
2 or limited guardian and ascertain:

3 (i) The proposed guardian's knowledge of the duties, requirements,
4 and limitations of a guardian; and

5 (ii) The steps the proposed guardian intends to take or has taken
6 to identify and meet the needs of the alleged incapacitated person;

7 (d) To consult as necessary to complete the investigation and
8 report required by this section with those known relatives, friends, or
9 other persons the guardian ad litem determines have had a significant,
10 continuing interest in the welfare of the alleged incapacitated person;

11 (e) To investigate alternate arrangements made, or which might be
12 created, by or on behalf of the alleged incapacitated person, such as
13 revocable or irrevocable trusts, or durable powers of attorney, or
14 blocked accounts in cases of personal injury settlements; whether good
15 cause exists for any such arrangements to be discontinued; and why such
16 arrangements should not be continued or created in lieu of a
17 guardianship;

18 (f) To provide the court with a written report which shall include
19 the following:

20 (i) A description of the nature, cause, and degree of incapacity,
21 and the basis upon which this judgment was made;

22 (ii) A description of the needs of the incapacitated person for
23 care and treatment, the probable residential requirements of the
24 alleged incapacitated person and the basis upon which these findings
25 were made;

26 (iii) An evaluation of the appropriateness of the guardian or
27 limited guardian whose appointment is sought and a description of the
28 steps the proposed guardian has taken or intends to take to identify
29 and meet current and emerging needs of the incapacitated person;

30 (iv) A description of any alternative arrangements previously made
31 by the alleged incapacitated person or which could be made, and whether
32 and to what extent such alternatives should be used in lieu of a
33 guardianship, and if the guardian ad litem is recommending
34 discontinuation of any such arrangements, specific findings as to why
35 such arrangements are contrary to the best interest of the alleged
36 incapacitated person;

37 (v) A description of the abilities of the alleged incapacitated
38 person and a recommendation as to whether a guardian or limited
39 guardian should be appointed. If appointment of a limited guardian is

1 recommended, the guardian ad litem shall recommend the specific areas
2 of authority the limited guardian should have and the limitations and
3 disabilities to be placed on the incapacitated person;

4 (vi) An evaluation of the person's mental ability to rationally
5 exercise the right to vote and the basis upon which the evaluation is
6 made;

7 (vii) Any expression of approval or disapproval made by the alleged
8 incapacitated person concerning the proposed guardian or limited
9 guardian or guardianship or limited guardianship;

10 (viii) Identification of persons with significant interest in the
11 welfare of the alleged incapacitated person who should be advised of
12 their right to request special notice of proceedings pursuant to RCW
13 11.92.150; ((and))

14 (ix) Unless independent counsel has appeared for the alleged
15 incapacitated person, an explanation of how the alleged incapacitated
16 person responded to the advice of the right to jury trial, to
17 independent counsel and to be present at the hearing on the petition;
18 and

19 (x) In cases of personal injury settlements, information relevant
20 to the court's analysis of the offered settlement. The information
21 relevant to the court's analysis may be specified by local court rule,
22 and need not include information specified in subsection (4)(f)(i)
23 through (ix) of this section.

24 Within forty-five days after notice of commencement of the
25 guardianship proceeding has been served upon the guardian ad litem, and
26 at least fifteen days before the hearing on the petition, unless an
27 extension or reduction of time has been granted by the court for good
28 cause, the guardian ad litem shall file its report and send a copy to
29 the alleged incapacitated person and his or her counsel, spouse, all
30 children not residing with a notified person, those persons described
31 in (f)(viii) of this subsection, and persons who have filed a request
32 for special notice pursuant to RCW 11.92.150. If the guardian ad litem
33 needs additional time to finalize his or her report, then the guardian
34 ad litem shall petition the court for a postponement of the hearing or,
35 with the consent of all other parties, an extension or reduction of
36 time for filing the report. If the hearing does not occur within sixty
37 days of filing the petition, then upon the two-month anniversary of
38 filing the petition and on or before the same day of each following
39 month until the hearing, the guardian ad litem shall file interim

1 reports summarizing his or her activities on the proceeding during that
2 time period as well as fees and costs incurred;

3 (g) To advise the court of the need for appointment of counsel for
4 the alleged incapacitated person within five court days after the
5 meeting described in (a) of this subsection unless (i) counsel has
6 appeared, (ii) the alleged incapacitated person affirmatively
7 communicated a wish not to be represented by counsel after being
8 advised of the right to representation and of the conditions under
9 which court-provided counsel may be available, or (iii) the alleged
10 incapacitated person was unable to communicate at all on the subject,
11 and the guardian ad litem is satisfied that the alleged incapacitated
12 person does not affirmatively desire to be represented by counsel.

13 (5) If the petition is brought by an interested person or entity
14 requesting the appointment of some other qualified person or entity and
15 a prospective guardian or limited guardian cannot be found, the court
16 shall order the guardian ad litem to investigate the availability of a
17 possible guardian or limited guardian and to include the findings in a
18 report to the court pursuant to subsection (4)(f) of this section.

19 (6) The parties to the proceeding may file responses to the
20 guardian ad litem report with the court and deliver such responses to
21 the other parties and the guardian ad litem at any time up to the
22 second day prior to the hearing. If a guardian ad litem fails to file
23 his or her report in a timely manner, the hearing shall be continued to
24 give the court and the parties at least fifteen days before the hearing
25 to review the report. At any time during the proceeding upon motion of
26 any party or on the court's own motion, the court may remove the
27 guardian ad litem for failure to perform his or her duties as specified
28 in this chapter, provided that the guardian ad litem shall have five
29 days' notice of any motion to remove before the court enters such
30 order. In addition, the court in its discretion may reduce a guardian
31 ad litem's fee for failure to carry out his or her duties.

32 (7) The court appointed guardian ad litem shall have the authority,
33 in the event that the alleged incapacitated person is in need of
34 emergency life-saving medical services, and is unable to consent to
35 such medical services due to incapacity pending the hearing on the
36 petition to give consent for such emergency life-saving medical
37 services on behalf of the alleged incapacitated person.

38 (8) The court-appointed guardian ad litem shall have the authority
39 to move for temporary relief under chapter 7.40 RCW to protect the

1 alleged incapacitated person from abuse, neglect, abandonment, or
2 exploitation, as those terms are defined in RCW 74.34.020, or to
3 address any other emergency needs of the alleged incapacitated person.
4 Any alternative arrangement executed before filing the petition for
5 guardianship shall remain effective unless the court grants the relief
6 requested under chapter 7.40 RCW, or unless, following notice and a
7 hearing at which all parties directly affected by the arrangement are
8 present, the court finds that the alternative arrangement should not
9 remain effective.

10 (9) The guardian ad litem shall receive a fee determined by the
11 court. The fee shall be charged to the alleged incapacitated person
12 unless the court finds that such payment would result in substantial
13 hardship upon such person, in which case the county shall be
14 responsible for such costs: PROVIDED, That if no guardian or limited
15 guardian is appointed the court may charge such fee to the petitioner
16 or the alleged incapacitated person, or divide the fee, as it deems
17 just; and if the petition is found to be frivolous or not brought in
18 good faith, the guardian ad litem fee shall be charged to the
19 petitioner. The court shall not be required to provide for the payment
20 of a fee to any salaried employee of a public agency. In cases of
21 personal injury settlements, guardian ad litem fees shall be negotiated
22 among the parties, and approved by the court.

23 (10) Upon the presentation of the guardian ad litem report and the
24 entry of an order either dismissing the petition for appointment of
25 guardian or limited guardian or appointing a guardian or limited
26 guardian, the guardian ad litem shall be dismissed and shall have no
27 further duties or obligations unless otherwise ordered by the court.
28 If the court orders the guardian ad litem to perform further duties or
29 obligations, they shall not be performed at county expense.

30 (11) The guardian ad litem shall appear in person at all hearings
31 on the petition unless all parties provide a written waiver of the
32 requirement to appear.

33 (12) At any hearing the court may consider whether any person who
34 makes decisions regarding the alleged incapacitated person or estate
35 has breached a statutory or fiduciary duty.

36 NEW SECTION. Sec. 3. A new section is added to chapter 11.88 RCW
37 to read as follows:

1 The court shall, in each order of appointment, specify the hourly
2 rate the guardian ad litem may charge for his or her services, and
3 shall specify the maximum amount the guardian ad litem may charge
4 without additional court review and approval.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 11.88 RCW
6 to read as follows:

7 All guardians ad litem are prohibited from engaging in ex parte
8 communications with any judicial officer regarding the matter for which
9 he or she is appointed, except as approved pursuant to a hearing
10 conducted with appropriate notice to all parties. All guardians ad
11 litem may petition the court to shorten time to hear any emergency
12 motions pursuant to court rules. Unauthorized communication shall be
13 immediately reported to all parties and their attorneys. The court,
14 upon its own motion, or upon the motion of a party, may consider the
15 removal of any guardian ad litem who violates this section from any
16 pending case or the guardian ad litem rotational registry, and if so
17 removed may require forfeiture of any fees for professional services on
18 any pending cases.

19 **Sec. 5.** RCW 13.34.100 and 1996 c 249 s 13 are each amended to read
20 as follows:

21 (1) The court shall appoint a guardian ad litem for a child who is
22 the subject of an action under this chapter, unless a court for good
23 cause finds the appointment unnecessary. The requirement of a guardian
24 ad litem may be deemed satisfied if the child is represented by
25 independent counsel in the proceedings.

26 (2) If the court does not have available to it a guardian ad litem
27 program with a sufficient number of volunteers, the court may appoint
28 a suitable person to act as guardian ad litem for the child under this
29 chapter. Another party to the proceeding or the party's employee or
30 representative shall not be so appointed.

31 (3) Each guardian ad litem program shall maintain a background
32 information record for each guardian ad litem in the program. The
33 background file shall include, but is not limited to, the following
34 information:

- 35 (a) Level of formal education;
36 (b) Training related to the guardian's duties;
37 (c) Number of years' experience as a guardian ad litem;

1 (d) Number of appointments as a guardian ad litem and the county or
2 counties of appointment; (~~and~~)

3 (e) The name of any counties in which the person was removed from
4 a guardian ad litem registry pursuant to a grievance action that orders
5 removal from the registry, and the cause number of any case in which
6 the court orders removal of the person because the person fails to
7 perform his or her duties as guardian ad litem; and

8 (f) Criminal history, as defined in RCW 9.94A.030.

9 The background information report shall be updated annually. As a
10 condition of appointment, the guardian ad litem's background
11 information record shall be made available to the court. If the
12 appointed guardian ad litem is not a member of a guardian ad litem
13 program the person shall provide the background information to the
14 court.

15 Upon appointment, the guardian ad litem, or guardian ad litem
16 program, shall provide the parties or their attorneys with a statement
17 containing: His or her training relating to the duties as a guardian
18 ad litem; the name of any counties in which the person was removed from
19 a guardian ad litem registry pursuant to a grievance action that orders
20 removal from the registry, and the cause number of any case in which
21 the court orders removal of the person because the person fails to
22 perform his or her duties as guardian ad litem; and his or her criminal
23 history as defined in RCW 9.94A.030 for the period covering ten years
24 prior to the appointment. The background statement shall not include
25 identifying information that may be used to harm a guardian ad litem,
26 such as home addresses and home telephone numbers, and for volunteer
27 guardians ad litem the court may allow the use of maiden names or
28 pseudonyms as necessary for their safety.

29 (4) The appointment of the guardian ad litem shall remain in effect
30 until the court discharges the appointment or no longer has
31 jurisdiction, whichever comes first. The guardian ad litem may also be
32 discharged upon entry of an order of guardianship.

33 (5) A guardian ad litem through counsel, or as otherwise authorized
34 by the court, shall have the right to present evidence, examine and
35 cross-examine witnesses, and to be present at all hearings. A guardian
36 ad litem shall receive copies of all pleadings and other documents
37 filed or submitted to the court, and notice of all hearings according
38 to court rules. The guardian ad litem shall receive all notice

1 contemplated for a parent or other party in all proceedings under this
2 chapter.

3 (6) If the child requests legal counsel and is age twelve or older,
4 or if the guardian ad litem or the court determines that the child
5 needs to be independently represented by counsel, the court may appoint
6 an attorney to represent the child's position.

7 (7) For the purposes of child abuse prevention and treatment act
8 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
9 or any related state or federal legislation, a person appointed
10 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
11 represent the best interests of the minor in proceedings before the
12 court.

13 (8) When a court-appointed special advocate or volunteer guardian
14 ad litem is requested on a case, the program shall give the court the
15 name of the person it recommends and the appointment shall be effective
16 immediately. The court shall appoint the person recommended by the
17 program. If a party in a case reasonably believes the court-appointed
18 special advocate or volunteer is inappropriate or unqualified, the
19 party may request a review of the appointment by the program. The
20 program must complete the review within five judicial days and remove
21 any appointee for good cause. If the party seeking the review is not
22 satisfied with the outcome of the review, the party may file a motion
23 with the court for the removal of the court-appointed special advocate
24 on the grounds the advocate or volunteer is inappropriate or
25 unqualified.

26 **Sec. 6.** RCW 13.34.102 and 1997 c 41 s 6 are each amended to read
27 as follows:

28 (1)(a) All guardians ad litem(~~(, who have not previously served or~~
29 ~~been trained as a guardian ad litem in this state, who are appointed~~
30 ~~after January 1, 1998,)) must ((complete the curriculum developed by~~
31 ~~the office of the administrator for the courts)) comply with the
32 training requirements established under RCW 2.56.030(15), prior to
33 their appointment in cases under Title 13 RCW, except that volunteer
34 guardians ad litem or court-appointed special advocates ((accepted into
35 a volunteer program after January 1, 1998,)) may ((complete an
36 alternative curriculum)) comply with alternative training requirements
37 approved by the office of the administrator for the courts that
38 meet((s)) or exceed((s)) the state-wide ((curriculum)) requirements.~~

1 (b) All persons appointed as guardians ad litem or court-appointed
2 special advocates must comply with the continuing education
3 requirements established under RCW 2.56.030(15).

4 (2)(a) Each guardian ad litem program for compensated guardians ad
5 litem shall establish a rotational registry system for the appointment
6 of guardians ad litem. If a judicial district does not have a program
7 the court shall establish the rotational registry system. Guardians ad
8 litem shall be selected from the registry except in exceptional
9 circumstances as determined and documented by the court. The parties
10 may make a joint recommendation for the appointment of a guardian ad
11 litem from the registry.

12 (b) In judicial districts with a population over one hundred
13 thousand, a list of three names shall be selected from the registry and
14 given to the parties along with the background information as specified
15 in RCW 13.34.100(3), including their hourly rate for services. Each
16 party may, within three judicial days, strike one name from the list.
17 If more than one name remains on the list, the court shall make the
18 appointment from the names on the list. In the event all three names
19 are stricken the person whose name appears next on the registry shall
20 be appointed.

21 (c) If a party reasonably believes that the appointed guardian ad
22 litem lacks the necessary expertise for the proceeding, charges an
23 hourly rate higher than what is reasonable for the particular
24 proceeding, or has a conflict of interest, the party may, within three
25 judicial days from the appointment, move for substitution of the
26 appointed guardian ad litem by filing a motion with the court.

27 (d) Upon the motion of any party the court shall, if located in a
28 judicial district with a population over one hundred thousand, remove
29 a compensated guardian ad litem who was not selected from a rotational
30 registry system. This subsection (2)(d) does not apply when the
31 guardian ad litem was appointed: (i) Under exceptional circumstances
32 authorized under (a) of this subsection; or (ii) as a result of a joint
33 recommendation of the parties.

34 (3) The rotational registry system shall not apply to court-
35 appointed special advocate programs.

36 **Sec. 7.** RCW 13.34.105 and 1993 c 241 s 3 are each amended to read
37 as follows:

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

3 (a) To ~~((represent))~~ investigate and ~~((be an advocate for))~~ report
4 to the court factual information regarding the best interests of the
5 child;

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

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

10 (d) To report to the court information on: (i) The legal status of
11 a child's membership in any Indian tribe or band; and (ii) the facts
12 relating to the child's best interests; and

13 (e) Court-appointed special advocates may make recommendations
14 based upon an independent investigation in the best interests of the
15 child, which the court may consider and weigh in conjunction with the
16 recommendations of all of the parties.

17 (2) ~~((The))~~ A guardian ad litem shall be deemed an officer of the
18 court for the purpose of immunity from civil liability.

19 (3) Except for information or records specified in RCW
20 13.50.100(4), the guardian ad litem shall have access to all
21 information available to the state or agency on the case. Upon
22 presentation of the order of appointment by the guardian ad litem, any
23 agency, hospital, school organization, division or department of the
24 state, doctor, nurse, or other health care provider, psychologist,
25 psychiatrist, police department, or mental health clinic shall permit
26 the guardian ad litem to inspect and copy any records relating to the
27 child or children involved in the case, without the consent of the
28 parent or guardian of the child, or of the child if the child is under
29 the age of thirteen years, unless such access is otherwise specifically
30 prohibited by law.

31 (4) A guardian ad litem may release confidential information,
32 records, and reports to the office of the family and children's
33 ombudsman for the purposes of carrying out its duties under chapter
34 43.06A RCW.

35 (5) The guardian ad litem shall release case information in
36 accordance with the provisions of RCW 13.50.100.

37 NEW SECTION. Sec. 8. A new section is added to chapter 13.34 RCW
38 to read as follows:

1 The court shall, in each order of appointment, specify the hourly
2 rate the guardian ad litem may charge for his or her services, and
3 shall specify the maximum amount the guardian ad litem may charge
4 without additional court review and approval.

5 NEW SECTION. **Sec. 9.** A new section is added to chapter 13.34 RCW
6 to read as follows:

7 All guardians ad litem and court-appointed special advocates are
8 prohibited from engaging in ex parte communications with any judicial
9 officer regarding the matter for which he or she is appointed, except
10 as approved pursuant to a hearing conducted with appropriate notice to
11 all parties. All guardians ad litem may petition the court to shorten
12 time to hear any emergency motions pursuant to court rules.
13 Unauthorized communication shall be immediately reported to all parties
14 and their attorneys. The court, upon its own motion, or upon the
15 motion of a party, may consider the removal of any guardian ad litem or
16 court-appointed special advocate who violates this section from any
17 pending case or from any court-authorized registry, and if so removed
18 may require forfeiture of any fees for professional services on any
19 pending cases.

20 **Sec. 10.** RCW 26.12.175 and 1996 c 249 s 15 are each amended to
21 read as follows:

22 (1)(a) The court may appoint a guardian ad litem to represent the
23 interests of a minor or dependent child when the court believes the
24 appointment of a guardian ad litem is necessary to protect the best
25 interests of the child in any proceeding under this chapter. The
26 family court services professionals may also make a recommendation to
27 the court regarding whether a guardian ad litem should be appointed for
28 the child. The court may appoint a guardian ad litem from the court-
29 appointed special advocate program, if that program exists in the
30 county.

31 (b) Unless otherwise ordered, the guardian ad litem's role is to
32 investigate and report to the court concerning parenting arrangements
33 for the child(~~(, and to represent the child's best interests)~~). This
34 should include factual information regarding the best interests of the
35 child. Additionally, if a minor expresses his or her custody wishes,
36 the guardian ad litem must report the wishes to the court. The child's
37 wishes do not determine placement. The court may require the guardian

1 ad litem to provide periodic reports to the parties regarding the
2 status of his or her investigation. The guardian ad litem shall file
3 his or her report at least sixty days prior to trial.

4 (c) The court shall enter an order for costs, fees, and
5 disbursements to cover the costs of the guardian ad litem. The court
6 may order either or both parents to pay for the costs of the guardian
7 ad litem, according to their ability to pay. If both parents are
8 indigent, the county shall bear the cost of the guardian, subject to
9 appropriation for guardians' ad litem services by the county
10 legislative authority. Guardians ad litem who are not volunteers shall
11 provide the parties with an itemized accounting of their time and
12 billing for services each month.

13 (2)(a) If the guardian ad litem appointed is from the county court-
14 appointed special advocate program, the program shall supervise any
15 guardian ad litem assigned to the case. The court-appointed special
16 advocate program shall be entitled to notice of all proceedings in the
17 case.

18 (b) The legislative authority of each county may authorize creation
19 of a court-appointed special advocate program. The county legislative
20 authority may adopt rules of eligibility for court-appointed special
21 advocate program services.

22 (3) Each guardian ad litem program shall maintain a background
23 information record for each guardian ad litem in the program. The
24 background file shall include, but is not limited to, the following
25 information:

26 (a) Level of formal education;

27 (b) Training related to the guardian's duties;

28 (c) Number of years' experience as a guardian ad litem;

29 (d) Number of appointments as a guardian ad litem and county or
30 counties of appointment; ((and))

31 (e) The name of any counties in which the person was removed from
32 a guardian ad litem registry pursuant to a grievance action that orders
33 removal from the registry, and the cause number of any case in which
34 the court orders removal of the person because the person fails to
35 perform his or her duties as guardian ad litem; and

36 (f) Criminal history, as defined in RCW 9.94A.030.

37 The background information report shall be updated annually. As a
38 condition of appointment, the guardian ad litem's background
39 information record shall be made available to the court. If the

1 appointed guardian ad litem is not a member of a guardian ad litem
2 program the person shall provide the background information to the
3 court.

4 Upon appointment, the guardian ad litem, or guardian ad litem
5 program, shall provide the parties or their attorneys with a statement
6 containing: His or her training relating to the duties as a guardian
7 ad litem; the name of any counties in which the person was removed from
8 a guardian ad litem registry pursuant to a grievance action that orders
9 removal from the registry, and the cause number of any case in which
10 the court orders removal of the person because the person fails to
11 perform his or her duties as guardian ad litem; and his or her criminal
12 history as defined in RCW 9.94A.030 for the period covering ten years
13 prior to the appointment. The background statement shall not include
14 identifying information that may be used to harm a guardian ad litem,
15 such as home addresses and home telephone numbers, and for volunteer
16 guardians ad litem the court may allow the use of maiden names or
17 pseudonyms as necessary for their safety.

18 (4) When a court-appointed special advocate or volunteer guardian
19 ad litem is requested on a case, the program shall give the court the
20 name of the person it recommends and the appointment shall be effective
21 immediately. The court shall appoint the person recommended by the
22 program. If a party in a case reasonably believes the court-appointed
23 special advocate or volunteer is inappropriate or unqualified, the
24 party may request a review of the appointment by the program. The
25 program must complete the review within five judicial days and remove
26 any appointee for good cause. If the party seeking the review is not
27 satisfied with the outcome of the review, the party may file a motion
28 with the court for the removal of the court-appointed special advocate
29 on the grounds the advocate or volunteer is inappropriate or
30 unqualified.

31 **Sec. 11.** RCW 26.12.177 and 1997 c 41 s 7 are each amended to read
32 as follows:

33 (1)(a) ~~All guardians ad litem((, who have not previously served or~~
34 ~~been trained as a guardian ad litem in this state, who are appointed~~
35 ~~after January 1, 1998,)) and investigators appointed under RCW~~
36 ~~26.09.220 must ((complete the curriculum developed by the office of the~~
37 ~~administrator for the courts)) comply with the training requirements~~
38 ~~established under RCW 2.56.030(15), prior to their appointment in cases~~

1 under Title 26 RCW, except that volunteer guardians ad litem or court-
2 appointed special advocates (~~((accepted into a volunteer program after~~
3 ~~January 1, 1998,))~~) may (~~((complete an alternative curriculum))~~) comply
4 with alternative training requirements approved by the office of the
5 administrator for the courts that meet(~~((s))~~) or exceed(~~((s))~~) the state-
6 wide (~~((curriculum))~~) requirements.

7 (b) All persons appointed as guardians ad litem, investigators
8 under RCW 26.09.220, or court-appointed special advocates must comply
9 with the continuing education requirements established under RCW
10 2.56.030(15).

11 (2)(a) Each guardian ad litem program for compensated guardians ad
12 litem shall establish a rotational registry system for the appointment
13 of guardians ad litem and investigators under RCW 26.09.220. If a
14 judicial district does not have a program the court shall establish the
15 rotational registry system. Guardians ad litem and investigators under
16 RCW 26.09.220 shall be selected from the registry except in exceptional
17 circumstances as determined and documented by the court. The parties
18 may make a joint recommendation for the appointment of a guardian ad
19 litem from the registry.

20 (b) In judicial districts with a population over one hundred
21 thousand, a list of three names shall be selected from the registry and
22 given to the parties along with the background information as specified
23 in RCW 26.12.175(3), including their hourly rate for services. Each
24 party may, within three judicial days, strike one name from the list.
25 If more than one name remains on the list, the court shall make the
26 appointment from the names on the list. In the event all three names
27 are stricken the person whose name appears next on the registry shall
28 be appointed.

29 (c) If a party reasonably believes that the appointed guardian ad
30 litem lacks the necessary expertise for the proceeding, charges an
31 hourly rate higher than what is reasonable for the particular
32 proceeding, or has a conflict of interest, the party may, within three
33 judicial days from the appointment, move for substitution of the
34 appointed guardian ad litem by filing a motion with the court.

35 (d) Upon the motion of any party the court shall, if located in a
36 judicial district with a population over one hundred thousand, remove
37 a compensated guardian ad litem who was not selected from a rotational
38 registry system. This subsection (2)(d) does not apply when the
39 guardian ad litem was appointed: (i) Under exceptional circumstances

1 authorized under (a) of this subsection; or (ii) as a result of a joint
2 recommendation of the parties.

3 (e) Under this section, within either registry referred to in (a)
4 of this subsection, a subregistry may be created that consists of
5 guardians ad litem under contract with the department of social and
6 health services' division of child support. Guardians ad litem on such
7 a subregistry shall be selected and appointed in state-initiated
8 paternity cases only.

9 (3) The rotational registry system shall not apply to court-
10 appointed special advocate programs.

11 NEW SECTION. Sec. 12. A new section is added to chapter 26.12 RCW
12 to read as follows:

13 The court shall, in each order of appointment, specify the hourly
14 rate the guardian ad litem or investigator under RCW 26.09.220 may
15 charge for his or her services, and shall specify the maximum amount
16 the guardian ad litem or investigator under RCW 26.09.220 may charge
17 without additional court review and approval.

18 NEW SECTION. Sec. 13. A new section is added to chapter 26.12 RCW
19 to read as follows:

20 All guardians ad litem, court-appointed special advocates, and
21 investigators under RCW 26.09.220 are prohibited from engaging in ex
22 parte communications with any judicial officer regarding the matter for
23 which he or she is appointed, except as approved pursuant to a hearing
24 conducted with appropriate notice to all parties. All guardians ad
25 litem or investigators under RCW 26.09.220 may petition the court to
26 shorten time to hear any emergency motions pursuant to court rules.
27 Unauthorized communication shall be immediately reported to all parties
28 and their attorneys. The court, upon its own motion, or upon the
29 motion of a party, may consider the removal of any guardian ad litem,
30 court-appointed special advocate, or investigator who violates this
31 section from any pending case or from any court-authorized registry,
32 and if so removed may require forfeiture of any fees for professional
33 services on any pending cases.

34 NEW SECTION. Sec. 14. A new section is added to chapter 26.12 RCW
35 to read as follows:

1 All information, records, and reports obtained or created by a
2 guardian ad litem, court-appointed special advocate, or investigator
3 under RCW 26.09.220, shall be discoverable pursuant to court rule to
4 the parties and their attorneys. The guardian ad litem, court-
5 appointed special advocate, or investigator shall maintain the privacy
6 of the parties and the confidentiality of information obtained,
7 pursuant to the investigation, as to third parties. Any guardian ad
8 litem or investigator under RCW 26.09.220 can move the court to seal
9 the court file to protect information obtained by the guardian ad litem
10 from disclosure to third persons, particularly in cases where no
11 evidentiary rulings have been made on information introduced by
12 affidavit, declaration, or other means. Nothing in this section shall
13 be interpreted to authorize disclosure of guardian ad litem or
14 investigator records in personal injury actions.

15 NEW SECTION. **Sec. 15.** A new section is added to chapter 26.12 RCW
16 to read as follows:

17 Any guardian ad litem or investigator under RCW 26.09.220 appointed
18 under this chapter may release confidential information, records, and
19 reports to the office of the family and children's ombudsman for the
20 purposes of carrying out its duties under chapter 43.06A RCW.

21 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes effect
24 July 1, 1999, except for sections 6 and 11 of this act, which take
25 effect January 1, 2001.

--- END ---