
SUBSTITUTE HOUSE BILL 2722

State of Washington 61st Legislature 2010 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Pedersen, Moeller, and Kenney)

READ FIRST TIME 01/25/10.

1 AN ACT Relating to persons appointed by the court to provide
2 information in family law and adoption cases; amending RCW 26.33.070,
3 26.09.220, 26.12.175, and 26.12.177; and adding a new section to
4 chapter 26.12 RCW.

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

6 **Sec. 1.** RCW 26.33.070 and 1984 c 155 s 7 are each amended to read
7 as follows:

8 (1) The court shall appoint a guardian ad litem for any parent or
9 alleged father under eighteen years of age in any proceeding under this
10 chapter. The court may appoint a guardian ad litem for a child adoptee
11 or any incompetent party in any proceeding under this chapter. The
12 guardian ad litem for a parent or alleged father, in addition to
13 determining what is in the best interest of the party, shall make an
14 investigation and report to the court concerning whether any written
15 consent to adoption or petition for relinquishment signed by the parent
16 or alleged father was signed voluntarily and with an understanding of
17 the consequences of the action. If the child to be relinquished is a
18 dependent child under chapter 13.34 RCW and the minor parent is
19 represented by an attorney or guardian ad litem in the dependency

1 proceeding, the court may rely on the minor parent's dependency court
2 attorney or guardian ad litem to make a report to the court as provided
3 in this subsection.

4 (2) The court in the county in which a petition is filed shall
5 direct who shall pay the fees of a guardian ad litem or attorney
6 appointed under this chapter and shall approve the payment of the fees.
7 If the court orders the parties to pay the fees of the guardian ad
8 litem, the fees must be established pursuant to the procedures in RCW
9 26.12.183.

10 **Sec. 2.** RCW 26.09.220 and 1993 c 289 s 1 are each amended to read
11 as follows:

12 (1)(a) The court may order an investigation and report concerning
13 parenting arrangements for the child, or may appoint a guardian ad
14 litem pursuant to RCW 26.12.175, or both. The investigation and report
15 may be made by the guardian ad litem, court-appointed special advocate,
16 the staff of the juvenile court, or other professional social service
17 organization experienced in counseling children and families.

18 (b) An investigator is a person appointed as an investigator under
19 RCW 26.12.050(1)(b) or any other third-party professional ordered or
20 appointed by the court to provide an opinion, assessment, or evaluation
21 regarding the creation or modification of a parenting plan.

22 (2) In preparing the report concerning a child, the investigator or
23 person appointed under subsection (1) of this section may consult any
24 person who may have information about the child and the potential
25 parenting or custodian arrangements. Upon order of the court, the
26 investigator or person appointed under subsection (1) of this section
27 may refer the child to professional personnel for diagnosis. The
28 investigator or person appointed under subsection (1) of this section
29 may consult with and obtain information from medical, psychiatric, or
30 other expert persons who have served the child in the past without
31 obtaining the consent of the parent or the child's custodian; but the
32 child's consent must be obtained if the child has reached the age of
33 twelve, unless the court finds that the child lacks mental capacity to
34 consent. If the requirements of subsection (3) of this section are
35 fulfilled, the ((investigator's)) report by the investigator or person
36 appointed under subsection (1) of this section may be received in
37 evidence at the hearing.

1 (3) The investigator or person appointed under subsection (1) of
2 this section shall (~~mail the investigator's~~) provide his or her
3 report to counsel and to any party not represented by counsel at least
4 ten days prior to the hearing unless a shorter time is ordered by the
5 court for good cause shown. The investigator or person appointed under
6 subsection (1) of this section shall make available to counsel and to
7 any party not represented by counsel (~~the investigator's~~) his or her
8 file of underlying data and reports, complete texts of diagnostic
9 reports made to the investigator or appointed person pursuant to the
10 provisions of subsection (2) of this section, and the names and
11 addresses of all persons whom (~~the investigator~~) he or she has
12 consulted. Any party to the proceeding may call the investigator or
13 person appointed under subsection (1) of this section and any person
14 whom the investigator or appointed person has consulted for cross-
15 examination. A party may not waive the right of cross-examination
16 prior to the hearing.

17 NEW SECTION. Sec. 3. A new section is added to chapter 26.12 RCW
18 to read as follows:

19 (1) The court may appoint an investigator in addition to a guardian
20 ad litem or court-appointed special advocate under RCW 26.12.175 and
21 26.12.177 to assist the court and make recommendations.

22 (2) An investigator is a person appointed as an investigator under
23 RCW 26.12.050(1)(b) or any other third-party professional ordered or
24 appointed by the court to provide an opinion, assessment, or evaluation
25 regarding the creation or modification of a parenting plan.

26 (3) Investigators who are not supervised by a guardian ad litem or
27 by a court-appointed special advocate program must comply with the
28 training requirements applicable to guardians ad litem or court-
29 appointed special advocates as provided under this chapter and court
30 rule.

31 Sec. 4. RCW 26.12.175 and 2009 c 480 s 3 are each amended to read
32 as follows:

33 (1)(a) The court may appoint a guardian ad litem to represent the
34 interests of a minor or dependent child when the court believes the
35 appointment of a guardian ad litem is necessary to protect the best
36 interests of the child in any proceeding under this chapter. The court

1 may appoint a guardian ad litem from the court-appointed special
2 advocate program, if that program exists in the county. The court
3 shall attempt to match a child with special needs with a guardian ad
4 litem who has specific training or education related to the child's
5 individual needs. The family court services professionals may also
6 make a recommendation to the court regarding whether a guardian ad
7 litem should be appointed for the child.

8 (b) The guardian ad litem's role is to investigate and report
9 factual information regarding the issues ordered to be reported or
10 investigated to the court. The guardian ad litem shall always
11 represent the best interests of the child. Guardians ad litem (~~and~~
12 ~~investigators~~) under this title may make recommendations based upon
13 his or her investigation, which the court may consider and weigh in
14 conjunction with the recommendations of all of the parties. If a child
15 expresses a preference regarding the parenting plan, the guardian ad
16 litem shall report the preferences to the court, together with the
17 facts relative to whether any preferences are being expressed
18 voluntarily and the degree of the child's understanding. The court may
19 require the guardian ad litem to provide periodic reports to the
20 parties regarding the status of his or her investigation. The guardian
21 ad litem shall file his or her report at least sixty days prior to
22 trial.

23 (c) The parties to the proceeding may file with the court written
24 responses to any report filed by the guardian ad litem (~~or~~
25 ~~investigator~~). The court shall consider any written responses to a
26 report filed by the guardian ad litem (~~or investigator~~), including
27 any factual information or recommendations provided in the report.

28 (d) The court shall enter an order for costs, fees, and
29 disbursements to cover the costs of the guardian ad litem. The court
30 may order either or both parents to pay for the costs of the guardian
31 ad litem, according to their ability to pay. If both parents are
32 indigent, the county shall bear the cost of the guardian, subject to
33 appropriation for guardians' ad litem services by the county
34 legislative authority. Guardians ad litem who are not volunteers shall
35 provide the parties with an itemized accounting of their time and
36 billing for services each month.

37 (2)(a) If the guardian ad litem appointed is from the county court-
38 appointed special advocate program, the program shall supervise any

1 guardian ad litem assigned to the case. The court-appointed special
2 advocate program shall be entitled to notice of all proceedings in the
3 case.

4 (b) The legislative authority of each county may authorize creation
5 of a court-appointed special advocate program. The county legislative
6 authority may adopt rules of eligibility for court-appointed special
7 advocate program services that are not inconsistent with this section.

8 (3) Each guardian ad litem program for compensated guardians ad
9 litem and each court-appointed special advocate program shall maintain
10 a background information record for each guardian ad litem in the
11 program. The background information record shall include, but is not
12 limited to, the following information:

13 (a) Level of formal education;

14 (b) General training related to the guardian ad litem's duties;

15 (c) Specific training related to issues potentially faced by
16 children in dissolution, custody, paternity, and other family law
17 proceedings;

18 (d) Specific training or education related to child disability or
19 developmental issues;

20 (e) Number of years' experience as a guardian ad litem;

21 (f) Number of appointments as a guardian ad litem and county or
22 counties of appointment;

23 (g) The names of any counties in which the person was removed from
24 a guardian ad litem registry pursuant to a grievance action, and the
25 name of the court and the cause number of any case in which the court
26 has removed the person for cause;

27 (h) Founded allegations of abuse or neglect as defined in RCW
28 26.44.020;

29 (i) The results of an examination that shall consist of a
30 background check as allowed through the Washington state criminal
31 records privacy act under RCW 10.97.050 and the Washington state patrol
32 criminal identification system under RCW 43.43.832 through 43.43.834.
33 This background check shall be done through the Washington state patrol
34 criminal identification section; and

35 (j) Criminal history, as defined in RCW 9.94A.030, for the period
36 covering ten years prior to the appointment.

37 The background information record shall be updated annually. As a
38 condition of appointment, the guardian ad litem's background

1 information record shall be made available to the court. If the
2 appointed guardian ad litem is not a member of a guardian ad litem
3 program the person appointed as guardian ad litem shall provide the
4 background information record to the court.

5 Upon appointment, the guardian ad litem, court-appointed special
6 advocate program or guardian ad litem program, shall provide the
7 parties or their attorneys with a copy of the background information
8 record. The portion of the background information record containing
9 the results of the criminal background check and the criminal history
10 shall not be disclosed to the parties or their attorneys. The
11 background information record shall not include identifying information
12 that may be used to harm a guardian ad litem, such as home addresses
13 and home telephone numbers, and for volunteer guardians ad litem the
14 court may allow the use of maiden names or pseudonyms as necessary for
15 their safety.

16 (4) When a court-appointed special advocate or volunteer guardian
17 ad litem is requested on a case, the program shall give the court the
18 name of the person it recommends. The court shall immediately appoint
19 the person recommended by the program.

20 (5) If a party in a case reasonably believes the court-appointed
21 special advocate or volunteer guardian ad litem is inappropriate or
22 unqualified, the party may request a review of the appointment by the
23 program. The program must complete the review within five judicial
24 days and remove any appointee for good cause. If the party seeking the
25 review is not satisfied with the outcome of the review, the party may
26 file a motion with the court for the removal of the court-appointed
27 special advocate or volunteer guardian ad litem on the grounds the
28 advocate or volunteer is inappropriate or unqualified.

29 **Sec. 5.** RCW 26.12.177 and 2009 c 480 s 4 are each amended to read
30 as follows:

31 (1) All guardians ad litem (~~(and investigators)~~) appointed under
32 this title must comply with the training requirements established under
33 RCW 2.56.030(15), prior to their appointment in cases under Title 26
34 RCW, except that volunteer guardians ad litem or court-appointed
35 special advocates may comply with alternative training requirements
36 approved by the administrative office of the courts that meet or exceed
37 the statewide requirements. In cases involving allegations of limiting

1 factors under RCW 26.09.191, the guardians ad litem (~~and~~
2 ~~investigators~~) appointed under this title must have additional
3 relevant training under RCW 2.56.030(15) (~~and as recommended under RCW~~
4 ~~2.53.040,~~) when it is available.

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

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

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

29 (d) Under this section, within either registry referred to in (a)
30 of this subsection, a subregistry may be created that consists of
31 guardians ad litem under contract with the department of social and
32 health services' division of child support. Guardians ad litem on such
33 a subregistry shall be selected and appointed in state-initiated
34 paternity cases only.

35 (e) The superior court shall remove any person from the guardian ad
36 litem registry who has been found to have misrepresented his or her
37 qualifications.

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

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