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HOUSE BILL 2722

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Goodman, Pedersen, Moeller, and Kenney

Read first time 01/12/10. Referred to Committee on Judiciary.

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.

18            (2) The court in the county in which a petition is filed shall  
19 direct who shall pay the fees of a guardian ad litem or attorney

1 appointed under this chapter and shall approve the payment of the fees.  
2 If the court orders the parties to pay the fees of the guardian ad  
3 litem, the fees must be established pursuant to the procedures in RCW  
4 26.12.183.

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

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

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

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

33 (3) The investigator or person appointed under subsection (1) of  
34 this section shall ~~((mail the investigator's))~~ provide his or her  
35 report to counsel and to any party not represented by counsel at least  
36 ten days prior to the hearing unless a shorter time is ordered by the  
37 court for good cause shown. The investigator or person appointed under

1 subsection (1) of this section shall make available to counsel and to  
2 any party not represented by counsel (~~(the investigator's)~~) his or her  
3 file of underlying data and reports, complete texts of diagnostic  
4 reports made to the investigator or appointed person pursuant to the  
5 provisions of subsection (2) of this section, and the names and  
6 addresses of all persons whom (~~(the investigator)~~) he or she has  
7 consulted. Any party to the proceeding may call the investigator or  
8 person appointed under subsection (1) of this section and any person  
9 whom the investigator or appointed person has consulted for cross-  
10 examination. A party may not waive the right of cross-examination  
11 prior to the hearing.

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

14 (1) The court may appoint an investigator in addition to a guardian  
15 ad litem or court-appointed special advocate under RCW 26.12.175 and  
16 26.12.177 to assist the court and make recommendations.

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

21 (3) Investigators who are not supervised by a guardian ad litem or  
22 by a court-appointed special advocate program must comply with the  
23 training requirements applicable to guardians ad litem or court-  
24 appointed special advocates as provided under this chapter and court  
25 rule.

26 **Sec. 4.** RCW 26.12.175 and 2009 c 480 s 3 are each amended to read  
27 as follows:

28 (1)(a) The court may appoint a guardian ad litem to represent the  
29 interests of a minor or dependent child when the court believes the  
30 appointment of a guardian ad litem is necessary to protect the best  
31 interests of the child in any proceeding under this chapter. The court  
32 may appoint a guardian ad litem from the court-appointed special  
33 advocate program, if that program exists in the county. The court  
34 shall attempt to match a child with special needs with a guardian ad  
35 litem who has specific training or education related to the child's

1 individual needs. The family court services professionals may also  
2 make a recommendation to the court regarding whether a guardian ad  
3 litem should be appointed for the child.

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

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

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

33 (2)(a) If the guardian ad litem appointed is from the county court-  
34 appointed special advocate program, the program shall supervise any  
35 guardian ad litem assigned to the case. The court-appointed special  
36 advocate program shall be entitled to notice of all proceedings in the  
37 case.

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

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

10 (a) Level of formal education;

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

12 (c) Specific training related to issues potentially faced by  
13 children in dissolution, custody, paternity, and other family law  
14 proceedings;

15 (d) Specific training or education related to child disability or  
16 developmental issues;

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

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

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

24 (h) Founded allegations of abuse or neglect as defined in RCW  
25 26.44.020;

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

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

34 The background information record shall be updated annually. As a  
35 condition of appointment, the guardian ad litem's background  
36 information record shall be made available to the court. If the  
37 appointed guardian ad litem is not a member of a guardian ad litem

1 program the person appointed as guardian ad litem shall provide the  
2 background information record to the court.

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

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

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

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

29 (1) All guardians ad litem (~~(and investigators)~~) appointed under  
30 this title must comply with the training requirements established under  
31 RCW 2.56.030(15), prior to their appointment in cases under Title 26  
32 RCW, except that volunteer guardians ad litem or court-appointed  
33 special advocates may comply with alternative training requirements  
34 approved by the administrative office of the courts that meet or exceed  
35 the statewide requirements. In cases involving allegations of limiting  
36 factors under RCW 26.09.191, the guardians ad litem (~~(and~~

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

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

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

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

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

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

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

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