
HOUSE BILL 2735

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2010 Regular Session

By Representatives Goodman, Appleton, Rolfes, Seaquist, Finn, Rodne, Williams, Haigh, Pettigrew, Nelson, Darneille, Hasegawa, and Ormsby

Read first time 01/13/10. Referred to Committee on Judiciary.

1 AN ACT Relating to the representation of children in dependency
2 matters; amending RCW 13.34.100, 13.34.105, and 13.34.215; and creating
3 new sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
6 inconsistent practices in and among counties in Washington have
7 resulted in few children being notified of their right to request legal
8 counsel in their dependency and termination proceedings under RCW
9 13.34.100.

10 (2) The legislature recognizes that when children are provided
11 attorneys in their dependency and termination proceedings, it is
12 imperative to provide them with well-trained advocates so that their
13 legal rights around health, safety, and well-being are protected.
14 Attorneys, who have different skills and obligations than guardians ad
15 litem and court-appointed special advocates, especially in forming a
16 confidential and privileged relationship with a child, should be
17 trained in meaningful and effective child advocacy, the child welfare
18 system and services available to a child client, child and adolescent
19 brain development, child and adolescent mental health, and the distinct

1 legal rights of dependent youth, among other things. Well-trained
2 attorneys can provide legal counsel to a child on issues such as
3 placement options, visitation rights, educational rights, access to
4 services while in care and services available to a child upon aging out
5 of care. Well-trained attorneys for a child can:

- 6 (a) Ensure the child's voice is considered in judicial proceedings;
- 7 (b) Engage the child in his or her legal proceedings;
- 8 (c) Explain to the child his or her legal rights;
- 9 (d) Assist the child, through the attorney's counseling role, to
10 consider the consequences of different decisions; and
- 11 (e) Encourage accountability, when appropriate, among the different
12 systems that provide services to children.

13 **Sec. 2.** RCW 13.34.100 and 2009 c 480 s 2 are each amended to read
14 as follows:

15 (1) The court shall appoint a guardian ad litem for a child who is
16 the subject of an action under this chapter, unless a court for good
17 cause finds the appointment unnecessary. The requirement of a guardian
18 ad litem may be deemed satisfied if the child is represented by
19 independent counsel in the proceedings. The court shall attempt to
20 match a child with special needs with a guardian ad litem who has
21 specific training or education related to the child's individual needs.

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

27 (3) Each guardian ad litem program shall maintain a background
28 information record for each guardian ad litem in the program. The
29 background information record shall include, but is not limited to, the
30 following information:

- 31 (a) Level of formal education;
- 32 (b) General training related to the guardian ad litem's duties;
- 33 (c) Specific training related to issues potentially faced by
34 children in the dependency system;
- 35 (d) Specific training or education related to child disability or
36 developmental issues;
- 37 (e) Number of years' experience as a guardian ad litem;

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

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

7 (h) Founded allegations of abuse or neglect as defined in RCW
8 26.44.020;

9 (i) The results of an examination of state and national criminal
10 identification data. The examination shall consist of a background
11 check as allowed through the Washington state criminal records privacy
12 act under RCW 10.97.050, the Washington state patrol criminal
13 identification system under RCW 43.43.832 through 43.43.834, and the
14 federal bureau of investigation. The background check shall be done
15 through the Washington state patrol criminal identification section and
16 must include a national check from the federal bureau of investigation
17 based on the submission of fingerprints; and

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

20 The background information record shall be updated annually. As a
21 condition of appointment, the guardian ad litem's background
22 information record shall be made available to the court. If the
23 appointed guardian ad litem is not a member of a guardian ad litem
24 program a suitable person appointed by the court to act as guardian ad
25 litem shall provide the background information record to the court.

26 Upon appointment, the guardian ad litem, or guardian ad litem
27 program, shall provide the parties or their attorneys with a copy of
28 the background information record. The portion of the background
29 information record containing the results of the criminal background
30 check and the criminal history shall not be disclosed to the parties or
31 their attorneys. The background information record shall not include
32 identifying information that may be used to harm a guardian ad litem,
33 such as home addresses and home telephone numbers, and for volunteer
34 guardians ad litem the court may allow the use of maiden names or
35 pseudonyms as necessary for their safety.

36 (4) The appointment of the guardian ad litem shall remain in effect
37 until the court discharges the appointment or no longer has

1 jurisdiction, whichever comes first. The guardian ad litem may also be
2 discharged upon entry of an order of guardianship.

3 (5) A guardian ad litem through counsel, or as otherwise authorized
4 by the court, shall have the right to present evidence, examine and
5 cross-examine witnesses, and to be present at all hearings. A guardian
6 ad litem shall receive copies of all pleadings and other documents
7 filed or submitted to the court, and notice of all hearings according
8 to court rules. The guardian ad litem shall receive all notice
9 contemplated for a parent or other party in all proceedings under this
10 chapter.

11 (6)(a) Pursuant to this subsection, the department or supervising
12 agency and the child's guardian ad litem shall each notify a child of
13 his or her right to request counsel and shall ask the child whether he
14 or she wishes to have counsel. The department or supervising agency
15 and the child's guardian ad litem shall notify the child and make this
16 inquiry immediately after:

17 (i) The date of the child's twelfth birthday;

18 (ii) Assignment of a case involving a child age twelve or older; or

19 (iii) July 1, 2010, for a child who turned twelve years old before
20 July 1, 2010.

21 (b) The department or supervising agency and the child's guardian
22 ad litem shall repeat the notification and inquiry at least annually
23 and upon the filing of any motion or petition affecting the child's
24 placement, services, or familial relationships.

25 (c) The notification and inquiry is not required if the child has
26 already been appointed counsel.

27 (d) The department or supervising agency shall note in the child's
28 individual service and safety plan, and the guardian ad litem shall
29 note in his or her report to the court, that the child was notified of
30 the right to request counsel and indicate the child's position
31 regarding appointment of counsel.

32 (e) At the first regularly scheduled hearing after:

33 (i) The date of the child's twelfth birthday;

34 (ii) The date that a dependency petition is filed pursuant to this
35 chapter on a child age twelve or older; or

36 (iii) July 1, 2010, for a child who turned twelve years old before
37 July 1, 2010;

1 the court shall inquire whether the child has received notice of
2 his or her right to request legal counsel from the department or
3 supervising agency and the child's guardian ad litem. The court shall
4 make an additional inquiry at the first regularly scheduled hearing
5 after the child's fifteenth birthday. No inquiry is necessary if the
6 child has already been appointed counsel.

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

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

17 (8) When a court-appointed special advocate or volunteer guardian
18 ad litem is requested on a case, the program shall give the court the
19 name of the person it recommends. The program shall attempt to match
20 a child with special needs with a guardian ad litem who has specific
21 training or education related to the child's individual needs. The
22 court shall immediately appoint the person recommended by the program.

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

32 **Sec. 3.** RCW 13.34.105 and 2008 c 267 s 13 are each amended to read
33 as follows:

34 (1) Unless otherwise directed by the court, the duties of the
35 guardian ad litem for a child subject to a proceeding under this
36 chapter, including an attorney specifically appointed by the court to

1 serve as a guardian ad litem, include but are not limited to the
2 following:

3 (a) To investigate, collect relevant information about the child's
4 situation, and report to the court factual information regarding the
5 best interests of the child;

6 (b) To meet with, interview, or observe the child, depending on the
7 child's age and developmental status, and report to the court any views
8 or positions expressed by the child on issues pending before the court;

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

12 (d) To report to the court information on the legal status of a
13 child's membership in any Indian tribe or band;

14 (e) Court-appointed special advocates and guardians ad litem may
15 make recommendations based upon an independent investigation regarding
16 the best interests of the child, which the court may consider and weigh
17 in conjunction with the recommendations of all of the parties; (~~and~~)

18 (f) To represent and be an advocate for the best interests of the
19 child; and

20 (g) To inform the child, if the child is twelve years old or older,
21 of his or her right to request counsel and to ask the child whether he
22 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The
23 guardian ad litem shall report to the court that the child was notified
24 of this right and indicate the child's position regarding appointment
25 of counsel. The guardian ad litem shall report to the court his or her
26 independent recommendation as to whether appointment of counsel is in
27 the best interest of the child.

28 (2) A guardian ad litem shall be deemed an officer of the court for
29 the purpose of immunity from civil liability.

30 (3) Except for information or records specified in RCW
31 13.50.100(7), the guardian ad litem shall have access to all
32 information available to the state or agency on the case. Upon
33 presentation of the order of appointment by the guardian ad litem, any
34 agency, hospital, school organization, division or department of the
35 state, doctor, nurse, or other health care provider, psychologist,
36 psychiatrist, police department, or mental health clinic shall permit
37 the guardian ad litem to inspect and copy any records relating to the
38 child or children involved in the case, without the consent of the

1 parent or guardian of the child, or of the child if the child is under
2 the age of thirteen years, unless such access is otherwise specifically
3 prohibited by law.

4 (4) A guardian ad litem may release confidential information,
5 records, and reports to the office of the family and children's
6 ombudsman for the purposes of carrying out its duties under chapter
7 43.06A RCW.

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

10 **Sec. 4.** RCW 13.34.215 and 2009 c 520 s 36 are each amended to read
11 as follows:

12 (1) A child may petition the juvenile court to reinstate the
13 previously terminated parental rights of his or her parent under the
14 following circumstances:

15 (a) The child was previously found to be a dependent child under
16 this chapter;

17 (b) The child's parent's rights were terminated in a proceeding
18 under this chapter;

19 (c) The child has not achieved his or her permanency plan within
20 three years of a final order of termination; and

21 (d) The child must be at least twelve years old at the time the
22 petition is filed. Upon the child's motion for good cause shown, or on
23 its own motion, the court may hear a petition filed by a child younger
24 than twelve years old.

25 (2) If the child is eligible to petition the juvenile court under
26 subsection (1) of this section and a parent whose rights have been
27 previously terminated contacts the department or supervising agency or
28 the child's guardian ad litem regarding reinstatement, the department
29 or supervising agency or the guardian ad litem must notify the eligible
30 child about his or her right to petition for reinstatement of parental
31 rights.

32 (3) A child seeking to petition under this section shall be
33 provided counsel at no cost to the child.

34 ((+3)) (4) The petition must be signed by the child in the absence
35 of a showing of good cause as to why the child could not do so.

36 ((+4)) (5) If, after a threshold hearing to consider the parent's
37 apparent fitness and interest in reinstatement of parental rights, the

1 court finds by a preponderance of the evidence that the best interests
2 of the child may be served by reinstatement of parental rights, the
3 juvenile court shall order that a hearing on the merits of the petition
4 be held.

5 ~~((+5))~~ (6) The court shall give prior notice for any proceeding
6 under this section, or cause prior notice to be given, to the
7 department or the supervising agency, the child's attorney, and the
8 child. The court shall also order the department or supervising agency
9 to give prior notice of any hearing to the child's former parent whose
10 parental rights are the subject of the petition, any parent whose
11 rights have not been terminated, the child's current foster parent,
12 relative caregiver, guardian or custodian, and the child's tribe, if
13 applicable.

14 ~~((+6))~~ (7) The juvenile court shall conditionally grant the
15 petition if it finds by clear and convincing evidence that the child
16 has not achieved his or her permanency plan and is not likely to
17 imminently achieve his or her permanency plan and that reinstatement of
18 parental rights is in the child's best interest. In determining
19 whether reinstatement is in the child's best interest the court shall
20 consider, but is not limited to, the following:

21 (a) Whether the parent whose rights are to be reinstated is a fit
22 parent and has remedied his or her deficits as provided in the record
23 of the prior termination proceedings and prior termination order;

24 (b) The age and maturity of the child, and the ability of the child
25 to express his or her preference;

26 (c) Whether the reinstatement of parental rights will present a
27 risk to the child's health, welfare, or safety; and

28 (d) Other material changes in circumstances, if any, that may have
29 occurred which warrant the granting of the petition.

30 ~~((+7))~~ (8) In determining whether the child has or has not
31 achieved his or her permanency plan or whether the child is likely to
32 achieve his or her permanency plan, the department or supervising
33 agency shall provide the court, and the court shall review, information
34 related to any efforts to achieve the permanency plan including efforts
35 to achieve adoption or a permanent guardianship.

36 ~~((+8))~~ (9)(a) If the court conditionally grants the petition under
37 subsection ~~((+6))~~ (7) of this section, the case will be continued for
38 six months and a temporary order of reinstatement entered. During this

1 period, the child shall be placed in the custody of the parent. The
2 department or supervising agency shall develop a permanency plan for
3 the child reflecting the plan to be reunification and shall provide
4 transition services to the family as appropriate.

5 (b) If the child must be removed from the parent due to abuse or
6 neglect allegations prior to the expiration of the conditional six-
7 month period, the court shall dismiss the petition for reinstatement of
8 parental rights if the court finds the allegations have been proven by
9 a preponderance of the evidence.

10 (c) If the child has been successfully placed with the parent for
11 six months, the court order reinstating parental rights remains in
12 effect and the court shall dismiss the dependency.

13 ~~((+9))~~ (10) After the child has been placed with the parent for
14 six months, the court shall hold a hearing. If the placement with the
15 parent has been successful, the court shall enter a final order of
16 reinstatement of parental rights, which shall restore all rights,
17 powers, privileges, immunities, duties, and obligations of the parent
18 as to the child, including those relating to custody, control, and
19 support of the child. The court shall dismiss the dependency and
20 direct the clerk's office to provide a certified copy of the final
21 order of reinstatement of parental rights to the parent at no cost.

22 ~~((+10))~~ (11) The granting of the petition under this section does
23 not vacate or otherwise affect the validity of the original termination
24 order.

25 ~~((+11))~~ (12) Any parent whose rights are reinstated under this
26 section shall not be liable for any child support owed to the
27 department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other
28 services provided to a child for the time period from the date of
29 termination of parental rights to the date parental rights are
30 reinstated.

31 ~~((+12))~~ (13) A proceeding to reinstate parental rights is a
32 separate action from the termination of parental rights proceeding and
33 does not vacate the original termination of parental rights. An order
34 granted under this section reinstates the parental rights to the child.
35 This reinstatement is a recognition that the situation of the parent
36 and child have changed since the time of the termination of parental
37 rights and reunification is now appropriate.

1 (~~(13)~~) (14) This section is retroactive and applies to any child
2 who is under the jurisdiction of the juvenile court at the time of the
3 hearing regardless of the date parental rights were terminated.

4 (~~(14)~~) (15) The state, the department, the supervising agency,
5 and its employees are not liable for civil damages resulting from any
6 act or omission in the provision of services under this section, unless
7 the act or omission constitutes gross negligence. This section does
8 not create any duty and shall not be construed to create a duty where
9 none exists. This section does not create a cause of action against
10 the state, the department, the supervising agency, or its employees
11 concerning the original termination.

12 NEW SECTION. **Sec. 5.** By December 31, 2010, and within available
13 resources, the administrative office of the courts, working in
14 coordination with the state supreme court commission on children in
15 foster care, shall develop recommendations for voluntary training and
16 caseload standards for attorneys who represent youth in dependency
17 proceedings under chapter 13.34 RCW. The administrative office of the
18 courts shall report its recommendations to the appropriate committees
19 of the legislature by December 31, 2010.

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