
SENATE BILL 5609

State of Washington 61st Legislature 2009 Regular Session

By Senators McDermott, Kline, Regala, Kohl-Welles, and Jarrett

Read first time 01/27/09. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to legal representation of children in dependency
2 proceedings; amending RCW 13.34.100; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature recognizes that inconsistent
5 practices in and among counties have resulted in few children in
6 Washington being afforded adequate legal representation in dependency
7 proceedings, thereby putting the health, safety, and welfare of
8 children at risk. The legislature finds that attorneys for children
9 have different skills and obligations than guardians ad litem and
10 court-appointed special advocates, especially in forming a confidential
11 and privileged relationship with a child to provide legal counsel to
12 the child on issues such as placement options, visitation rights,
13 educational rights, and access to services while in care and services
14 available to the child upon aging out of care. Thus, it is in the best
15 interest of a child who is age twelve or older for the court to
16 consider whether an attorney should be appointed to advocate for the
17 child's position and legal rights.

1 **Sec. 2.** RCW 13.34.100 and 2000 c 124 s 2 are each amended to read
2 as follows:

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

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

13 (3) Each guardian ad litem program shall maintain a background
14 information record for each guardian ad litem in the program. The
15 background file shall include, but is not limited to, the following
16 information:

17 (a) Level of formal education;

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

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

20 (d) Number of appointments as a guardian ad litem and the county or
21 counties of appointment;

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

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

27 The background information report shall be updated annually. As a
28 condition of appointment, the guardian ad litem's background
29 information record shall be made available to the court. If the
30 appointed guardian ad litem is not a member of a guardian ad litem
31 program the person shall provide the background information to the
32 court.

33 Upon appointment, the guardian ad litem, or guardian ad litem
34 program, shall provide the parties or their attorneys with a statement
35 containing: His or her training relating to the duties as a guardian
36 ad litem; the name of any counties in which the person was removed from
37 a guardian ad litem registry pursuant to a grievance action, and the
38 name of the court and the cause number of any case in which the court

1 has removed the person for cause; and his or her criminal history as
2 defined in RCW 9.94A.030 for the period covering ten years prior to the
3 appointment. The background statement shall not include identifying
4 information that may be used to harm a guardian ad litem, such as home
5 addresses and home telephone numbers, and for volunteer guardians ad
6 litem the court may allow the use of maiden names or pseudonyms as
7 necessary for their safety.

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

12 (5) A guardian ad litem through counsel, or as otherwise authorized
13 by the court, shall have the right to present evidence, examine and
14 cross-examine witnesses, and to be present at all hearings. A guardian
15 ad litem shall receive copies of all pleadings and other documents
16 filed or submitted to the court, and notice of all hearings according
17 to court rules. The guardian ad litem shall receive all notice
18 contemplated for a parent or other party in all proceedings under this
19 chapter.

20 (6) (~~(If the child requests legal counsel and is age twelve or~~
21 ~~older, or)) (a) The court may, in its discretion, appoint an attorney
22 to represent the child's position and legal rights if the guardian ad
23 litem or the court determines that the child needs to be independently
24 represented by counsel(~~(, the court may appoint an attorney to~~
25 ~~represent the child's position)) or if the child requests an attorney
26 and is age twelve or older. Regardless of any request, if an attorney
27 has not previously been appointed to represent the child's position and
28 legal rights, the court shall consider appointment of an attorney for
29 the child at the first regularly scheduled hearing after:~~~~

- 30 (i) The date of the child's twelfth birthday;
- 31 (ii) The date that a dependency petition is filed pursuant to this
32 chapter on a child age twelve or older; or
- 33 (iii) The effective date of this section, for a child who turned
34 twelve years old before the effective date of this section, and who has
35 not previously been appointed an attorney to represent the child's
36 position and legal rights.

37 If the court orders appointment of an attorney for the child, it
38 shall set forth on the record the reasons therefor.

1 (b) If the court does not order appointment of an attorney for the
2 child at the hearing, it shall:

3 (i) Set forth on the record the reasons therefor;

4 (ii) Orally inform the parties, including the child, if present, of
5 their right to request an attorney for the child at any future point in
6 the dependency proceeding, direct the caseworker or a party to notify
7 any absent party, including the child, of that right; and

8 (iii) Consider whether to appoint an attorney to represent the
9 child's position and legal rights at all subsequent hearings until an
10 attorney is appointed or until the dependency is dismissed.

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 shall be deemed a guardian ad litem to
15 represent the best interests of the minor in proceedings before the
16 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 and the appointment shall be effective
20 immediately. The court shall appoint the person recommended by the
21 program. If a party in a case reasonably believes the court-appointed
22 special advocate or volunteer is inappropriate or unqualified, the
23 party may request a review of the appointment by the program. The
24 program must complete the review within five judicial days and remove
25 any appointee for good cause. If the party seeking the review is not
26 satisfied with the outcome of the review, the party may file a motion
27 with the court for the removal of the court-appointed special advocate
28 on the grounds the advocate or volunteer is inappropriate or
29 unqualified.

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