

**E2SSB 6126** - H COMM AMD  
By Committee on Appropriations

ADOPTED 03/07/2014

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that some  
4 children may remain in foster care following the termination of the  
5 parent and child relationship. These children have legal rights and no  
6 longer have a parent to advocate on their behalf, and no other party  
7 represents their legal interests. The legislature finds that providing  
8 attorneys for children following the termination of the parent and  
9 child relationship is fundamental to protecting the child's legal  
10 rights and to accelerate permanency.

11 (2) Although the legislature recognizes that many jurisdictions  
12 provide attorneys to children prior to termination of the parent and  
13 child relationship, nothing in this act may be construed against the  
14 parent's fundamental liberty interest in parenting the child prior to  
15 termination of the parent and child relationship as stated in *In re*  
16 *Dependency of K.N.J.*, 171 Wn.2d 568, 574 (2011) and *In re Welfare of*  
17 *Luscier*, 84 Wn.2d 135, 136-37 (1974), unless such a position would  
18 jeopardize the child's right to conditions of basic nurture, health, or  
19 safety.

20 **Sec. 2.** RCW 13.34.100 and 2010 c 180 s 2 are each amended to read  
21 as follows:

22 (1) The court shall appoint a guardian ad litem for a child who is  
23 the subject of an action under this chapter, unless a court for good  
24 cause finds the appointment unnecessary. The requirement of a guardian  
25 ad litem may be deemed satisfied if the child is represented by an  
26 independent (~~counsel~~) attorney in the proceedings. The court shall  
27 attempt to match a child with special needs with a guardian ad litem  
28 who has specific training or education related to the child's  
29 individual needs.

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

6 (3) Each guardian ad litem program shall maintain a background  
7 information record for each guardian ad litem in the program. The  
8 background information record shall include, but is not limited to, the  
9 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 the dependency system;

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

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

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

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

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

25 (i) The results of an examination of state and national criminal  
26 identification data. The examination shall consist of a background  
27 check as allowed through the Washington state criminal records privacy  
28 act under RCW 10.97.050, the Washington state patrol criminal  
29 identification system under RCW 43.43.832 through 43.43.834, and the  
30 federal bureau of investigation. The background check shall be done  
31 through the Washington state patrol criminal identification section and  
32 must include a national check from the federal bureau of investigation  
33 based on the submission of fingerprints; and

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

36 The background information record shall be updated annually. As a  
37 condition of appointment, the guardian ad litem's background  
38 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 a suitable person appointed by the court to act as guardian ad  
3 litem shall provide the background information record to the court.

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

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

18 (5) A guardian ad litem through (~~counsel~~) an attorney, or as  
19 otherwise authorized by the court, shall have the right to present  
20 evidence, examine and cross-examine witnesses, and to be present at all  
21 hearings. A guardian ad litem shall receive copies of all pleadings  
22 and other documents filed or submitted to the court, and notice of all  
23 hearings according to court rules. The guardian ad litem shall receive  
24 all notice contemplated for a parent or other party in all proceedings  
25 under this chapter.

26 (6)(a) The court must appoint an attorney for a child in a  
27 dependency proceeding six months after granting a petition to terminate  
28 the parent and child relationship pursuant to RCW 13.34.180 and when  
29 there is no remaining parent with parental rights.

30 The court must appoint an attorney for a child when there is no  
31 remaining parent with parental rights for six months or longer prior to  
32 the effective date of this section if the child is not already  
33 represented.

34 The court may appoint one attorney to a group of siblings, unless  
35 there is a conflict of interest, or such representation is otherwise  
36 inconsistent with the rules of professional conduct.

37 (b) Legal services provided by an attorney appointed pursuant to

1 (a) of this subsection do not include representation of the child in  
2 any appellate proceedings relative to the termination of the parent and  
3 child relationship.

4 (c)(i) Subject to the availability of amounts appropriated for this  
5 specific purpose, the state shall pay the costs of legal services  
6 provided by an attorney appointed pursuant to (a) of this subsection,  
7 if the legal services are provided in accordance with the standards of  
8 practice, voluntary training, and caseload limits developed and  
9 recommended by the statewide children's representation work group  
10 pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must  
11 be calculated pursuant to (c)(ii) of this subsection.

12 (ii) Counties are encouraged to set caseloads as low as possible  
13 and to account for the individual needs of the children in care.  
14 Notwithstanding the caseload limits developed and recommended by the  
15 statewide children's representation work group pursuant to section 5,  
16 chapter 180, Laws of 2010, when one attorney represents a sibling  
17 group, the first child is counted as one case, and each child  
18 thereafter is counted as one-half case to determine compliance with the  
19 caseload standards pursuant to (c)(i) of this subsection and section 3  
20 of this act.

21 (iii) The office of civil legal aid is responsible for  
22 implementation of (c)(i) and (ii) of this subsection as provided in  
23 section 3 of this act.

24 (7)(a) The court may appoint an attorney to represent the child's  
25 position in any dependency action on its own initiative, or upon the  
26 request of a parent, the child, a guardian ad litem, a caregiver, or  
27 the department.

28 (b)(i) If the court has not already appointed an attorney for a  
29 child, or the child is not represented by a privately retained  
30 attorney:

31 (A) The child's caregiver, or any individual, may refer the child  
32 to an attorney for the purposes of filing a motion to request  
33 appointment of an attorney at public expense; or

34 (B) The child or any individual may retain an attorney for the  
35 child for the purposes of filing a motion to request appointment of an  
36 attorney at public expense.

37 (ii) Nothing in this subsection (7)(b) shall be construed to change  
38 or alter the confidentiality provisions of RCW 13.50.100.

1       (c) Pursuant to this subsection, the department or supervising  
2 agency and the child's guardian ad litem shall each notify a child of  
3 his or her right to request ~~((counsel))~~ an attorney and shall ask the  
4 child whether he or she wishes to have ~~((counsel))~~ an attorney. The  
5 department or supervising agency and the child's guardian ad litem  
6 shall notify the child and make this inquiry immediately after:

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

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

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

11       ~~((b))~~ (d) The department or supervising agency and the child's  
12 guardian ad litem shall repeat the notification and inquiry at least  
13 annually and upon the filing of any motion or petition affecting the  
14 child's placement, services, or familial relationships.

15       ~~((e))~~ (e) The notification and inquiry is not required if the  
16 child has already been appointed ~~((counsel))~~ an attorney.

17       ~~((d))~~ (f) The department or supervising agency shall note in the  
18 child's individual service and safety plan, and the guardian ad litem  
19 shall note in his or her report to the court, that the child was  
20 notified of the right to request ~~((counsel))~~ an attorney and indicate  
21 the child's position regarding appointment of ~~((counsel))~~ an attorney.

22       ~~((e))~~ (g) At the first regularly scheduled hearing after:

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

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

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

28 the court shall inquire whether the child has received notice of his or  
29 her right to request ~~((legal counsel))~~ an attorney from the department  
30 or supervising agency and the child's guardian ad litem. The court  
31 shall make an additional inquiry at the first regularly scheduled  
32 hearing after the child's fifteenth birthday. No inquiry is necessary  
33 if the child has already been appointed ~~((counsel))~~ an attorney.

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

1       ~~(7))~~ (8) For the purposes of child abuse prevention and treatment  
2 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-  
3 247, or any related state or federal legislation, a person appointed  
4 pursuant to this section shall be deemed a guardian ad litem (~~to~~  
5 ~~represent the best interests of the minor in proceedings before the~~  
6 ~~court~~)).

7       ~~((8))~~ (9) When a court-appointed special advocate or volunteer  
8 guardian ad litem is requested on a case, the program shall give the  
9 court the name of the person it recommends. The program shall attempt  
10 to match a child with special needs with a guardian ad litem who has  
11 specific training or education related to the child's individual needs.  
12 The court shall immediately appoint the person recommended by the  
13 program.

14       ~~((9))~~ (10) If a party in a case reasonably believes the court-  
15 appointed special advocate or volunteer guardian ad litem is  
16 inappropriate or unqualified, the party may request a review of the  
17 appointment by the program. The program must complete the review  
18 within five judicial days and remove any appointee for good cause. If  
19 the party seeking the review is not satisfied with the outcome of the  
20 review, the party may file a motion with the court for the removal of  
21 the court-appointed special advocate or volunteer guardian ad litem on  
22 the grounds the advocate or volunteer is inappropriate or unqualified.

23       NEW SECTION.   **Sec. 3.** A new section is added to chapter 2.53 RCW  
24 to read as follows:

25       (1) Money appropriated by the legislature for legal services  
26 provided by an attorney appointed pursuant to RCW 13.34.100 must be  
27 administered by the office of civil legal aid established under RCW  
28 2.53.020.

29       (2) The office of civil legal aid may enter into contracts with the  
30 counties to disburse state funds for an attorney appointed pursuant to  
31 RCW 13.34.100. The office of civil legal aid may also require a county  
32 to use attorneys under contract with the office for the provision of  
33 legal services under RCW 13.34.100 to remain within appropriated  
34 amounts.

35       (3) Prior to distributing state funds under subsection (2) of this  
36 section, the office of civil legal aid must verify that attorneys  
37 providing legal representation to children under RCW 13.34.100 meet the

1 standards of practice, voluntary training, and caseload limits  
2 developed and recommended by the statewide children's representation  
3 work group pursuant to section 5, chapter 180, Laws of 2010. Caseload  
4 limits described in this subsection must be determined as provided in  
5 RCW 13.34.100(6)(c)(ii).

6 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2014.

7 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this  
8 act, referencing this act by bill or chapter number, is not provided by  
9 June 30, 2014, in the omnibus appropriations act, this act is null and  
10 void."

11 Correct the title.

EFFECT: Retains the underlying bill with the following changes:  
Changes some of the intent language with respect to children  
languishing in care and having no one to advocate for them to instead  
provide that some children remain in care after termination of parental  
rights and no longer have their parents to advocate for them or anyone  
to represent their legal interests.

Requires, rather than permits, (by changing "may" to "shall") the  
state to pay the costs if funding is appropriated for purposes of  
paying for legal services of attorneys appointed to represent children  
6 months after termination of parental rights.

States that nothing in the provisions relative to  
recommending/referring children to attorneys for purposes of making a  
motion for appointment of attorney shall be construed to change  
confidentiality provision of law.

Makes the act null and void if specific funding is not provided in  
the omnibus appropriations act by June 30, 2014.

--- END ---