

SHB 1285 - S COMM AMD

By Committee on Human Services & Corrections

NOT CONSIDERED

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

3 "Sec. 1. RCW 13.34.100 and 2010 c 180 s 2 are each amended to read  
4 as follows:

5 (1) The court shall appoint a guardian ad litem for a child who is  
6 the subject of an action under this chapter, unless a court for good  
7 cause finds the appointment unnecessary. The requirement of a guardian  
8 ad litem may be deemed satisfied if the child is represented by an  
9 independent (~~counsel~~) attorney in the proceedings. The court shall  
10 attempt to match a child with special needs with a guardian ad litem  
11 who has specific training or education related to the child's  
12 individual needs.

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

18 (3) Each guardian ad litem program shall maintain a background  
19 information record for each guardian ad litem in the program. The  
20 background information record shall include, but is not limited to, the  
21 following information:

22 (a) Level of formal education;

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

24 (c) Specific training related to issues potentially faced by  
25 children in the dependency system;

26 (d) Specific training or education related to child disability or  
27 developmental issues;

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

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

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

5 (h) Founded allegations of abuse or neglect as defined in RCW  
6 26.44.020;

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

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

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

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

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

1       (5) When a court-appointed special advocate or volunteer guardian  
2 ad litem is requested on a case, the program must give the court the  
3 name of the person it recommends. The program must attempt to match a  
4 child with special needs with a guardian ad litem who has specific  
5 training or education related to the child's individual needs. The  
6 court must immediately appoint the person recommended by the program.

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

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

24       ~~((+6)(a))~~ (8) The court may appoint an attorney for the child in  
25 the dependency within seventy-two hours of granting a petition to  
26 terminate the parent and child relationship pursuant to RCW 13.34.180.

27       (9)(a) Pursuant to this subsection (9), the department or  
28 supervising agency and the child's guardian ad litem shall each notify  
29 a child of his or her right to request ~~((counsel))~~ an attorney and  
30 shall ask the child whether he or she wishes to have ~~((counsel))~~ an  
31 attorney. The department or supervising agency and the child's  
32 guardian ad litem shall notify the child and make this inquiry  
33 immediately after:

- 34       (i) The date of the child's twelfth birthday;  
35       (ii) Assignment of a case involving a child age twelve or older; or  
36       (iii) July 1, ~~((2010))~~ 2013, for a child who turned twelve years  
37 old before July 1, ~~((2010))~~ 2013.

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

5 (c) The notification and inquiry is not required if the child has  
6 already been appointed (~~counsel~~) an attorney.

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

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

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

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

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

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

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

28 ~~(7))~~ (10) For the purposes of child abuse prevention and treatment  
29 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-  
30 247, or any related state or federal legislation, a person appointed  
31 pursuant to this section shall be deemed a guardian ad litem (~~(to  
32 represent the best interests of the minor in proceedings before the  
33 court))~~).

34 (~~(8) When a court appointed special advocate or volunteer guardian  
35 ad litem is requested on a case, the program shall give the court the  
36 name of the person it recommends. The program shall attempt to match  
37 a child with special needs with a guardian ad litem who has specific~~

1 ~~training or education related to the child's individual needs. The~~  
2 ~~court shall immediately appoint the person recommended by the program.~~

3 ~~(9) If a party in a case reasonably believes the court appointed~~  
4 ~~special advocate or volunteer guardian ad litem is inappropriate or~~  
5 ~~unqualified, the party may request a review of the appointment by the~~  
6 ~~program. The program must complete the review within five judicial~~  
7 ~~days and remove any appointee for good cause. If the party seeking the~~  
8 ~~review is not satisfied with the outcome of the review, the party may~~  
9 ~~file a motion with the court for the removal of the court appointed~~  
10 ~~special advocate or volunteer guardian ad litem on the grounds the~~  
11 ~~advocate or volunteer is inappropriate or unqualified.))~~

12 **Sec. 2.** RCW 13.34.105 and 2011 c 309 s 26 are each amended to read  
13 as follows:

14 (1) Unless otherwise directed by the court, the duties of the  
15 guardian ad litem for a child subject to a proceeding under this  
16 chapter, including an attorney specifically appointed by the court to  
17 serve as a guardian ad litem, include but are not limited to the  
18 following:

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

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

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

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

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

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

36 (g) To inform the child, if the child is twelve years old or older,  
37 of his or her right to request ~~((counsel))~~ an attorney and to ask the

1 child whether he or she wishes to have (~~counsel~~) an attorney,  
2 pursuant to RCW 13.34.100(~~(+6)~~) (9). The guardian ad litem shall  
3 report to the court that the child was notified of this right and  
4 indicate the child's position regarding appointment of (~~counsel~~) an  
5 attorney. The guardian ad litem shall report to the court his or her  
6 independent recommendation as to whether appointment of (~~counsel~~) an  
7 attorney is in the best interest of the child; and

8 (h) In the case of an Indian child as defined in RCW 13.38.040,  
9 know, understand, and advocate the best interests of the Indian child.

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

12 (3) Except for information or records specified in RCW  
13 13.50.100(7), the guardian ad litem shall have access to all  
14 information available to the state or agency on the case. Upon  
15 presentation of the order of appointment by the guardian ad litem, any  
16 agency, hospital, school organization, division or department of the  
17 state, doctor, nurse, or other health care provider, psychologist,  
18 psychiatrist, police department, or mental health clinic shall permit  
19 the guardian ad litem to inspect and copy any records relating to the  
20 child or children involved in the case, without the consent of the  
21 parent or guardian of the child, or of the child if the child is under  
22 the age of thirteen years, unless such access is otherwise specifically  
23 prohibited by law.

24 (4) A guardian ad litem may release confidential information,  
25 records, and reports to the office of the family and children's  
26 ombudsman for the purposes of carrying out its duties under chapter  
27 43.06A RCW.

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

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30 On page 1, line 2 of the title, after "matters;" strike the

1 remainder of the title and insert "and amending RCW 13.34.100 and  
2 13.34.105."

EFFECT: Deletes the intent section; makes the appointment of an attorney for parental termination petition discretionary rather than mandatory; deletes the other discretionary language regarding when the court may appoint an attorney; changes the age at which dependent youth must be notified of their right to an attorney from seven back to twelve; and deletes the section that tasks the Washington state center for court research with evaluating the effects of attorney representation.

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