

2SSB 6126 - S AMD 507

By Senators O'Ban, Darneille

PULLED 02/17/2014

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that many
4 children languish in foster care following the termination of the
5 parent and child relationship. These children have legal rights but no
6 longer have a parent or advocate to represent their unique interests to
7 the court. The legislature finds that providing attorneys for children
8 following the termination of the parent and child relationship is
9 fundamental to protecting the child's legal rights and to accelerate
10 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 that is dependent
31 pursuant to this chapter for six months prior to the effective date of
32 this section if the child is not already represented.

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

36 (b) Legal services provided by an attorney appointed pursuant to
37 (a) of this subsection do not include representation of the child in

1 any appellate proceedings relative to the termination of the parent and
2 child relationship.

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

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

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

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

26 (b) If the court has not already appointed an attorney for a child,
27 or the child is not represented by a privately retained attorney:

28 (i) The child's caregiver, or any individual, may refer the child
29 to an attorney for the purposes of filing a motion to request
30 appointment of an attorney at public expense; or

31 (ii) The child or any individual may retain an attorney for the
32 child for the purposes of filing a motion to request appointment of an
33 attorney at public expense.

34 (c) Pursuant to this subsection, the department or supervising
35 agency and the child's guardian ad litem shall each notify a child of
36 his or her right to request (~~counsel~~) an attorney and shall ask the
37 child whether he or she wishes to have (~~counsel~~) an attorney. The

1 department or supervising agency and the child's guardian ad litem
2 shall notify the child and make this inquiry immediately after:

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

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

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

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

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

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

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

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

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

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

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

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

34 ~~(7))~~ (8) For the purposes of child abuse prevention and treatment
35 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-
36 247, or any related state or federal legislation, a person appointed
37 pursuant to this section shall be deemed a guardian ad litem ~~((to~~

1 ~~represent the best interests of the minor in proceedings before the~~
2 ~~court)).~~

3 ((+8)) (9) When a court-appointed special advocate or volunteer
4 guardian ad litem is requested on a case, the program shall give the
5 court the name of the person it recommends. The program shall attempt
6 to match a child with special needs with a guardian ad litem who has
7 specific training or education related to the child's individual needs.
8 The court shall immediately appoint the person recommended by the
9 program.

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

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

21 (1) Money appropriated by the legislature for legal services
22 provided by an attorney appointed pursuant to RCW 13.34.100 must be
23 administered by the office of civil legal aid established under RCW
24 2.53.020.

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

31 (3) Prior to distributing state funds under subsection (2) of this
32 section, the office of civil legal aid must verify that attorneys
33 providing legal representation to children under RCW 13.34.100 meet the
34 standards of practice, voluntary training, and caseload limits
35 developed and recommended by the statewide children's representation
36 work group pursuant to section 5, chapter 180, Laws of 2010. Caseload

1 limits described in this subsection must be determined as provided in
2 RCW 13.34.100(6)(c)(ii).

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

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4 On page 1, line 2 of the title, after "matters;" strike the
5 remainder of the title and insert "amending RCW 13.34.100; adding a new
6 section to chapter 2.53 RCW; creating a new section; and providing an
7 effective date."

EFFECT: (1) Clarifies that both parents' rights have to be terminated prior to the appointment of an attorney; (2) clarifies that a child whose parents' rights were previously terminated must have an attorney appointed after the effective date of the act; (3) appointment of an attorney to a legally free child occurs at 6 months after TPR; (4) eliminates requirement for the county to pay half the cost; (5) allows office of civil legal aid to require the provision of legal services through its office to remain within appropriated amounts.

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