

**2SSB 6126 - S AMD 515**

By Senators O'Ban, Hargrove, Darneille

**ADOPTED 02/17/2014**

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

3  
4 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes that many  
5 children languish in foster care following the termination of the  
6 parent and child relationship. These children have legal rights but  
7 no longer have a parent or advocate to represent their unique  
8 interests to the court. The legislature finds that providing  
9 attorneys for children following the termination of the parent and  
10 child relationship is fundamental to protecting the child's legal  
11 rights and to accelerate permanency.

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

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

24 (1) The court shall appoint a guardian ad litem for a child who is  
25 the subject of an action under this chapter, unless a court for good  
26 cause finds the appointment unnecessary. The requirement of a  
27 guardian ad litem may be deemed satisfied if the child is represented

1 by an independent (~~counsel~~) attorney in the proceedings. The court  
2 shall attempt to match a child with special needs with a guardian ad  
3 litem who has specific training or education related to the child's  
4 individual needs.

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

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

- 14 (a) Level of formal education;
- 15 (b) General training related to the guardian ad litem's duties;
- 16 (c) Specific training related to issues potentially faced by  
17 children in the dependency system;
- 18 (d) Specific training or education related to child disability or  
19 developmental issues;
- 20 (e) Number of years' experience as a guardian ad litem;
- 21 (f) Number of appointments as a guardian ad litem and the county  
22 or counties of appointment;
- 23 (g) The names of any counties in which the person was removed from  
24 a guardian ad litem registry pursuant to a grievance action, and the  
25 name of the court and the cause number of any case in which the court  
26 has removed the person for cause;
- 27 (h) Founded allegations of abuse or neglect as defined in RCW  
28 26.44.020;
- 29 (i) The results of an examination of state and national criminal  
30 identification data. The examination shall consist of a background  
31 check as allowed through the Washington state criminal records privacy  
32 act under RCW 10.97.050, the Washington state patrol criminal  
33 identification system under RCW 43.43.832 through 43.43.834, and the  
34 federal bureau of investigation. The background check shall be done

1 through the Washington state patrol criminal identification section  
2 and must include a national check from the federal bureau of  
3 investigation based on the submission of fingerprints; and

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

6 The background information record shall be updated annually. As a  
7 condition of appointment, the guardian ad litem's background  
8 information record shall be made available to the court. If the  
9 appointed guardian ad litem is not a member of a guardian ad litem  
10 program a suitable person appointed by the court to act as guardian ad  
11 litem shall provide the background information record to the court.

12 Upon appointment, the guardian ad litem, or guardian ad litem  
13 program, shall provide the parties or their attorneys with a copy of  
14 the background information record. The portion of the background  
15 information record containing the results of the criminal background  
16 check and the criminal history shall not be disclosed to the parties  
17 or their attorneys. The background information record shall not  
18 include identifying information that may be used to harm a guardian ad  
19 litem, such as home addresses and home telephone numbers, and for  
20 volunteer guardians ad litem the court may allow the use of maiden  
21 names or pseudonyms as necessary for their safety.

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

26 (5) A guardian ad litem through ~~((counsel))~~ an attorney, or as  
27 otherwise authorized by the court, shall have the right to present  
28 evidence, examine and cross-examine witnesses, and to be present at  
29 all hearings. A guardian ad litem shall receive copies of all  
30 pleadings and other documents filed or submitted to the court, and  
31 notice of all hearings according to court rules. The guardian ad  
32 litem shall receive all notice contemplated for a parent or other  
33 party in all proceedings under this chapter.

34

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

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

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

12       (b) Legal services provided by an attorney appointed pursuant to  
13 (a) of this subsection do not include representation of the child in  
14 any appellate proceedings relative to the termination of the parent  
15 and child relationship.

16       (c)(i) Subject to the availability of amounts appropriated for  
17 this specific purpose, the state may pay the costs of legal services  
18 provided by an attorney appointed pursuant to (a) of this subsection,  
19 if the legal services are provided in accordance with the standards of  
20 practice, voluntary training, and caseload limits developed and  
21 recommended by the statewide children's representation work group  
22 pursuant to section 5, chapter 180, Laws of 2010. Caseload limits  
23 must be calculated pursuant to (c)(ii) of this subsection.

24       (ii) Counties are encouraged to set caseloads as low as possible  
25 and to account for the individual needs of the children in care.  
26 Notwithstanding the caseload limits developed and recommended by the  
27 statewide children's representation work group pursuant to section 5,  
28 chapter 180, Laws of 2010, when one attorney represents a sibling  
29 group, the first child is counted as one case, and each child  
30 thereafter is counted as one-half case to determine compliance with  
31 the caseload standards pursuant to (c)(i) of this subsection and  
32 section 3 of this act.

33       (iii) The office of civil legal aid is responsible for  
34 implementation of (c)(i) and (ii) of this subsection as provided in

1 section 3 of this act.

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

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

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

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

15 (c) Pursuant to this subsection, the department or supervising  
16 agency and the child's guardian ad litem shall each notify a child of  
17 his or her right to request (~~(counsel)~~) an attorney and shall ask the  
18 child whether he or she wishes to have (~~(counsel)~~) an attorney. The  
19 department or supervising agency and the child's guardian ad litem  
20 shall notify the child and make this inquiry immediately after:

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

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

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

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

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

32 (~~(d)~~) (f) The department or supervising agency shall note in the  
33 child's individual service and safety plan, and the guardian ad litem  
34 shall note in his or her report to the court, that the child was

1 notified of the right to request (~~(counsel)~~) an attorney and indicate  
2 the child's position regarding appointment of (~~(counsel)~~) an attorney.

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

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

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

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

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

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

20 ~~(7)~~) (8) For the purposes of child abuse prevention and treatment  
21 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-  
22 247, or any related state or federal legislation, a person appointed  
23 pursuant to this section shall be deemed a guardian ad litem (~~(to~~  
24 ~~represent the best interests of the minor in proceedings before the~~  
25 ~~court)~~).

26 (~~(8)~~) (9) When a court-appointed special advocate or volunteer  
27 guardian ad litem is requested on a case, the program shall give the  
28 court the name of the person it recommends. The program shall attempt  
29 to match a child with special needs with a guardian ad litem who has  
30 specific training or education related to the child's individual  
31 needs. The court shall immediately appoint the person recommended by  
32 the program.

33 (~~(9)~~) (10) If a party in a case reasonably believes the court-  
34 appointed special advocate or volunteer guardian ad litem is

1 inappropriate or unqualified, the party may request a review of the  
2 appointment by the program. The program must complete the review  
3 within five judicial days and remove any appointee for good cause. If  
4 the party seeking the review is not satisfied with the outcome of the  
5 review, the party may file a motion with the court for the removal of  
6 the court-appointed special advocate or volunteer guardian ad litem on  
7 the grounds the advocate or volunteer is inappropriate or unqualified.

8  
9 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.53 RCW  
10 to read as follows:

11 (1) Money appropriated by the legislature for legal services  
12 provided by an attorney appointed pursuant to RCW 13.34.100 must be  
13 administered by the office of civil legal aid established under RCW  
14 2.53.020.

15 (2) The office of civil legal aid may enter into contracts with  
16 the counties to disburse state funds for an attorney appointed  
17 pursuant to RCW 13.34.100. The office of civil legal aid may also  
18 require a county to use attorneys under contract with the office for  
19 the provision of legal services under RCW 13.34.100 to remain within  
20 appropriated amounts.

21 (3) Prior to distributing state funds under subsection (2) of this  
22 section, the office of civil legal aid must verify that attorneys  
23 providing legal representation to children under RCW 13.34.100 meet  
24 the standards of practice, voluntary training, and caseload limits  
25 developed and recommended by the statewide children's representation  
26 work group pursuant to section 5, chapter 180, Laws of 2010. Caseload  
27 limits described in this subsection must be determined as provided in  
28 RCW 13.34.100(6)(c)(ii).

29  
30 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2014."

32 2SSB 6126 - S AMD  
By Senator O'Ban

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

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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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