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SENATE BILL 5363

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State of Washington

65th Legislature

2017 Regular Session

By Senators Walsh, Frockt, Rivers, Fain, Carlyle, Darneille, Miloscia, Warnick, and Kuderer

Read first time 01/20/17. Referred to Committee on Human Services, Mental Health & Housing.

1 AN ACT Relating to the appointment of counsel for youth in  
2 dependency court proceedings; and amending RCW 13.34.090, 13.34.092,  
3 13.34.100, and 13.34.105.

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

5 **Sec. 1.** RCW 13.34.090 and 2000 c 122 s 10 are each amended to  
6 read as follows:

7 (1) Any party has a right to be represented by an attorney in all  
8 proceedings under this chapter, to introduce evidence, to be heard in  
9 his or her own behalf, to examine witnesses, to receive a decision  
10 based solely on the evidence adduced at the hearing, and to an  
11 unbiased fact finder.

12 (2) At all stages of a proceeding in which a child is alleged to  
13 be dependent, the child's parent, guardian, or legal custodian has  
14 the right to be represented by counsel, and if indigent, to have  
15 counsel appointed for him or her by the court. Unless waived in  
16 court, counsel shall be provided to the child's parent, guardian, or  
17 legal custodian, if such person (a) has appeared in the proceeding or  
18 requested the court to appoint counsel and (b) is financially unable  
19 to obtain counsel because of indigency.

1       (3) At all stages of a proceeding in which a child is alleged to  
2 be dependent, the child has the right to be represented by counsel  
3 and have counsel appointed for him or her by the court.

4       (4) If a party to an action under this chapter is represented by  
5 counsel, no order shall be provided to that party for his or her  
6 signature without prior notice and provision of the order to counsel.

7       ~~((4))~~ (5) Copies of department of social and health services or  
8 supervising agency records to which the child and the child's parents  
9 have legal access pursuant to chapter 13.50 RCW shall be given to the  
10 ~~((child's))~~ child, child's counsel, and the parents, guardian, legal  
11 custodian, or his or her legal counsel, prior to any shelter care  
12 hearing and within fifteen days after the department or supervising  
13 agency receives a written request for such records from the child,  
14 child's counsel, and the parents, guardian, legal custodian, or his  
15 or her legal counsel. These records shall be provided to the  
16 ~~((child's))~~ child, child's counsel, and the parents, guardian, legal  
17 custodian, or legal counsel a reasonable period of time prior to the  
18 shelter care hearing in order to allow an opportunity to review the  
19 records prior to the hearing. These records shall be legible and  
20 shall be provided at no expense to the child, child's counsel, and  
21 the parents, guardian, legal custodian, or his or her counsel. When  
22 the records are served on legal counsel, legal counsel shall have the  
23 opportunity to review the records with ~~((the parents))~~ his or her  
24 client and shall review the records with ~~((the parents))~~ his or her  
25 client prior to the shelter care hearing.

26       **Sec. 2.** RCW 13.34.092 and 2000 c 122 s 6 are each amended to  
27 read as follows:

28       At the commencement of the shelter care hearing the court shall  
29 advise the parties of basic rights as provided in RCW 13.34.090 and  
30 appoint counsel to the child's parent, guardian, or legal custodian  
31 pursuant to RCW 13.34.090 if the parent ~~((or)),~~ guardian, or legal  
32 custodian is indigent unless counsel has been retained by the parent  
33 ~~((or)),~~ guardian, or legal custodian or the court finds that the  
34 right to counsel has been expressly and voluntarily waived in court.

35       **Sec. 3.** RCW 13.34.100 and 2014 c 108 s 2 are each amended to  
36 read as follows:

37       (1) The court shall appoint a guardian ad litem for a child who  
38 is the subject of an action under this chapter, unless a court for

1 good cause finds the appointment unnecessary. The requirement of a  
2 guardian ad litem may be deemed satisfied if the child is represented  
3 by an independent attorney in the proceedings. The court shall  
4 attempt to match a child with special needs with a guardian ad litem  
5 who has specific training or education related to the child's  
6 individual needs.

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

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

16 (a) Level of formal education;

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

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

20 (d) Specific training or education related to child disability or  
21 developmental issues;

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

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

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

29 (h) Founded allegations of abuse or neglect as defined in RCW  
30 26.44.020;

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

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

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

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

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

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

32 (6)(a) The court must appoint an attorney for a child in a  
33 dependency proceeding (~~((six months after granting a petition to  
34 terminate the parent and child relationship pursuant to RCW 13.34.180  
35 and when there is no remaining parent with parental rights))~~ prior to  
36 the initial shelter care hearing.

37 (~~(The court must appoint an attorney for a child when there is no  
38 remaining parent with parental rights for six months or longer prior  
39 to July 1, 2014, if the child is not already represented.)~~)

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

4 ~~(b) ((Legal services provided by an attorney appointed pursuant  
5 to (a) of this subsection do not include representation of the child  
6 in any appellate proceedings relative to the termination of the  
7 parent and child relationship.~~

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

17 (ii) Counties are encouraged to set caseloads as low as possible  
18 and to account for the individual needs of the children in care.  
19 Notwithstanding the caseload limits developed and recommended by the  
20 statewide children's representation work group pursuant to section 5,  
21 chapter 180, Laws of 2010, when one attorney represents a sibling  
22 group, the first child is counted as one case, and each child  
23 thereafter is counted as one-half case to determine compliance with  
24 the caseload standards pursuant to ~~((e))~~ (b)(i) of this subsection  
25 and RCW 2.53.045.

26 (iii) The office of civil legal aid is responsible for  
27 implementation of ~~((e))~~ (b)(i) and (ii) of this subsection as  
28 provided in RCW 2.53.045.

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

33 ~~(b)(i) If the court has not already appointed an attorney for a  
34 child, or the child is not represented by a privately retained  
35 attorney:~~

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

1       ~~(B) The child or any individual may retain an attorney for the~~  
2 ~~child for the purposes of filing a motion to request appointment of~~  
3 ~~an attorney at public expense.~~

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

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

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

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

14 ~~or~~

15       ~~(iii) July 1, 2010, for a child who turned twelve years old~~  
16 ~~before July 1, 2010.~~

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

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

23       ~~(f) The department or supervising agency shall note in the~~  
24 ~~child's individual service and safety plan, and the guardian ad litem~~  
25 ~~shall note in his or her report to the court, that the child was~~  
26 ~~notified of the right to request an attorney and indicate the child's~~  
27 ~~position regarding appointment of an attorney.~~

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

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

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

32       ~~(iii) July 1, 2010, for a child who turned twelve years old~~  
33 ~~before July 1, 2010;~~

34 ~~the court shall inquire whether the child has received notice of his~~  
35 ~~or her right to request an attorney from the department or~~  
36 ~~supervising agency and the child's guardian ad litem. The court shall~~  
37 ~~make an additional inquiry at the first regularly scheduled hearing~~  
38 ~~after the child's fifteenth birthday. No inquiry is necessary if the~~  
39 ~~child has already been appointed an attorney.~~

1       ~~(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.  
3 93-247, or any related state or federal legislation, a person  
4 appointed pursuant to this section shall be deemed a guardian ad  
5 litem.

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

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

23       **Sec. 4.** RCW 13.34.105 and 2013 c 23 s 5 are each amended to read  
24 as follows:

25       (1) Unless otherwise directed by the court, the duties of the  
26 guardian ad litem for a child subject to a proceeding under this  
27 chapter, including an attorney specifically appointed by the court to  
28 serve as a guardian ad litem, include but are not limited to the  
29 following:

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

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

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

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

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

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

10 ~~(g) ((To inform the child, if the child is twelve years old or  
11 older, of his or her right to request counsel and to ask the child  
12 whether he or she wishes to have counsel, pursuant to RCW  
13 13.34.100(6). The guardian ad litem shall report to the court that  
14 the child was notified of this right and indicate the child's  
15 position regarding appointment of counsel. The guardian ad litem  
16 shall report to the court his or her independent recommendation as to  
17 whether appointment of counsel is in the best interest of the child;  
18 and~~

19 ~~(h))~~ In the case of an Indian child as defined in RCW 13.38.040,  
20 know, understand, and advocate the best interests of the Indian  
21 child.

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

24 (3) Except for information or records specified in RCW  
25 13.50.100(7), the guardian ad litem shall have access to all  
26 information available to the state or agency on the case. Upon  
27 presentation of the order of appointment by the guardian ad litem,  
28 any agency, hospital, school organization, division or department of  
29 the state, doctor, nurse, or other health care provider,  
30 psychologist, psychiatrist, police department, or mental health  
31 clinic shall permit the guardian ad litem to inspect and copy any  
32 records relating to the child or children involved in the case,  
33 without the consent of the parent or guardian of the child, or of the  
34 child if the child is under the age of thirteen years, unless such  
35 access is otherwise specifically prohibited by law.

36 (4) A guardian ad litem may release confidential information,  
37 records, and reports to the office of the family and children's  
38 ombuds for the purposes of carrying out its duties under chapter  
39 43.06A RCW.



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

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