
SUBSTITUTE SENATE BILL 5461

State of Washington

63rd Legislature

2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Darneille, Harper, Kohl-Welles, and Frockt)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to representation of children in dependency
2 matters; amending RCW 13.34.100 and 13.34.105; and creating new
3 sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
6 dependency proceedings often determine many critical aspects of a
7 child's future, including where the child lives, whether the child
8 resides with siblings, where the child attends school, and how long the
9 child remains in state care. Children have many legal rights at stake
10 in these proceedings, and representation by an attorney can be
11 invaluable in ensuring that the child's rights are respected. The
12 legislature further recognizes that varying practices throughout the
13 state have resulted in inconsistent protection of the rights of the
14 state's children, especially those in the most vulnerable situations.

15 (2) The legislature takes note of the 2012 holding of the
16 Washington supreme court in *In re the Dependency of MSR and TSR*, where
17 the court held that children have at least as much of a due process
18 right to counsel in dependency proceedings as their parents. The court
19 further noted that children have fundamental liberty interests at stake

1 in dependency proceedings, including a right to freedom from harm, a
2 right to reasonable safety, and a right to maintain family
3 relationships. Whether individual children are entitled to an attorney
4 is determined by a balancing test, yet the current inconsistent
5 practices in attorney appointment across the state may lead to many
6 children being denied their constitutional right to legal
7 representation. The balancing test will always favor appointment of
8 counsel for certain groups of highly vulnerable children including, but
9 not limited to, those whose parents' parental rights have been
10 terminated.

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

13 (1) The court shall appoint a guardian ad litem for a child who is
14 the subject of an action under this chapter, unless a court for good
15 cause finds the appointment unnecessary. The requirement of a guardian
16 ad litem may be deemed satisfied if the child is represented by an
17 independent (~~counsel~~) attorney in the proceedings. The court shall
18 attempt to match a child with special needs with a guardian ad litem
19 who has specific training or education related to the child's
20 individual needs.

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

26 (3) Each guardian ad litem program shall maintain a background
27 information record for each guardian ad litem in the program. The
28 background information record shall include, but is not limited to, the
29 following information:

- 30 (a) Level of formal education;
- 31 (b) General training related to the guardian ad litem's duties;
- 32 (c) Specific training related to issues potentially faced by
33 children in the dependency system;
- 34 (d) Specific training or education related to child disability or
35 developmental issues;
- 36 (e) Number of years' experience as a guardian ad litem;

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

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

7 (h) Founded allegations of abuse or neglect as defined in RCW
8 26.44.020;

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

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

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

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

36 (4) The appointment of the guardian ad litem shall remain in effect
37 until the court discharges the appointment or no longer has

1 jurisdiction, whichever comes first. The guardian ad litem may also be
2 discharged upon entry of an order of guardianship.

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

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

18 (7) 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)~~)) (8) The court must appoint an attorney for the child in
27 the dependency within seventy-two hours of granting a petition to
28 terminate the parent and child relationship pursuant to RCW 13.34.180.

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

33 (b) The child's caregiver may refer the child to an attorney for
34 the purposes of filing a motion to request appointment of an attorney
35 at public expense.

36 (c) The child or another individual may retain an attorney for the
37 child for the purposes of filing a motion to request appointment of an
38 attorney at public expense.

1 (d) Pursuant to this subsection (9), 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))~~ seventh birthday;

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

10 (iii) July 1, ~~((2010))~~ 2013, for a child who turned ~~((twelve))~~
11 seven years old before July 1, ~~((2010))~~ 2013.

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

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

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

23 ~~((e))~~ (h) At the first regularly scheduled hearing after:

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

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

27 (iii) July 1, ~~((2010))~~ 2013, for a child who turned ~~((twelve))~~
28 seven years old before July 1, ~~((2010))~~ 2013;

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

36 ~~((f) If the child requests legal counsel and is age twelve or~~
37 ~~older, or if the guardian ad litem or the court determines that the~~

1 ~~child needs to be independently represented by counsel, the court may~~
2 ~~appoint an attorney to represent the child's position.~~

3 ~~(7)) (10) For the purposes of child abuse prevention and treatment~~
4 ~~act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-~~
5 ~~247, or any related state or federal legislation, a person appointed~~
6 ~~pursuant to this section shall be deemed a guardian ad litem ((to~~
7 ~~represent the best interests of the minor in proceedings before the~~
8 ~~court)).~~

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

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

24 **Sec. 3.** RCW 13.34.105 and 2011 c 309 s 26 are each amended to read
25 as follows:

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

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

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

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

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

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

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

12 (g) To inform the child, if the child is (~~twelve~~) seven years old
13 or older, of his or her right to request (~~counsel~~) an attorney and to
14 ask the child whether he or she wishes to have (~~counsel~~) an attorney,
15 pursuant to RCW 13.34.100(~~(+6)~~) (9). The guardian ad litem shall
16 report to the court that the child was notified of this right and
17 indicate the child's position regarding appointment of (~~counsel~~) an
18 attorney. The guardian ad litem shall report to the court his or her
19 independent recommendation as to whether appointment of (~~counsel~~) an
20 attorney is in the best interest of the child; and

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

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

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

37 (4) A guardian ad litem may release confidential information,

1 records, and reports to the office of the family and children's
2 ombudsman for the purposes of carrying out its duties under chapter
3 43.06A RCW.

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

6 NEW SECTION. **Sec. 4.** The Washington state center for court
7 research, in consultation with the office of civil legal aid, shall
8 evaluate the effect of attorney representation under RCW 13.34.100(8),
9 particularly the effect on case processing timelines and child and
10 family well-being outcomes, and submit a preliminary report regarding
11 its findings to the appropriate committees of the legislature and the
12 governor by December 1, 2014, and a final report by December 1, 2015.

--- END ---