

HOUSE BILL REPORT

SSB 5285

As Reported by House Committee On:
Judiciary

Title: An act relating to guardians ad litem.

Brief Description: Revising procedures for appointment of guardians ad litem.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Kauffman and Stevens).

Brief History:

Committee Activity:

Judiciary: 3/16/09, 3/19/09 [DPA].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Requires a guardian ad litem (GAL) to report child abuse or neglect under the mandatory reporting of child abuse and neglect statute.
- Requires the court in family law and dependency cases to attempt to match a child with special needs to a GAL with specific training or education related to the child's needs.
- Requires GALs to provide additional background information to the court and the parties.
- Makes other changes to the statutes governing GALs.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Trudes Tango (786-7384)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Mandatory Reporting of Child Abuse or Neglect.

Certain persons, such as physicians, social service counselors, and nurses, are required to report to the Department of Social and Health Services (DSHS) or to law enforcement if the person has reasonable cause to believe that a child has suffered abuse or neglect. The mandatory reporting statute establishes procedures that the DSHS and law enforcement must follow when they receive a report.

Guardians ad Litem.

A guardian ad litem (GAL) is a person who is appointed by the court to represent the best interests of the child in family law and dependency cases. The GAL performs an investigation and reports findings and recommendations to the court. In family law cases, the court may also appoint an investigator who may make recommendations to the court. There are compensated GALs and volunteer GALs. Volunteer GALs generally serve as court appointed special advocates in dependency cases.

Appointment and Removal of a GAL.

For family law cases, superior courts maintain a registry of qualified GALs, and appointments are generally made by agreement or by rotation from the GAL registry. The GAL in family law cases must investigate and report to the court factual information concerning parenting arrangements for the child.

When a request is made to use a volunteer GAL in a dependency or family law case, the GAL program must give the court the name of the volunteer it recommends and that person's appointment is effective immediately. If a party reasonably believes the volunteer GAL is inappropriate or unqualified, the party may request that the GAL program review the appointment. The review must be completed within five judicial days, and the program must remove any appointee for good cause. If the party seeking review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the volunteer on the grounds the person is inappropriate or unqualified.

For compensated GALs, a party who reasonably believes that the GAL lacks the necessary expertise, charges an hourly rate higher than what is reasonable for the proceeding, or has a conflict of interest, may, within three judicial days from the appointment, file a motion with the court for substitution of the GAL.

A different appointment and removal process for compensated GALs applies in judicial districts with a population of more than 100,000. In those districts, a list of three names is selected from the GAL registry and given to the parties, along with the GALs' background information. Each party may, within three judicial days, strike one name from the list. If one name remains on the list, that GAL will be appointed. Once appointed, if a party reasonably believes that the appointed GAL lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the proceeding, or has a conflict of interest, the party may, within three judicial days, file a motion with the court seeking a substitution of the GAL.

Background Information Required.

Guardian ad litem programs must maintain a record of background information for each GAL in the program. The background information includes, but is not limited to, information such as the level of formal education; training related to the GAL's duties; years of experience as a GAL; number of appointments as a GAL; the names of any counties in which the GAL was removed from a GAL registry under a grievance action; and criminal history. As a condition of appointment, the GAL's background information must be made available to the court. Upon appointment, the GAL must provide the parties or their attorneys with that background information, including criminal history for the period covering 10 years prior to the appointment.

Summary of Amended Bill:

Mandatory Reporting of Child Abuse and Neglect.

The statute requiring mandatory reporting of child abuse and neglect applies to GALs, including court appointed special advocates.

Guardian ad Litem in Dependency and Family Law Cases.

Changes are made to the GAL statutes for dependency and family law cases. Courts must attempt to match a child with special needs with a GAL who has specific training or education related to the child's needs. Rather than investigating issues "concerning parenting arrangements," the GAL in family law cases must investigate and report factual information regarding the issues ordered to be reported or investigated.

Volunteer and compensated GALs must provide the following additional information in their background information record:

- the GAL's general training;
- specific training related to issues potentially faced by children in dependency, dissolution, and other family-law related matters;
- specific training or education related to child disability or developmental issues;
- founded allegations of abuse or neglect; and
- results of an examination of state criminal identification data that consists of a background check through the Washington State Patrol.

Upon appointment, the GAL or GAL program must provide the parties with a copy of the background information, but information related to the criminal background check and criminal history must not be disclosed to the parties.

Amended Bill Compared to Original Bill:

The amendment makes the following changes:

- It clarifies that the mandatory reporting requirement also applies to court appointed special advocates.

- It provides that the requirement for a court to attempt to match a child with a specially-trained GAL applies to children with special needs.
 - The procedures allowing a party to remove a GAL within five days of appointment without cause are removed (the removal process in current law remains).
 - Requirements that the GAL's background information include a fingerprint-based FBI check are removed.
 - Current law is restored that allows investigators appointed by the court to make recommendations to the court on family law proceedings.
 - The requirement that a court find that the GAL substantially misrepresented his or her qualifications before the court can remove the GAL from the registry is removed.
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Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are some cases in which the child has special needs and the appointed GAL does not have a good grasp of the child's needs. Such situations make it difficult for the GAL to represent the best interests of the child. The bill does not entitle a person to a specific GAL with a specific background, but it provides for the opportunity to find a GAL who would have some understanding of the child's special needs. The bill gives a parent some process for removing a GAL if the parent does not feel that the GAL is representing the child's best interest. There are many issues with GALs and there needs to be consistency. The mandatory reporting requirement only applies to a child who the GAL is representing.

(Opposed) The bill places a burden on nonprofit programs to provide court appointed special advocates (CASA). There are numerous issues that go into which a GAL is matched with a child. The CASA program considers issues such as geography, socio-economic situations, and other issues for matching. The requirement for a national check is expensive for nonprofit CASA programs. The CASA volunteers already have a statewide background check. Allowing a party to remove a volunteer GAL within five days is procedurally problematic. It is unknown how courts will be able to make the determination whether a GAL is appropriate when the GAL is first appointed. Some parents will have nothing to lose to delay the process by automatically removing the GAL. Courts want immediate information. The five-day process will slow down the GAL's investigation.

(With concerns) The removal process will allow the parties to cherry-pick. Appointing a GAL is for the benefit of the children and to allow the parties to hinder that by removing the GAL for no reason contradicts the purpose of appointing the GAL. Every jurisdiction already has a process to remove a GAL who is not doing his or her job.

Persons Testifying: (In support) Senator Regala, prime sponsor.

(Opposed) Caroline Denis, Family Law Court Appointed Special Advocates Program.

(With concerns) Richard McDermott, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.