

SENATE BILL REPORT

SB 5285

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2009

Title: An act relating to guardians ad litem.

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

Sponsors: Senators Regala, Hargrove, Kauffman and Stevens.

Brief History:

Committee Activity: Human Services & Corrections: 2/06/09, 2/23/09 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5285 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Jennifer Strus (786-7316)

Background: Child Abuse Reporting. Many professionals are required by law to report suspected child abuse or neglect to the Department of Social and Health Services (DSHS). Guardians ad litem (GALs) who work with children are not included in that requirement.

Dependency Cases. Under the dependency statute, every GAL or Court Appointed Special Advocate (CASA) program must maintain a background information record (record) for each GAL or CASA in the program. The record must include:

- level of formal education;
- training related to the GAL's duties;
- number of years experience as a GAL;
- number of GAL appointments in all counties;
- names of the counties in which the GAL was removed from the GAL program; and
- criminal history.

When a CASA or GAL is requested on a case, the program provides to the court the name of the person it recommends. The appointment becomes effective immediately. If a party reasonably believes the CASA or GAL is inappropriate or unqualified, the party may ask the

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program to review the appointment. If the party is not satisfied with the results of the review, the party may file a motion with the court to have the CASA or GAL removed on the grounds that the CASA or GAL is inappropriate or unqualified.

When the court requests a CASA volunteer or volunteer GAL be appointed in a case, the program must provide the name of the person it recommends and the appointment must immediately be effective. The court must appoint the person recommended by the program.

Family Court Cases. The court in a family court matter may appoint a GAL to represent the interests of a minor when the court believes the appointment of a GAL is necessary to protect the best interests of the child. The GAL's role is to investigate and report factual information concerning parenting arrangements for the child, and to represent the child's best interests. GALs may make recommendations based upon an independent investigation regarding the best interests of the child.

Volunteer GALs. Each volunteer GAL program must maintain a background information record on each of its GALs. The information to be contained in the record is the same information that must be kept by the CASA or GAL program for dependency cases.

When a GAL is requested on a case, the program must provide the court with the name of the person it recommends and the appointment becomes effective immediately. If there is no such program or the program has insufficient volunteers, the court must appoint a suitable person to act as a GAL for the child. The process for removal of a GAL in a family court case is the same as the process for removal of a GAL or CASA in a dependency case.

Compensated GALs. Compensated GALs must comply with certain training requirements established by the Administrative Office of the Courts prior to their appointment in family court matters.

Each GAL program must establish a rotational registry system for the appointment of GALs. If a party reasonably believes 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 move for substitution of the GAL within three days of the GAL's appointment.

The court must remove any person from the GAL registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

Summary of Bill (Recommended Substitute): Child Abuse Reporting. GALs appointed in dependency, family court, and probate matters who, in the course of their representation of children in these matters, have reasonable cause to believe a child has been abused or neglected must report suspected child abuse or neglect to DSHS.

Dependency Cases. In appointing a GAL, the court must attempt to match the child with a GAL who has specific training or education related to the child's individual needs.

The following items are added to the list of information already required in the background information record:

- specific training related to the issues potentially faced by children in the dependency system;
- specific training or education related to child disability or developmental issues;
- founded allegations of child abuse or neglect; and
- the results of a criminal history background check.

The results of the criminal history background check cannot be disclosed to either the parties or their attorneys.

When a CASA or volunteer GAL is requested, the program must provide the court with the name of the person it recommends. The program must attempt to match the child with a GAL who has specific training or education related to the child's individual needs. The court must immediately appoint the person recommended by the program unless the court believes the CASA or volunteer GAL is inappropriate or unqualified.

If a party reasonably believes that a suitable person appointed by the court to act as a GAL for the child is inappropriate or unqualified, the party may request that the court review the appointment.

Family Court Cases. When appointing a GAL to represent the interests of the child, the court must attempt to match the child with a GAL who has specific training or education related to the child's individual needs.

Either party may request, within five judicial days of appointment, that the GAL be removed. The court must grant the first request unless, because of the limited pool of guardians ad litem, to do so would cause substantial harm to the children involved. Subsequent requests to remove a GAL must follow the current procedure used to remove GALs in dependency matters. If a party requests that a GAL be removed within the first five days of appointment, the court must determine whether fees should be paid to the GAL for work completed during that five day period or if fees have already been paid, how much, if any, should be refunded to the parties.

Compensated GAL programs must maintain a background information record for each GAL in the program. The background information record must include the following:

- level of formal education;
- training related to the GAL's duties;
- number of years experience as a GAL;
- number of GAL appointments in all counties;
- names of the counties in which the GAL was removed from the GAL program;
- criminal history;
- specific training related to the issues potentially faced by children in the dependency system;
- specific training or education related to child disability or developmental issues;
- founded allegations of child abuse or neglect; and
- the results of a criminal history background check.

As with volunteer GAL or CASA programs, the background information record must be annually updated. The record must be available to the court and, upon appointment, must

provide the record to the parties or their attorneys, except for the results of the criminal background check. If a compensated GAL is not part of a GAL program, the GAL must provide the information required in the background information record to the court.

Either party may request, within five judicial days of appointment, that the GAL be removed. The court must grant the first request unless, because of the limited pool of guardians ad litem, to do so would cause substantial harm to the children involved. Subsequent requests to remove a GAL must follow the current procedure used to remove GALs in dependency matters. The court must remove any person from the GAL registry who has been found to have materially misrepresented his or her qualifications.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Clarifies that the GAL is a mandated reporter of child abuse or neglect only in the situation in which the GAL reasonably believes a child has been abused or neglected through his or her representation of the child in the matter for which the person has been appointed GAL.

Clarifies that the criminal history background check results cannot be disclosed to either the parties or their attorneys.

Clarifies that the court must grant a party's request that a GAL be removed within the first five days following appointment unless, because of the limited pool of GALs, to do so would cause substantial harm to the children involved.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The provisions in the bill that try to match the GAL's training with the child's needs is to be commended. Also, the provisions clarifying the role of the GAL are also positive. The five-day removal process is concerning because it may allow parties to abuse the system and ask for the removal of a qualified GAL because the party may not like what the GAL will recommend. Regarding the provision making CASA/GALs working with children mandated reporters, it would be more effective to limit the scope of their reporting responsibilities to those children assigned to their caseload. The provision in the bill adding to the background information record the training and education of the GAL is a good one and the CASA programs already do this. CASA has been trying to get fingerprint-based background checks of their volunteers for years but the wording of the statute has prevented them from doing so. This change will help them to obtain those checks.

Persons Testifying: PRO: Lisa Barton, NW Women's Law Center; Ryan Murrey, Washington State Association of CASA/GAL Programs.