S-1297.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5823**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Rivers and Litzow

AN ACT Relating to guardians ad litem; amending RCW 26.12.175, 26.12.177, and 26.12.183; and prescribing penalties.

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

**Sec.**  RCW 26.12.175 and 2011 c 292 s 6 are each amended to read as follows:

(1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The court ((~~may~~)) shall only appoint a guardian ad litem from the guardian ad litem program or court-appointed special advocate program((~~, if that program exists in the county~~)). The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child.

(b) The guardian ad litem's role is to investigate and report factual information regarding the issues ordered to be reported or investigated to the court. The guardian ad litem shall always represent the best interests of the child. Guardians ad litem under this title may make recommendations based upon his or her investigation, which the court may consider and weigh in conjunction with the recommendations of all of the parties. However, all recommendations must be substantiated through accurate factual information and may only be made according to the guardian ad litem's training and licensing. A guardian ad litem may not make recommendations based upon mental health, physical health, or other special circumstance without the aid of a licensed professional for that field of study. The court shall strike all nonprofessional recommendations from the guardian ad litem report. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court ((~~may~~)) shall require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem. The court shall consider any written responses to a report filed by the guardian ad litem, including any factual information or recommendations provided in the report. The court may not adopt or act upon the guardian ad litem report or recommendations prior to each party to the proceeding having at least thirty days to respond to any report or recommendation filed by the guardian ad litem.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties and court with an itemized accounting of their time and billing for services each month. The court may not award fees for services rendered without the guardian ad litem first submitting an itemized accounting of his or her time and billing.

(2)(a) ((~~If the guardian ad litem appointed is from the county court-appointed special advocate program,~~)) The program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority ((~~may~~)) shall adopt rules of eligibility for court-appointed special advocate program services that are ((~~not inconsistent~~)) consistent with this section.

(3) Each guardian ad litem program for compensated guardians ad litem and each court-appointed special advocate program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

(a) Level of formal education;

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

(c) Specific training related to issues potentially faced by children in dissolution, custody, paternity, and other family law proceedings;

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

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

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

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

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

(i) The results of an examination that shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050 and the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834. This background check shall be done through the Washington state patrol criminal identification section; and

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

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. ((~~If the appointed guardian ad litem is not a member of a guardian ad litem program the person appointed as guardian ad litem shall provide the background information record to the court.~~))

Upon appointment, the guardian ad litem, court-appointed special advocate program or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall ((~~not~~)) be disclosed to the parties ((~~or~~)) and their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The court shall immediately appoint the person recommended by the program.

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

**Sec.**  RCW 26.12.177 and 2011 c 292 s 7 are each amended to read as follows:

(1) All guardians ad litem appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem appointed under this title must have additional relevant training under RCW 2.56.030(15) ((~~when it is available~~)).

(2)(a) Each guardian ad litem program ((~~for compensated guardians ad litem~~)) shall establish a rotational registry system for the appointment of guardians ad litem under this title. ((~~If a judicial district does not have a program the court shall establish the rotational registry system.~~)) Guardians ad litem under this title shall be selected from the registry ((~~except in exceptional circumstances as determined and documented by the court~~)). Cases involving mental or physical health, limiting factors under RCW 26.09.191, or other issues outside of the guardian ad litem licensing must have a licensed professional for that field appointed to assist the court in examining potential long-term effects on ability to parent. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties and presiding judge or commissioner along with the background information record as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem is inappropriate or unqualified, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court. Guardians ad litem must notify each party and court of any actual or potential conflicts of interest prior to accepting appointment. Failure to do so results in immediate dismissal of the guardian ad litem and all reports and documents from the court case. A party knowingly withholding conflict of interest information is guilty of a misdemeanor.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only. Guardians ad litem must notify each party and court of any actual or potential conflicts of interest prior to accepting appointment. Failure to do so results in immediate dismissal of the guardian ad litem and all reports and documents from the court case. A party knowingly withholding conflict of interest information is guilty of a misdemeanor.

(e) The superior court shall remove any person from the guardian ad litem registry who has been found to have misrepresented his or her qualifications.

((~~(3) The rotational registry system shall not apply to court-appointed special advocate programs.~~))

**Sec.**  RCW 26.12.183 and 2000 c 124 s 15 are each amended to read as follows:

Except for guardians ad litem appointed by the court from the subregistry created under RCW 26.12.177(2)(d), the court shall specify the hourly rate the guardian ad litem or investigator under this title may charge for his or her services, and shall specify the maximum amount the guardian ad litem or investigator under this title may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. ((~~This section shall apply except as provided by local court rule.~~))

**--- END ---**