

SENATE BILL REPORT

ESSB 6257

As Passed Senate, February 13, 1996

Title: An act relating to guardians and guardians ad litem for minors and incapacitated persons.

Brief Description: Improving guardian and guardian ad litem systems to protect minors and incapacitated persons.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin, Hargrove, Goings, Long, Sheldon, Fairley, Wojahn, Prentice, Thibaudeau, Fraser and Heavey).

Brief History:

Committee Activity: Human Services & Corrections: 1/17/96, 2/2/96 [DPS-WM].

Ways & Means: 2/5/96 [w/oRec].

Passed Senate, 2/13/96, 45-2.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6257 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Franklin, Vice Chair; Kohl, Moyer, Prentice, Schow, Strannigan and Zarelli.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred to Committee on Rules without recommendation.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Cantu, Drew, Finkbeiner, Fraser, Hargrove, Hochstatter, Johnson, Kohl, Long, McDonald, Moyer, Pelz, Quigley, Roach, Sheldon, Snyder, Spanel, Strannigan, West, Winsley and Wojahn.

Staff: Steve Jones (786-7440)

Background: Washington law recognizes guardians and guardians ad litem (GALs). A guardian may be appointed for incapacitated persons to manage either or both their personal or financial affairs. A guardian is a person appointed to manage the personal or financial affairs of an incapacitated person or minor.

The GALs conduct interviews of the interested parties and report their findings and recommendations to the court. GALs are temporary appointments and they may be succeeded by a guardian. They are appointed in child abuse and neglect and custody cases.

GALs are appointed by the court to represent the best interests of children and incapacitated adults who are involved in the legal system. For children, the GALs are usually appointed in child abuse and neglect cases and child custody cases.

For adults, GALs are used when a person files a guardianship for an alleged incapacitated person. In many cases, the court grants the GALs very broad powers.

GALs are appointed in different ways depending on the county and type of case. Some courts utilize: (1) The services of court-operated GAL programs; (2) independent attorneys; or (3) volunteer programs authorized by statute under the court-appointed special advocate program (CASA). Some jurisdictions use all three types of programs.

The CASA programs use trained community volunteers to conduct the investigations or duties requested by the court. Nineteen CASA programs are operated in 20 counties. Other programs are being developed in four additional counties.

Training programs and requirements are approved by the courts and vary by jurisdiction. Fees also vary by jurisdiction, type of case involved, and the type of appointment. Court-operated programs generally use a set hourly fee, and independent attorneys may submit their bills for court approval. CASA volunteers may receive reimbursement for their expenses, but are not paid for their services.

GAL programs, which provide services on child abuse and neglect cases, are required to maintain a background information record for each GAL in the program. The information is updated annually and is made available to the court. It has been suggested that the information should also be available to the parties and their attorneys.

Once the GAL is appointed, it is very difficult to have a GAL removed from a case. It has been suggested that the affidavit of prejudice procedure used for judges should also be available for removal of a GAL. This procedure is used to remove a person whom the party believes is prejudiced or is unable to render a fair or impartial decision.

GALs report their findings at court hearings and trials. It is recommended that the GALs should also file periodic reports to keep the parties apprised of the direction of the case.

In some instances, the GAL may be required to obtain an evaluation of the child or persons involved in the case. It has been suggested that, absent a court order, the GAL should not be allowed to select a health care provider or evaluator which is chosen in opposition to the wishes of the person being evaluated, or their parents in the case of a child.

Summary of Bill: The Office of the Administrator for the Courts (OAC) is required to develop a comprehensive statewide curriculum for all persons who act as guardians ad litem under the RCW titles pertaining to juveniles and domestic relations (cases involving child abuse, neglect or custody). The curriculum includes specialty sections on child development, child sexual abuse, child physical abuse, child neglect, clinical and forensic investigative and interviewing techniques, and relevant statutory and legal requirements. The curriculum is completed and made available to all superior court judges, court personnel, and all persons who act as guardians ad litem by July 1, 1997.

The OAC must review the advisability of the statewide mandatory use of court-appointed special advocates to act as guardians ad litem in juvenile and domestic relations cases. The plan must include recommendations regarding the increase of court fees or assessments as necessary to fully fund the implementation and continuation of the plan.

The OAC must also conduct a study on the feasibility and desirability of requiring all persons to be certified as qualified guardians ad litem prior to their eligibility for appointment as guardians ad litem under the statutes pertaining to probate and trust, juveniles and domestic relations. The report is due December 1, 1996.

DSHS must, every two years, update its model training program for GALs who are involved in guardianship and limited guardianship cases. The superior courts must ensure the GALs who work on guardianship cases have completed a model training program.

A petition for guardianship or limited guardianship must describe any alternative arrangements previously made by the alleged incapacitated person (AIP), such as trusts, powers of attorney or health care directives, and must identify any nominations of guardian made in a power of attorney. The petition must explain why a guardianship is necessary in cases where the person had already made alternative arrangements.

An AIP has the right to be represented by an attorney of their choosing. If an AIP opposes a health care professional selected by a GAL, the GAL must use the professional selected by the AIP or obtain court approval to use another provider. The AIP may testify and present evidence at any hearing on their alleged incapacity.

The GAL for an AIP must give each party a statement of qualifications, their hourly rate, and a description of their other guardianship, dependency, or domestic relations cases which involve the attorneys to the present action. A party or the court may move for substitution of the GAL if they believe the GAL lacks the expertise necessary, charges more than a reasonable fee, or has a conflict of interest.

Additional information is required for the GAL background statements in all cases. As a condition of appointment, the background statements must be provided to the parties or their attorneys. The background statements in dependency cases must not include home addresses or home telephone numbers, and the court may allow the use of pseudonyms or maiden names to increase the safety of the CASA/GALs.

The GAL for an AIP must examine the alternative arrangements to a guardianship which were already made by the AIP. The previous alternative arrangements may only be discontinued by a showing of clear, cogent and convincing evidence. The GAL for an AIP must attend the final hearing on the petition unless all parties waive the requirement.

No attorney may be appointed to act as a judge pro tempore in the superior court if they currently serve as a compensated GAL. An exception is allowed for judicial districts with less than 100,000 people.

GALs in domestic relations and dependency cases who are appointed after January 1, 1998, must complete the comprehensive statewide curriculum developed by the OAC, prior to their appointment.

Each GAL program (for paid GALs) or the superior court of each county is required to maintain a rotational registry of persons who are willing and qualified to serve as guardians ad litem. In judicial districts with a population over 100,000 the parties shall be given a list of three potential GALs. Each party may strike on name from the list, after which the court shall make the appointment. Once the appointment has been made, a party may move for the substitution of a GAL if they believe the GAL lacks the necessary qualifications, charges a fee too high for the type of case, or on the basis of a conflict of interest by the GAL. The parties may independently agree upon a GAL who is listed on the registry. The court may appoint a person who is not on the registry in exceptional circumstances documented by the court.

For CASA/GALs a formal administrative removal process is added along with a formal motion for substitution. The rotational registry does not apply to the "volunteer" CASA.

In domestic relations cases the court may require GALs to file periodic reports. The GAL's report must be filed at least 60 days prior to a trial. The GALs, except for volunteers, in domestic relations and dependency cases are required to provide a monthly accounting of their time and billings.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: There are many abuses occurring in the area of guardianship law. Many GALs are exceeding their authority, charging excessive fees, and are inadequately trained. The use of alternatives to guardianships are being ignored; this includes powers of attorney, health care directives, and trusts, either created before the person's incapacity or which should be used as a tool after incapacity. There is a need for uniformity in the training of GALs and the courts should use a rotational list in the selection of GALs. Parties should not be forced to be examined by the health care professional selected by the GAL, especially when they have their own qualified treating providers. There needs to be a way for parties to avoid a GAL who has a predisposition on a case or is prejudiced against a party or their attorney.

Testimony Against: There appears to be a problem in one county and this legislation changes the system for the whole state. The use of an affidavit of prejudice and the dissemination of background information will discourage volunteers from acting as CASA/GALs. The affidavit of prejudice will unduly delay the proceedings. There should not be a set fee schedule for guardianship cases because many of them require the use of specialists, such as tax attorneys or medical professionals. The use of a rotational list system will not allow the court to appoint the most qualified person to conduct the investigation.

Testified: William Nathe, MSW, JD, GAL Section, King County Bar (con); Douglas A. Schafer, independent lawyer (pro); Ruth A. Warner, lawyer (pro); Kelly Gillespie, citizen (pro); Rosanne Buckner, Superior Court Judges Assn. (con); Joe Kearney, parent (pro); Deborah Ruggles, WA Coalition of Sexual Assault Programs (con); Lori Irvin, WA State Assn. of CASA/GAL Programs (con); Raven Lidman, Professor of Law, Seattle U School

of Law (pro); Mark Bates, Lifetime Advocacy Plus (con); Donald Barovic, citizen (pro); Pam McCain Barovic, citizen (pro); Mike Courtney, AARP (pro); Mary Lockhart, ARCH (pro); Cindy Iversen, citizen (pro); Chad Smithson, Lifetime Advocacy (con); Linda Burk, ARCH (pro); Donna Thompson, citizen (pro); Mandy Carlson, citizen (pro); Sharon M. Carter, citizen; Watson B. Blair, WSBA Real Property Probate & Trust Section (con).

House Amendment(s): Some of the requirements of the bill that currently apply to all GALs will apply only to GALs that are paid for their services. Volunteer GALs do not have to attend the statewide training program but can continue to be trained through their programs' training. Paid GALs must provide their background statements to the parties, but volunteer GALs have to provide their background statements only to the court unless a court orders otherwise. The CASA program will continue to pick their own GALs, and the program will act as the GAL pending appointment of the GAL. A person who asks the program to review the appointment of a GAL in a family or dependency matter must show good cause for the review.

The statewide training program must contain training on family reconciliation and mediation services.

A GAL, the petitioner, or another person, may file an emergency motion to protect the AIP from abuse, neglect, abandonment, or exploitation, or to provide for other emergency needs of the AIP.

The population threshold is raised to judicial districts with a population of 600,000 or more before an attorney can be prevented from acting as a GAL and a pro tempore. The phrase "while serving as" is clarified.