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**SUBSTITUTE SENATE BILL 6257**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

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

Read first time 02/02/96.

1 AN ACT Relating to guardians and guardians ad litem for minors and  
2 incapacitated persons; amending RCW 2.56.030, 4.08.060, 8.25.270,  
3 11.16.083, 11.88.030, 11.88.045, 11.88.090, 11.92.190, 13.34.100,  
4 13.34.120, 26.12.175, 26.26.140, 26.33.070, and 26.44.053; adding a new  
5 section to chapter 2.56 RCW; adding new sections to chapter 13.34 RCW;  
6 adding new sections to chapter 26.09 RCW; adding new sections to  
7 chapter 26.12 RCW; adding a new section to chapter 2.08 RCW; and  
8 creating new sections.

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

10 NEW SECTION. **Sec. 1.** It is the intent of this act to make  
11 improvements to the guardian and guardian ad litem systems currently in  
12 place for the protection of minors and incapacitated persons.

13 **Sec. 2.** RCW 2.56.030 and 1994 c 240 s 1 are each amended to read  
14 as follows:

15 The administrator for the courts shall, under the supervision and  
16 direction of the chief justice:

17 (1) Examine the administrative methods and systems employed in the  
18 offices of the judges, clerks, stenographers, and employees of the

1 courts and make recommendations, through the chief justice, for the  
2 improvement of the same;

3 (2) Examine the state of the dockets of the courts and determine  
4 the need for assistance by any court;

5 (3) Make recommendations to the chief justice relating to the  
6 assignment of judges where courts are in need of assistance and carry  
7 out the direction of the chief justice as to the assignments of judges  
8 to counties and districts where the courts are in need of assistance;

9 (4) Collect and compile statistical and other data and make reports  
10 of the business transacted by the courts and transmit the same to the  
11 chief justice to the end that proper action may be taken in respect  
12 thereto;

13 (5) Prepare and submit budget estimates of state appropriations  
14 necessary for the maintenance and operation of the judicial system and  
15 make recommendations in respect thereto;

16 (6) Collect statistical and other data and make reports relating to  
17 the expenditure of public moneys, state and local, for the maintenance  
18 and operation of the judicial system and the offices connected  
19 therewith;

20 (7) Obtain reports from clerks of courts in accordance with law or  
21 rules adopted by the supreme court of this state on cases and other  
22 judicial business in which action has been delayed beyond periods of  
23 time specified by law or rules of court and make report thereof to  
24 supreme court of this state;

25 (8) Act as secretary of the judicial conference referred to in RCW  
26 2.56.060;

27 (9) Formulate and submit to the judicial council of this state  
28 recommendations of policies for the improvement of the judicial system;

29 (10) Submit annually, as of February 1st, to the chief justice and  
30 the judicial council, a report of the activities of the administrator's  
31 office for the preceding calendar year;

32 (11) Administer programs and standards for the training and  
33 education of judicial personnel;

34 (12) Examine the need for new superior court and district judge  
35 positions under a weighted caseload analysis that takes into account  
36 the time required to hear all the cases in a particular court and the  
37 amount of time existing judges have available to hear cases in that  
38 court. The results of the weighted caseload analysis shall be reviewed  
39 by the board for judicial administration and the judicial council, both

1 of which shall make recommendations to the legislature (~~by January 1,~~  
2 ~~1989~~). It is the intent of the legislature that weighted caseload  
3 analysis become the basis for creating additional district court  
4 positions, and recommendations should address that objective;

5 (13) Provide staff to the judicial retirement account plan under  
6 chapter 2.14 RCW;

7 (14) Attend to such other matters as may be assigned by the supreme  
8 court of this state;

9 (15) Within available funds, develop a curriculum for a general  
10 understanding of child development, placement, and treatment resources,  
11 as well as specific legal skills and knowledge of relevant statutes  
12 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,  
13 interviewing skills, and special needs of the abused or neglected  
14 child. This curriculum shall be completed and made available to all  
15 juvenile court judges, court personnel, and service providers (~~by July~~  
16 ~~1, 1988. The curriculum shall~~) and be updated yearly to reflect  
17 changes in statutes, court rules, or case law;

18 (16) Develop, in consultation with the entities set forth in  
19 section 3(3) of this act, a comprehensive state-wide curriculum for all  
20 persons who act as guardians ad litem under Title 13 or 26 RCW. The  
21 curriculum shall be made available January 1, 1997, and include  
22 specialty sections on child development, child sexual abuse, child  
23 physical abuse, child neglect, investigative and interviewing  
24 techniques, and relevant statutory and legal requirements. The  
25 curriculum shall be made available to all superior court judges, court  
26 personnel, and all persons who act as guardians ad litem;

27 (17) Develop a curriculum for a general understanding of crimes of  
28 malicious harassment, as well as specific legal skills and knowledge of  
29 RCW 9A.36.080, relevant cases, court rules, and the special needs of  
30 malicious harassment victims. This curriculum shall be (~~completed~~  
31 ~~and~~) made available to all superior court and court of appeals judges  
32 and to all justices of the supreme court (~~by July 1, 1989~~);

33 (~~(17)~~) (18) Develop, in consultation with the criminal justice  
34 training commission and the commissions established under chapters  
35 43.113, 43.115, and 43.117 RCW, a curriculum for a general  
36 understanding of ethnic and cultural diversity and its implications for  
37 working with youth of color and their families. The curriculum shall  
38 be (~~completed and made~~) available to all superior court judges and  
39 court commissioners assigned to juvenile court, and other court

1 personnel ((by October 1, 1993)). Ethnic and cultural diversity  
2 training shall be provided annually so as to incorporate cultural  
3 sensitivity and awareness into the daily operation of juvenile courts  
4 state-wide;

5 ((~~(18)~~)) (19) Authorize the use of closed circuit television and  
6 other electronic equipment in judicial proceedings. The administrator  
7 shall promulgate necessary standards and procedures and shall provide  
8 technical assistance to courts as required.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.56 RCW  
10 to read as follows:

11 (1) The administrator for the courts shall develop a plan for the  
12 state-wide mandatory use of court-appointed special advocates as  
13 described in RCW 26.12.175 to act as guardians ad litem in all cases  
14 under Titles 13 and 26 RCW. The plan shall include recommendations  
15 regarding the increase of court fees or assessments as necessary to  
16 fully fund the implementation and continuation of the plan.

17 (2) The administrator shall also conduct a study on the feasibility  
18 and desirability of requiring all persons who act as guardians ad litem  
19 under Titles 11, 13, and 26 RCW to be certified as qualified guardians  
20 ad litem prior to their eligibility for appointment.

21 (3) In developing the plan and conducting the study the  
22 administrator shall consult with: (a) The presidents or directors of  
23 all public benefit nonprofit corporations that are eligible to receive  
24 state funds under RCW 43.330.135; (b) the attorney general, or a  
25 designee; (c) the secretary of the department of social and health  
26 services, or a designee; (d) the superior court judges association; (e)  
27 the Washington state bar association; (f) public defenders who  
28 represent children under Title 13 or 26 RCW; (g) private attorneys who  
29 represent parents under Title 13 or 26 RCW; (h) professionals who  
30 evaluate families for the purposes of determining the custody or  
31 placement decisions of children; (i) the office of financial  
32 management; (j) persons who act as volunteer or compensated guardians  
33 ad litem; and (k) parents who have dealt with guardians ad litem in  
34 court cases. For the purposes of studying the feasibility of a  
35 certification requirement for guardians ad litem acting under Title 11  
36 RCW the administrator shall consult with the advisory group formed  
37 under RCW 11.88.090.

1        NEW SECTION.    **Sec. 4.** The plan and study required under section 3  
2 of this act shall be presented to the governor and to the legislature  
3 no later than December 1, 1996.

4        **Sec. 5.** RCW 4.08.060 and 1899 c 91 s 1 are each amended to read as  
5 follows:

6        When an ~~((insane))~~ incapacitated person, as defined in RCW  
7 11.88.010, is a party to an action in the superior courts he or she  
8 shall appear by guardian, or if he or she has no guardian, or in the  
9 opinion of the court the guardian is an improper person, the court  
10 shall appoint one to act as guardian ad litem. Said guardian shall be  
11 appointed as follows:

12        (1) When the ~~((insane))~~ incapacitated person is plaintiff, upon  
13 the application of a relative or friend of the ~~((insane))~~ incapacitated  
14 person.

15        (2) When the ~~((insane))~~ incapacitated person is defendant, upon the  
16 application of a relative or friend of such ~~((insane))~~ incapacitated  
17 person, such application shall be made within thirty days after the  
18 service of summons if served in the state of Washington, and if served  
19 out of the state or service is made by publication, then such  
20 application shall be made within sixty days after the first publication  
21 of summons or within sixty days after the service out of the state. If  
22 no such application be made within the time above limited, application  
23 may be made by any party to the action.

24        **Sec. 6.** RCW 8.25.270 and 1977 ex.s. c 80 s 12 are each amended to  
25 read as follows:

26        When it ~~((shall))~~ appears in any petition or otherwise at any time  
27 during the proceedings for condemnation brought pursuant to chapters  
28 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW(~~(, each as now or hereafter~~  
29 ~~amended,)) that any ~~((infant))~~ minor, or ~~((allegedly incompetent or~~  
30 ~~disabled))~~ alleged incapacitated person, as defined in RCW 11.88.010,  
31 is interested in any property that is to be taken or damaged, the court  
32 shall appoint a guardian ad litem for ~~((such infant))~~ the minor or  
33 ~~((allegedly incompetent or disabled))~~ alleged incapacitated person to  
34 appear and assist in ~~((his, her or their))~~ the person's defense, unless  
35 a guardian or limited guardian has previously been appointed, in which  
36 case the duty to appear and assist shall be delegated to the properly  
37 qualified guardian or limited guardian. The court shall make such~~

1 orders or decrees as it shall deem necessary to protect and secure the  
2 interest of the ((infant)) minor or ((allegedly incompetent or  
3 disabled)) alleged incapacitated person ((in the property sought to be  
4 condemned or the compensation which shall be awarded therefore)).

5 **Sec. 7.** RCW 11.16.083 and 1977 ex.s. c 234 s 1 are each amended to  
6 read as follows:

7 Notwithstanding any other provision of this title, no notice of any  
8 hearing in probate or probate proceeding need be given to any legally  
9 competent person who is interested in any hearing in any probate as an  
10 heir, legatee, or devisee of the decedent who has in person or by  
11 attorney waived in writing notice of such hearing or proceeding. Such  
12 waiver of notice may apply to either a specific hearing or proceeding,  
13 or to any and all hearings and proceedings to be held during the  
14 administration of the estate in which event such waiver of notice shall  
15 be of continuing effect unless subsequently revoked by the filing of a  
16 written notice of revocation of the waiver and the mailing of a copy  
17 thereof to the personal representative and his or her attorney. Unless  
18 notice of a hearing is required to be given by publication, if all  
19 persons entitled to notice thereof shall have waived such notice, the  
20 court may hear the matter forthwith. A guardian of the estate or a  
21 guardian ad litem may make such waivers on behalf of ((his  
22 incompetent)) an incapacitated person, as defined in RCW 11.88.010, and  
23 a trustee may make such waivers on behalf of any competent or  
24 ((incompetent)) incapacitated beneficiary of his or her trust. A  
25 consul or other representative of a foreign government, whose  
26 appearance has been entered as provided by law on behalf of any person  
27 residing in a foreign country, may make such waiver of notice on behalf  
28 of such person. Any person who submits to the jurisdiction of the  
29 court in any hearing shall be deemed to have waived notice thereof.

30 **Sec. 8.** RCW 11.88.030 and 1995 c 297 s 1 are each amended to read  
31 as follows:

32 (1) Any person or entity may petition for the appointment of a  
33 qualified person, trust company, national bank, or nonprofit  
34 corporation authorized in RCW 11.88.020 ((as now or hereafter amended))  
35 as the guardian or limited guardian of an incapacitated person. No  
36 liability for filing a petition for guardianship or limited  
37 guardianship shall attach to a petitioner acting in good faith and upon

1 reasonable basis. A petition for guardianship or limited guardianship  
2 shall state:

3 (a) The name, age, residence, and post office address of the  
4 alleged incapacitated person;

5 (b) The nature of the alleged incapacity in accordance with RCW  
6 11.88.010;

7 (c) The approximate value and description of property, including  
8 any compensation, pension, insurance, or allowance, to which the  
9 alleged incapacitated person may be entitled;

10 (d) Whether there is, in any state, a guardian or limited guardian,  
11 or pending guardianship action for the person or estate of the alleged  
12 incapacitated person;

13 (e) The residence and post office address of the person whom  
14 petitioner asks to be appointed guardian or limited guardian;

15 (f) The names and addresses, and nature of the relationship, so far  
16 as known or can be reasonably ascertained, of the persons most closely  
17 related by blood or marriage to the alleged incapacitated person;

18 (g) The name and address of the person or facility having the care  
19 and custody of the alleged incapacitated person;

20 (h) The reason why the appointment of a guardian or limited  
21 guardian is sought and the interest of the petitioner in the  
22 appointment, and whether the appointment is sought as guardian or  
23 limited guardian of the person, the estate, or both(~~(, and why no~~  
24 ~~alternative to guardianship is appropriate))~~);

25 (i) A description of any alternate arrangements previously made by  
26 the alleged incapacitated person, such as trusts or powers of attorney,  
27 including identifying any nominations of guardian in a power of  
28 attorney, and why a guardianship is nevertheless necessary;

29 (j) The nature and degree of the alleged incapacity and the  
30 specific areas of protection and assistance requested and the  
31 limitation of rights requested to be included in the court's order of  
32 appointment;

33 (~~(j)~~) (k) The requested term of the limited guardianship to be  
34 included in the court's order of appointment;

35 (~~(k)~~) (l) Whether the petitioner is proposing a specific  
36 individual to act as guardian ad litem and, if so, the individual's  
37 knowledge of or relationship to any of the parties, and why the  
38 individual is proposed.

1 (2)(a) The attorney general may petition for the appointment of a  
2 guardian or limited guardian in any case in which there is cause to  
3 believe that a guardianship is necessary and no private party is able  
4 and willing to petition.

5 (b) Prepayment of a filing fee shall not be required in any  
6 guardianship or limited guardianship brought by the attorney general.  
7 Payment of the filing fee shall be ordered from the estate of the  
8 incapacitated person at the hearing on the merits of the petition,  
9 unless in the judgment of the court, such payment would impose a  
10 hardship upon the incapacitated person, in which case the filing shall  
11 be waived.

12 (3) No filing fee shall be charged by the court for filing either  
13 a petition for guardianship or a petition for limited guardianship if  
14 the petition alleges that the alleged incapacitated person has total  
15 assets of a value of less than three thousand dollars.

16 (4)(a) Notice that a guardianship proceeding has been commenced  
17 shall be personally served upon the alleged incapacitated person and  
18 the guardian ad litem along with a copy of the petition for appointment  
19 of a guardian. Such notice shall be served not more than five court  
20 days after the petition has been filed.

21 (b) Notice under this subsection shall include a clear and easily  
22 readable statement of the legal rights of the alleged incapacitated  
23 person that could be restricted or transferred to a guardian by a  
24 guardianship order as well as the right to counsel of choice and to a  
25 jury trial on the issue of incapacity. Such notice shall be in  
26 substantially the following form and shall be in capital letters,  
27 double-spaced, and in a type size not smaller than ten-point type:

28 IMPORTANT NOTICE  
29 PLEASE READ CAREFULLY

30 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE  
31 . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS  
32 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

- 33 (1) TO MARRY OR DIVORCE;
- 34 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 35 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 36 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 37 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 38 (6) TO POSSESS A LICENSE TO DRIVE;



- 1 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 2 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 3 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 4 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

5 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

6 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.  
7 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO  
8 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

9 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED  
10 A GUARDIAN TO HELP YOU.

11 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING  
12 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

13 (5) All petitions filed under the provisions of this section shall  
14 be heard within sixty days unless an extension of time is requested by  
15 a party or the guardian ad litem within such sixty day period and  
16 granted for good cause shown. If an extension is granted, the court  
17 shall set a new hearing date.

18 **Sec. 9.** RCW 11.88.045 and 1995 c 297 s 3 are each amended to read  
19 as follows:

20 (1)(a) Alleged incapacitated individuals shall have the right to be  
21 represented by counsel of their choosing at any stage in guardianship  
22 proceedings. The court shall provide counsel to represent any alleged  
23 incapacitated person at public expense when either: (i) The individual  
24 is unable to afford counsel, or (ii) the expense of counsel would  
25 result in substantial hardship to the individual, or (iii) the  
26 individual does not have practical access to funds with which to pay  
27 counsel. If the individual can afford counsel but lacks practical  
28 access to funds, the court shall provide counsel and may impose a  
29 reimbursement requirement as part of a final order. When, in the  
30 opinion of the court, the rights and interests of an alleged or  
31 adjudicated incapacitated person cannot otherwise be adequately  
32 protected and represented, the court on its own motion shall appoint an  
33 attorney at any time to represent such person. Counsel shall be  
34 provided as soon as practicable after a petition is filed and long  
35 enough before any final hearing to allow adequate time for consultation

1 and preparation. Absent a convincing showing in the record to the  
2 contrary, a period of less than three weeks shall be presumed by a  
3 reviewing court to be inadequate time for consultation and preparation.

4 (b) Counsel for an alleged incapacitated individual shall act as an  
5 advocate for the client and shall not substitute counsel's own judgment  
6 for that of the client on the subject of what may be in the client's  
7 best interests. Counsel's role shall be distinct from that of the  
8 guardian ad litem, who is expected to promote the best interest of the  
9 alleged incapacitated individual, rather than the alleged incapacitated  
10 individual's expressed preferences.

11 (c) If an alleged incapacitated person is represented by counsel  
12 and does not communicate with counsel, counsel may ask the court for  
13 leave to withdraw for that reason. If satisfied, after affording the  
14 alleged incapacitated person an opportunity for a hearing, that the  
15 request is justified, the court may grant the request and allow the  
16 case to proceed with the alleged incapacitated person unrepresented.

17 (2) During the pendency of any guardianship, any attorney  
18 purporting to represent a person alleged or adjudicated to be  
19 incapacitated shall petition to be appointed to represent the  
20 incapacitated or alleged incapacitated person. Fees for representation  
21 described in this section shall be subject to approval by the court  
22 pursuant to the provisions of RCW 11.92.180.

23 (3) The alleged incapacitated person is further entitled to testify  
24 and present evidence and, upon request, entitled to a jury trial on the  
25 issues of his or her alleged incapacity. The standard of proof to be  
26 applied in a contested case, whether before a jury or the court, shall  
27 be that of clear, cogent, and convincing evidence.

28 (4) In all proceedings for appointment of a guardian or limited  
29 guardian, the court must be presented with a written report from a  
30 physician licensed to practice under chapter 18.71 or 18.57 RCW or  
31 licensed or certified psychologist selected by the guardian ad litem.  
32 If the alleged incapacitated person opposes the health care  
33 professional selected by the guardian ad litem to prepare the medical  
34 report, then the guardian ad litem must either use the health care  
35 professional selected by the alleged incapacitated person or obtain  
36 court approval, following a hearing, for the guardian ad litem's  
37 selection. The physician or psychologist shall have personally  
38 examined and interviewed the alleged incapacitated person within thirty  
39 days of preparation of the report to the court and shall have expertise

1 in the type of disorder or incapacity the alleged incapacitated person  
2 is believed to have. The report shall contain the following  
3 information and shall be set forth in substantially the following  
4 format:

5 (a) The name and address of the examining physician or  
6 psychologist;

7 (b) The education and experience of the physician or psychologist  
8 pertinent to the case;

9 (c) The dates of examinations of the alleged incapacitated person;

10 (d) A summary of the relevant medical, functional, neurological,  
11 psychological, or psychiatric history of the alleged incapacitated  
12 person as known to the examining physician or psychologist;

13 (e) The findings of the examining physician or psychologist as to  
14 the condition of the alleged incapacitated person;

15 (f) Current medications;

16 (g) The effect of current medications on the alleged incapacitated  
17 person's ability to understand or participate in guardianship  
18 proceedings;

19 (h) Opinions on the specific assistance the alleged incapacitated  
20 person needs;

21 (i) Identification of persons with whom the physician or  
22 psychologist has met or spoken regarding the alleged incapacitated  
23 person.

24 The court shall not enter an order appointing a guardian or limited  
25 guardian until a medical or psychological report meeting the above  
26 requirements is filed.

27 The requirement of filing a medical report is waived if the basis  
28 of the guardianship is minority.

29 **Sec. 10.** RCW 11.88.090 and 1995 c 297 s 4 are each amended to read  
30 as follows:

31 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010  
32 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and  
33 11.92.180(~~(, as now or hereafter amended,)~~) shall affect or impair the  
34 power of any court to appoint a guardian ad litem to defend the  
35 interests of any incapacitated person interested in any suit or matter  
36 pending therein, or to commence and prosecute any suit in his or her  
37 behalf.

1 (2) Upon receipt of a petition for appointment of guardian or  
2 limited guardian, except as provided herein, the court shall appoint a  
3 guardian ad litem to represent the best interests of the alleged  
4 incapacitated person, who shall be a person found or known by the court  
5 to:

6 (a) Be free of influence from anyone interested in the result of  
7 the proceeding; and

8 (b) Have the requisite knowledge, training, or expertise to perform  
9 the duties required by this section.

10 The guardian ad litem shall, within five days of receipt of notice  
11 of appointment, file with the court and serve each party with a  
12 statement of his or her qualifications, a statement of his or her  
13 hourly rate, and a description of his or her previous dealings with and  
14 current relationships with all parties to the proceeding and their  
15 attorneys. Upon receipt of such statement, any party or the court may  
16 move for substitution of the guardian ad litem upon a showing of lack  
17 of expertise necessary for the proceeding, an hourly rate higher than  
18 what is reasonable for the particular proceeding, or a conflict of  
19 interest.

20 No guardian ad litem need be appointed when a parent is petitioning  
21 for a guardian or a limited guardian to be appointed for his or her  
22 minor child and the minority of the child, as defined by RCW 11.92.010,  
23 is the sole basis of the petition. The order appointing the guardian  
24 ad litem shall recite the duties set forth in subsection ~~((+5))~~ (4) of  
25 this section. The appointment of a guardian ad litem shall have no  
26 effect on the legal competency of the alleged incapacitated person and  
27 shall not overcome the presumption of competency or full legal and  
28 civil rights of the alleged incapacitated person.

29 (3)(a) The superior court of each county shall develop ~~((by~~  
30 ~~September 1, 1991,))~~ and maintain a registry of persons who are willing  
31 and qualified to serve as guardians ad litem in guardianship matters.  
32 The court shall choose as guardian~~((s))~~ ad litem ~~((only))~~ the  
33 person~~((s))~~ whose name~~((s))~~ appears next on the registry, except in  
34 extraordinary circumstances such as the need for particular expertise.  
35 The court shall develop procedures for periodic review of the persons  
36 on the registry and for probation, suspension, or removal of persons on  
37 the registry for failure to perform properly their duties as guardian  
38 ad litem. In the event the court does not select the person next on

1 the list, it shall include in the order of appointment a written reason  
2 for its decision.

3 (b) To be eligible for the registry a person shall:

4 (i) Present a written statement ~~((of))~~ outlining his or her  
5 background and qualifications ((describing)). The background statement  
6 shall include, but is not limited to, the following information:

7 (A) Level of formal education;

8 (B) Training related to the guardian's duties;

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

10 (D) Number of appointments as a guardian ad litem and the county or  
11 counties of appointment;

12 (E) Criminal history, as defined in RCW 9.94A.030; and

13 (F) Evidence of the person's knowledge, training, and experience in  
14 each of the following: Needs of impaired elderly people, physical  
15 disabilities, mental illness, developmental disabilities, and other  
16 areas relevant to the needs of incapacitated persons, legal procedure,  
17 and the requirements of chapters 11.88 and 11.92 RCW.

18 The written statement of qualifications shall include a statement  
19 of the number of times the guardian ad litem has been removed for  
20 failure to perform his or her duties as guardian ad litem; and

21 ~~(ii) Complete ((a training program adopted by the court, or, in the~~  
22 ~~absence of a locally adopted program, a candidate for inclusion upon~~  
23 ~~the registry shall have completed a))~~ the model training program as  
24 described in (d) of this subsection.

25 ~~(c) ((The superior court of each county shall approve training~~  
26 ~~programs designed to:~~

27 ~~(i) Train otherwise qualified human service professionals in those~~  
28 ~~aspects of legal procedure and the requirements of chapters 11.88 and~~  
29 ~~11.92 RCW with which a guardian ad litem should be familiar;~~

30 ~~(ii) Train otherwise qualified legal professionals in those aspects~~  
31 ~~of medicine, social welfare, and social service delivery systems with~~  
32 ~~which a guardian ad litem should be familiar.))~~ The background  
33 information report shall be updated annually. As a condition of  
34 appointment, the guardian ad litem's background information record  
35 shall be made available to the court, and immediately provided to the  
36 parties or their attorneys.

37 ~~(d) ((The superior court of each county may approve a guardian ad~~  
38 ~~litem training program on or before June 1, 1991.))~~ The department of  
39 social and health services((, —aging— and —adult— services

1 ~~administration,~~) shall convene an advisory group to develop a model  
2 guardian ad litem training program and shall update the program  
3 biennially. The advisory group shall consist of representatives from  
4 consumer, advocacy, and professional groups knowledgeable in  
5 developmental disabilities, neurological impairment, physical  
6 disabilities, mental illness, aging, legal, court administration, the  
7 Washington state bar association, and other interested parties.

8 (e) ~~((Any))~~ The superior court ~~((that has not adopted a guardian ad~~  
9 ~~litem training program by September 1, 1991,))~~ shall require  
10 utilization of ~~((a))~~ the model program developed by the advisory group  
11 as described in (d) of this subsection, to assure that candidates  
12 applying for registration as a qualified guardian ad litem shall have  
13 satisfactorily completed training to attain these essential minimum  
14 qualifications to act as guardian ad litem.

15 (4) ~~((The guardian ad litem's written statement of qualifications~~  
16 ~~required by RCW 11.88.090(3)(b)(i) shall be made part of the record in~~  
17 ~~each matter in which the person is appointed guardian ad litem.~~

18 ~~(5))~~ The guardian ad litem appointed pursuant to this section  
19 shall have the following duties:

20 (a) To meet and consult with the alleged incapacitated person as  
21 soon as practicable following appointment and explain, in language  
22 which such person can reasonably be expected to understand, the  
23 substance of the petition, the nature of the resultant proceedings, the  
24 person's right to contest the petition, the identification of the  
25 proposed guardian or limited guardian, the right to a jury trial on the  
26 issue of his or her alleged incapacity, the right to independent legal  
27 counsel as provided by RCW 11.88.045, and the right to be present in  
28 court at the hearing on the petition;

29 (b) To obtain a written report according to RCW 11.88.045; and such  
30 other written or oral reports from other qualified professionals as are  
31 necessary to permit the guardian ad litem to complete the report  
32 required by this section;

33 (c) To meet with the person whose appointment is sought as guardian  
34 or limited guardian and ascertain:

35 (i) The proposed guardian's knowledge of the duties, requirements,  
36 and limitations of a guardian; and

37 (ii) The steps the proposed guardian intends to take or has taken  
38 to identify and meet the needs of the alleged incapacitated person;

1 (d) To consult as necessary to complete the investigation and  
2 report required by this section with those known relatives, friends, or  
3 other persons the guardian ad litem determines have had a significant,  
4 continuing interest in the welfare of the alleged incapacitated person;

5 (e) To investigate alternate arrangements made, or which might be  
6 created, by or on behalf of the alleged incapacitated person, such as  
7 revocable or irrevocable trusts, or durable powers of attorney; whether  
8 good cause exists for any such arrangements to be discontinued; and why  
9 such arrangements should not be continued or created in lieu of a  
10 guardianship;

11 (f) To provide the court with a written report which shall include  
12 the following:

13 (i) A description of the nature, cause, and degree of incapacity,  
14 and the basis upon which this judgment was made;

15 (ii) A description of the needs of the incapacitated person for  
16 care and treatment, the probable residential requirements of the  
17 alleged incapacitated person and the basis upon which these findings  
18 were made;

19 (iii) An evaluation of the appropriateness of the guardian or  
20 limited guardian whose appointment is sought and a description of the  
21 steps the proposed guardian has taken or intends to take to identify  
22 and meet current and emerging needs of the incapacitated person;

23 (iv) A description of any alternative arrangements previously made  
24 by the alleged incapacitated person or which could be made, and whether  
25 and to what extent such alternatives should be used in lieu of a  
26 guardianship, and if the guardian ad litem is recommending  
27 discontinuation of any such arrangements, specific findings as to why  
28 such arrangements are contrary to the best interest of the alleged  
29 incapacitated person. Any alternative arrangement executed prior to  
30 filing the petition shall remain effective unless the court, following  
31 notice and a hearing at which all parties directly affected by the  
32 arrangement are provided an opportunity to be heard, based on clear,  
33 cogent, and convincing evidence, orders otherwise;

34 (v) A description of the abilities of the alleged incapacitated  
35 person and a recommendation as to whether a guardian or limited  
36 guardian should be appointed. If appointment of a limited guardian is  
37 recommended, the guardian ad litem shall recommend the specific areas  
38 of authority the limited guardian should have and the limitations and  
39 disabilities to be placed on the incapacitated person;

1       (~~(v)~~) (vi) An evaluation of the person's mental ability to  
2 rationally exercise the right to vote and the basis upon which the  
3 evaluation is made;

4       (~~(vi)~~) (vii) Any expression of approval or disapproval made by  
5 the alleged incapacitated person concerning the proposed guardian or  
6 limited guardian or guardianship or limited guardianship;

7       (~~(vii)~~) (viii) Identification of persons with significant  
8 interest in the welfare of the alleged incapacitated person who should  
9 be advised of their right to request special notice of proceedings  
10 pursuant to RCW 11.92.150; and

11       (~~(viii)~~) (ix) Unless independent counsel has appeared for the  
12 alleged incapacitated person, an explanation of how the alleged  
13 incapacitated person responded to the advice of the right to jury  
14 trial, to independent counsel and to be present at the hearing on the  
15 petition.

16       Within forty-five days after notice of commencement of the  
17 guardianship proceeding has been served upon the guardian ad litem, and  
18 at least (~~(ten)~~) fifteen days before the hearing on the petition,  
19 (~~(unless an extension or reduction of time has been granted by the~~  
20 ~~court for good cause,)~~) the guardian ad litem shall file its report and  
21 send a copy to the alleged incapacitated person and his or her counsel,  
22 spouse, all children not residing with a notified person, those persons  
23 described in (~~(e)(vii)~~) (f)(viii) of this subsection, and persons who  
24 have filed a request for special notice pursuant to RCW 11.92.150. If  
25 the guardian ad litem needs additional time to finalize his or her  
26 report, then the guardian ad litem shall petition the court for a  
27 postponement of the hearing or, with the consent of all other parties,  
28 an extension or reduction of time for filing the report. If the  
29 hearing does not occur within sixty days of filing the petition, then  
30 upon the two-month anniversary of filing the petition and on or before  
31 the same day of each following month until the hearing, the guardian ad  
32 litem shall file interim reports summarizing his or her activities on  
33 the proceeding during that time period as well as fees and costs  
34 incurred;

35       (~~(f)~~) (g) To advise the court of the need for appointment of  
36 counsel for the alleged incapacitated person within five court days  
37 after the meeting described in (a) of this subsection unless (i)  
38 counsel has appeared, (ii) the alleged incapacitated person  
39 affirmatively communicated a wish not to be represented by counsel



1 after being advised of the right to representation and of the  
2 conditions under which court-provided counsel may be available, or  
3 (iii) the alleged incapacitated person was unable to communicate at all  
4 on the subject, and the guardian ad litem is satisfied that the alleged  
5 incapacitated person does not affirmatively desire to be represented by  
6 counsel.

7 ~~((+6))~~ (5) If the petition is brought by an interested person or  
8 entity requesting the appointment of some other qualified person or  
9 entity and a prospective guardian or limited guardian cannot be found,  
10 the court shall order the guardian ad litem to investigate the  
11 availability of a possible guardian or limited guardian and to include  
12 the findings in a report to the court pursuant to ~~((RCW 11.88.090(5)(e)~~  
13 ~~as now or hereafter amended))~~ subsection (4)(f) of this section.

14 (6) The parties to the proceeding may file responses to the  
15 guardian ad litem report with the court and deliver such responses to  
16 the other parties and the guardian ad litem at any time up to the  
17 second day prior to the hearing. If a guardian ad litem fails to file  
18 his or her report in a timely manner, the hearing shall be continued to  
19 give the court and the parties at least fifteen days before the hearing  
20 to review the report. At any time during the proceeding upon motion of  
21 any party or on the court's own motion, the court may remove the  
22 guardian ad litem for failure to perform his or her duties as specified  
23 in this chapter, provided that the guardian ad litem shall have five  
24 days' notice of any motion to remove before the court enters such  
25 order. In addition, the court in its discretion may reduce a guardian  
26 ad litem's fee for failure to carry out his or her duties.

27 (7) The court appointed guardian ad litem shall have the authority,  
28 in the event that the alleged incapacitated person is in need of  
29 emergency life-saving medical services, and is unable to consent to  
30 such medical services due to incapacity pending the hearing on the  
31 petition to give consent for such emergency life-saving medical  
32 services on behalf of the alleged incapacitated person.

33 (8) The guardian ad litem shall receive a fee determined by the  
34 court. The fee shall be charged to the alleged incapacitated person  
35 unless the court finds that such payment would result in substantial  
36 hardship upon such person, in which case the county shall be  
37 responsible for such costs: PROVIDED, That if no guardian or limited  
38 guardian is appointed the court may charge such fee to the petitioner  
39 or the alleged incapacitated person, or divide the fee, as it deems

1 just; and if the petition is found to be frivolous or not brought in  
2 good faith, the guardian ad litem fee shall be charged to the  
3 petitioner. The court shall not be required to provide for the payment  
4 of a fee to any salaried employee of a public agency.

5 (9) Upon the presentation of the guardian ad litem report and the  
6 entry of an order either dismissing the petition for appointment of  
7 guardian or limited guardian or appointing a guardian or limited  
8 guardian, the guardian ad litem shall be dismissed and shall have no  
9 further duties or obligations unless otherwise ordered by the court.  
10 If the court orders the guardian ad litem to perform further duties or  
11 obligations, they shall not be performed at county expense.

12 (10) The guardian ad litem shall appear in person at the final  
13 hearing on the petition unless all parties provide a written waiver of  
14 the requirement to appear.

15 (11) At any hearing the court may consider whether or not any  
16 person who acts as a fiduciary has breached a statutory or fiduciary  
17 duty or is unable to continue.

18 **Sec. 11.** RCW 11.92.190 and 1977 ex.s. c 309 s 14 are each amended  
19 to read as follows:

20 No residential treatment facility which provides nursing or other  
21 care may detain a person within such facility against their will. Any  
22 court order, other than an order issued in accordance with the  
23 involuntary treatment provisions of chapters 10.77, 71.05, and 72.23  
24 RCW, which purports to authorize such involuntary detention or purports  
25 to authorize a guardian or limited guardian to consent to such  
26 involuntary detention on behalf of an ((~~incompetent or disabled~~))  
27 incapacitated person shall be void and of no force or effect. This  
28 section does not apply to the detention of a minor upon the application  
29 of a parent under chapter 70.96A or 71.34 RCW.

30 Nothing in this section shall be construed to require a court order  
31 authorizing placement of an ((~~incompetent or disabled~~)) incapacitated  
32 person in a residential treatment facility if such order is not  
33 otherwise required by law: PROVIDED, That notice of any residential  
34 placement of an ((~~incompetent or disabled~~)) incapacitated person shall  
35 be served, either before or after placement, by the guardian or limited  
36 guardian on such person, the guardian ad litem of record, and any  
37 attorney of record.

1        NEW SECTION.    **Sec. 12.** A new section is added to chapter 13.34 RCW  
2 to read as follows:

3        Any party or attorney to an action under this chapter may file a  
4 motion of prejudice regarding the appointment of a guardian ad litem.  
5 The motion shall be supported by an affidavit stating the guardian is  
6 prejudiced against the party or attorney and the party or attorney  
7 cannot, or believes they cannot, have a fair and impartial  
8 investigation by the guardian ad litem. The motion and affidavit shall  
9 be filed within five days of receipt of the notice of the appointment  
10 or receipt of the background information report required under RCW  
11 13.34.100, whichever is later. A party or attorney may not file more  
12 than one affidavit of prejudice against a guardian ad litem in any  
13 action. The first such motion filed by any party shall be  
14 automatically granted.

15        NEW SECTION.    **Sec. 13.** A new section is added to chapter 26.09 RCW  
16 to read as follows:

17        Any party or attorney to an action under this chapter may file a  
18 motion of prejudice regarding the appointment of a guardian ad litem.  
19 The motion shall be supported by an affidavit stating the guardian is  
20 prejudiced against the party or attorney and the party or attorney  
21 cannot, or believes they cannot, have a fair and impartial  
22 investigation by the guardian ad litem. The motion and affidavit shall  
23 be filed within five days of receipt of the notice of the appointment  
24 or receipt of the background information report required under RCW  
25 26.12.175 or 26.44.053, whichever is later. A party or attorney may  
26 not file more than one affidavit of prejudice against a guardian ad  
27 litem in any action. The first such motion filed by any party shall be  
28 automatically granted.

29        NEW SECTION.    **Sec. 14.** A new section is added to chapter 26.12 RCW  
30 to read as follows:

31        Any party or attorney to an action under this chapter may file a  
32 motion of prejudice regarding the appointment of a guardian ad litem.  
33 The motion shall be supported by an affidavit stating the guardian is  
34 prejudiced against the party or attorney and the party or attorney  
35 cannot, or believes they cannot, have a fair and impartial  
36 investigation by the guardian ad litem. The motion and affidavit shall  
37 be filed within five days of receipt of the notice of the appointment

1 or receipt of the background information report required under RCW  
2 26.12.175 or 26.44.053, whichever is later. A party or attorney may  
3 not file more than one affidavit of prejudice against a guardian ad  
4 litem in any action. The first such motion filed by any party shall be  
5 automatically granted.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 13.34 RCW  
7 to read as follows:

8 Except in judicial districts of less than forty thousand  
9 population, no attorney may serve as a superior court judge pro tempore  
10 in the same judicial district in which he or she serves as a guardian  
11 ad litem for compensation.

12 NEW SECTION. **Sec. 16.** A new section is added to chapter 26.09 RCW  
13 to read as follows:

14 Except in judicial districts of less than forty thousand  
15 population, no attorney may serve as a superior court judge pro tempore  
16 in the same judicial district in which he or she serves as a guardian  
17 ad litem for compensation.

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 26.12 RCW  
19 to read as follows:

20 Except in judicial districts of less than forty thousand  
21 population, no attorney may serve as a superior court judge pro tempore  
22 in the same judicial district in which he or she serves as a guardian  
23 ad litem for compensation.

24 **Sec. 18.** RCW 13.34.100 and 1994 c 110 s 2 are each amended to read  
25 as follows:

26 (1) The court shall appoint a guardian ad litem for a child who is  
27 the subject of an action under this chapter, unless a court for good  
28 cause finds the appointment unnecessary. The requirement of a guardian  
29 ad litem may be deemed satisfied if the child is represented by  
30 independent counsel in the proceedings.

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

1 (3) Each guardian ad litem program shall maintain a background  
2 information record for each guardian ad litem in the program. The  
3 background file shall include, but is not limited to, the following  
4 information:

5 (a) Level of formal education;

6 (b) Training related to the guardian's duties;

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

8 (d) Number of appointments as a guardian ad litem and the county or  
9 counties of appointment; and

10 (e) Criminal history, as defined in RCW 9.94A.030. The background  
11 statement shall not include identifying information that may be used to  
12 harm a guardian ad litem, such as home addresses and home telephone  
13 numbers, and for volunteer guardians ad litem the court may allow the  
14 use of maiden names or pseudonyms as necessary for their safety.

15 The background information report shall be updated annually. As a  
16 condition of appointment, the guardian ad litem's background  
17 information record shall be made available to the court, and  
18 immediately provided to the parties or their attorneys. ((~~If the~~  
19 ~~appointed guardian ad litem is not a member of a guardian ad litem~~  
20 ~~program the person shall provide the background information to the~~  
21 ~~court.~~))

22 (4) The appointment of the guardian ad litem shall remain in effect  
23 until the court discharges the appointment or no longer has  
24 jurisdiction, whichever comes first. The guardian ad litem may also be  
25 discharged upon entry of an order of guardianship.

26 (5) A guardian ad litem through counsel, or as otherwise authorized  
27 by the court, shall have the right to present evidence, examine and  
28 cross-examine witnesses, and to be present at all hearings. A guardian  
29 ad litem shall receive copies of all pleadings and other documents  
30 filed or submitted to the court, and notice of all hearings according  
31 to court rules. The guardian ad litem shall receive all notice  
32 contemplated for a parent or other party in all proceedings under this  
33 chapter.

34 (6) If the child requests legal counsel and is age twelve or older,  
35 or if the guardian ad litem or the court determines that the child  
36 needs to be independently represented by counsel, the court may appoint  
37 an attorney to represent the child's position.

38 (7) For the purposes of child abuse prevention and treatment act  
39 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,

1 or any related state or federal legislation, a person appointed  
2 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to  
3 represent the best interests of the minor in proceedings before the  
4 court.

5 **Sec. 19.** RCW 13.34.120 and 1994 c 288 s 2 are each amended to read  
6 as follows:

7 (1) To aid the court in its decision on disposition, a social  
8 study, consisting of a written evaluation of matters relevant to the  
9 disposition of the case, shall be made by the person or agency filing  
10 the petition. The study shall include all social records and may also  
11 include facts relating to the child's cultural heritage, and shall be  
12 made available to the court. The court shall consider the social file,  
13 social study, guardian ad litem report, the court-appointed special  
14 advocate's report, if any, and any reports filed by a party at the  
15 disposition hearing in addition to evidence produced at the fact-  
16 finding hearing. At least ten working days before the disposition  
17 hearing, the department shall mail to the parent and his or her  
18 attorney a copy of the agency's social study and proposed service plan,  
19 which shall be in writing or in a form understandable to the parents or  
20 custodians. In addition, the department shall provide an opportunity  
21 for parents to review and comment on the plan at the community service  
22 office. If the parents disagree with the agency's plan or any part  
23 thereof, the parents shall submit to the court at least twenty-four  
24 hours before the hearing, in writing, or signed oral statement, an  
25 alternative plan to correct the problems which led to the finding of  
26 dependency. This section shall not interfere with the right of the  
27 parents or custodians to submit oral arguments regarding the  
28 disposition plan at the hearing.

29 (2) In addition to the requirements set forth in subsection (1) of  
30 this section, a predisposition study to the court in cases of  
31 dependency alleged pursuant to RCW (~~13.34.030(2)~~) 13.34.030(4) (b) or  
32 (c) shall contain the following information:

33 (a) A statement of the specific harm or harms to the child that  
34 intervention is designed to alleviate;

35 (b) A description of the specific programs, for both the parents  
36 and child, that are needed in order to prevent serious harm to the  
37 child; the reasons why such programs are likely to be useful; the

1 availability of any proposed services; and the agency's overall plan  
2 for ensuring that the services will be delivered;

3 (c) If removal is recommended, a full description of the reasons  
4 why the child cannot be protected adequately in the home, including a  
5 description of any previous efforts to work with the parents and the  
6 child in the home; the in-home treatment programs which have been  
7 considered and rejected; the preventive services that have been offered  
8 or provided and have failed to prevent the need for out-of-home  
9 placement, unless the health, safety, and welfare of the child cannot  
10 be protected adequately in the home; and the parents' attitude toward  
11 placement of the child;

12 (d) A statement of the likely harms the child will suffer as a  
13 result of removal. This section should include an exploration of the  
14 nature of the parent-child attachment and the meaning of separation and  
15 loss to both the parents and the child;

16 (e) A description of the steps that will be taken to minimize harm  
17 to the child that may result if separation occurs; and

18 (f) Behavior that will be expected before determination that  
19 supervision of the family or placement is no longer necessary.

20 **Sec. 20.** RCW 26.12.175 and 1993 c 289 s 4 are each amended to read  
21 as follows:

22 (1)(a) The court may appoint a guardian ad litem to represent the  
23 interests of a minor or dependent child when the court believes the  
24 appointment of a guardian ad litem is necessary to protect the best  
25 interests of the child in any proceeding under this chapter. The  
26 family court services professionals may also make a recommendation to  
27 the court regarding whether a guardian ad litem should be appointed for  
28 the child. The court may appoint a guardian ad litem from the court-  
29 appointed special advocate program, if that program exists in the  
30 county.

31 (b) Unless otherwise ordered, the guardian ad litem's role is to  
32 investigate and report to the court concerning parenting arrangements  
33 for the child, and to represent the child's best interests. The  
34 guardian ad litem shall provide periodic reports to the court and the  
35 parties regarding the status of their investigation and their periodic  
36 findings and recommendations. The reports shall be provided at least  
37 every three months. The interim actions of a guardian ad litem are  
38 revisable by the court upon the motion of a party.

1       (c) The court shall enter an order for costs, fees, and  
2 disbursements to cover the costs of the guardian ad litem in accordance  
3 with the fee schedule established pursuant to section 27 of this act.  
4 The court may order either or both parents to pay for the costs of the  
5 guardian ad litem, according to their ability to pay. If both parents  
6 are indigent, the county shall bear the cost of the guardian, subject  
7 to appropriation for guardians' ad litem services by the county  
8 legislative authority. Guardians ad litem who are not volunteers shall  
9 provide the parties with monthly itemized accountings of their time and  
10 billings for services.

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

16       (b) The legislative authority of each county may authorize creation  
17 of a court-appointed special advocate program. The county legislative  
18 authority may adopt rules of eligibility for court-appointed special  
19 advocate program services.

20       (3) Each guardian ad litem program shall maintain a background  
21 information record for each guardian ad litem in the program. The  
22 background file shall include, but is not limited to, the following  
23 information:

24       (a) Level of formal education;

25       (b) Training related to the guardian's duties;

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

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

29       (e) Criminal history, as defined in RCW 9.94A.030. The background  
30 statement shall not include identifying information that may be used to  
31 harm a guardian ad litem, such as home addresses and home telephone  
32 numbers, and for volunteer guardians ad litem the court may allow the  
33 use of maiden names or pseudonyms as necessary for their safety.

34       The background information report shall be updated annually. As a  
35 condition of appointment, the guardian ad litem's background  
36 information record shall be made available to the court, and  
37 immediately provided to the parties or their attorneys. (~~If the~~  
38 ~~appointed guardian ad litem is not a member of a guardian ad litem~~



1 ~~program the person shall provide the background information to the~~  
2 ~~court.))~~

3       **Sec. 21.** RCW 26.26.140 and 1994 c 146 s 4 are each amended to read  
4 as follows:

5       The court may order reasonable fees of experts and the child's  
6 guardian ad litem, and other costs of the action, including blood or  
7 genetic test costs, to be paid by the parties in proportions and at  
8 times determined by the court. The guardian ad litem fees shall be set  
9 in accordance to the fee schedule established pursuant to section 27 of  
10 this act. The court may order that all or a portion of a party's  
11 reasonable attorney's fees be paid by another party, except that an  
12 award of attorney's fees assessed against the state or any of its  
13 agencies or representatives shall be under RCW 4.84.185.

14       **Sec. 22.** RCW 26.33.070 and 1984 c 155 s 7 are each amended to read  
15 as follows:

16       (1) The court shall appoint a guardian ad litem for any parent or  
17 alleged father under eighteen years of age in any proceeding under this  
18 chapter. The court may appoint a guardian ad litem for a child adoptee  
19 or any incompetent party in any proceeding under this chapter. The  
20 guardian ad litem for a parent or alleged father, in addition to  
21 determining what is in the best interest of the party, shall make an  
22 investigation and report to the court concerning whether any written  
23 consent to adoption or petition for relinquishment signed by the parent  
24 or alleged father was signed voluntarily and with an understanding of  
25 the consequences of the action.

26       (2) The county in which a petition is filed shall pay the fees of  
27 a guardian ad litem or attorney appointed under this chapter. The  
28 guardian ad litem fees shall be set in accordance to the fee schedule  
29 established pursuant to section 27 of this act.

30       **Sec. 23.** RCW 26.44.053 and 1994 c 110 s 1 are each amended to read  
31 as follows:

32       (1) In any judicial proceeding under this chapter or chapter 13.34  
33 RCW in which it is alleged that a child has been subjected to child  
34 abuse or neglect, the court shall appoint a guardian ad litem for the  
35 child. The requirement of a guardian ad litem may be deemed satisfied  
36 if the child is represented by counsel in the proceedings.

1       (2) Each guardian ad litem program shall maintain a background  
2 information record for each guardian ad litem in the program. The  
3 background file shall include, but is not limited to, the following  
4 information:

5       (a) Level of formal education;

6       (b) Training related to the guardian's duties;

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

8       (d) Number of appointments as a guardian ad litem; and

9       (e) Criminal history, as defined in RCW 9.94A.030.

10       The background information report shall be updated annually. As a  
11 condition of appointment, the guardian ad litem's background  
12 information record shall be made available to the court, and  
13 immediately provided to the parties or their attorneys. The background  
14 statement shall not include identifying information that may be used to  
15 harm a guardian ad litem, such as home addresses and home telephone  
16 numbers, and for volunteer guardians ad litem the court may allow the  
17 use of maiden names or pseudonyms as necessary for their safety.

18       (3) At any time prior to or during a hearing in such a case, the  
19 court may, on its own motion, or the motion of the guardian ad litem,  
20 or other parties, order the examination by a physician, psychologist,  
21 or psychiatrist, of any parent or child or other person having custody  
22 of the child at the time of the alleged child abuse or neglect, if the  
23 court finds such an examination is necessary to the proper  
24 determination of the case. The hearing may be continued pending the  
25 completion of such examination. The physician, psychologist, or  
26 psychiatrist conducting such an examination may be required to testify  
27 concerning the results of such examination and may be asked to give his  
28 or her opinion as to whether the protection of the child requires that  
29 he or she not be returned to the custody of his or her parents or other  
30 persons having custody of him or her at the time of the alleged child  
31 abuse or neglect. Persons so testifying shall be subject to cross-  
32 examination as are other witnesses. No information given at any such  
33 examination of the parent or any other person having custody of the  
34 child may be used against such person in any subsequent criminal  
35 proceedings against such person or custodian concerning the abuse or  
36 neglect of the child.

37       ((+3)) (4) A parent or other person having legal custody of a  
38 child alleged to be abused or neglected shall be a party to any

1 proceeding that may impair or impede such person's interest in and  
2 custody or control of the child.

3 NEW SECTION. **Sec. 24.** A new section is added to chapter 13.34 RCW  
4 to read as follows:

5 (1) All guardians ad litem appointed under this chapter, after  
6 January 1, 1998, shall have completed the comprehensive state-wide  
7 curriculum developed by the office of the administrator for the courts,  
8 under RCW 2.56.030(16), prior to their appointment.

9 (2) The superior court of each county shall maintain a registry of  
10 persons who are willing and qualified to serve as guardians ad litem  
11 under this chapter. The court shall only appoint as guardian ad litem,  
12 the person whose name appears next on the registry except in  
13 extraordinary circumstances such as the need for special expertise.  
14 The court shall develop procedures for periodic review of the persons  
15 on the registry and for probation, suspension, or removal of persons  
16 from the registry for failure to perform their duties as guardian ad  
17 litem. In the event the court does not select the person next on the  
18 registry, it shall include in the order of appointment a written reason  
19 for its decision. If the person whose name appears next on the  
20 registry is: Unable to accept the appointment, unwilling to accept the  
21 appointment, or subject to an affidavit of prejudice, the person's name  
22 shall be placed at the bottom of the registry. The rotational registry  
23 system shall not apply to court-appointed special advocate programs.

24 NEW SECTION. **Sec. 25.** A new section is added to chapter 26.09 RCW  
25 to read as follows:

26 (1) All guardians ad litem appointed under this chapter, after  
27 January 1, 1998, shall have completed the comprehensive state-wide  
28 curriculum developed by the office of the administrator for the courts,  
29 under RCW 2.56.030(16), prior to their appointment.

30 (2) The superior court of each county shall maintain a registry of  
31 persons who are willing and qualified to serve as guardians ad litem  
32 under this chapter. The court shall only appoint as guardian ad litem,  
33 the person whose name appears next on the registry except in  
34 extraordinary circumstances such as the need for special expertise.  
35 The court shall develop procedures for periodic review of the persons  
36 on the registry and for probation, suspension, or removal of persons  
37 from the registry for failure to perform their duties as guardian ad

1 litem. In the event the court does not select the person next on the  
2 registry, it shall include in the order of appointment a written reason  
3 for its decision. If the person whose name appears next on the  
4 registry is: Unable to accept the appointment, unwilling to accept the  
5 appointment, or subject to an affidavit of prejudice, the person's name  
6 shall be placed at the bottom of the registry. The rotational registry  
7 system shall not apply to court-appointed special advocate programs.

8 NEW SECTION. **Sec. 26.** A new section is added to chapter 26.12 RCW  
9 to read as follows:

10 (1) All guardians ad litem appointed under this chapter, after  
11 January 1, 1998, shall have completed the comprehensive state-wide  
12 curriculum developed by the office of the administrator for the courts,  
13 under RCW 2.56.030(16), prior to their appointment.

14 (2) The superior court of each county shall maintain a registry of  
15 persons who are willing and qualified to serve as guardians ad litem  
16 under this chapter. The court shall only appoint as guardian ad litem  
17 the person whose name appears next on the registry except in  
18 extraordinary circumstances such as the need for special expertise.  
19 The court shall develop procedures for periodic review of the persons  
20 on the registry and for probation, suspension, or removal of persons  
21 from the registry for failure to perform their duties as guardian ad  
22 litem. In the event the court does not select the person next on the  
23 registry, it shall include in the order of appointment a written reason  
24 for its decision. If the person whose name appears next on the  
25 registry is: Unable to accept the appointment, unwilling to accept the  
26 appointment, or subject to an affidavit of prejudice, the person's name  
27 shall be placed at the bottom of the registry. The rotational registry  
28 system shall not apply to court-appointed special advocate programs.

29 NEW SECTION. **Sec. 27.** A new section is added to chapter 2.08 RCW  
30 to read as follows:

31 The maximum hourly fee allowed for the services a person acting as  
32 a guardian ad litem appointed under Title 13 or 26 RCW shall be fixed  
33 by the judges of the judicial district. The judges of the superior  
34 court shall use the fee schedule when setting, awarding, or approving  
35 fees for guardians ad litem.

1        NEW SECTION.   **Sec. 28.**   A new section is added to chapter 13.34 RCW  
2 to read as follows:

3        If a person subject to a proceeding under this chapter opposes a  
4 health care professional selected by a guardian ad litem, the guardian  
5 ad litem must either use the health care professional selected by the  
6 person or obtain court approval, following a hearing, for the guardian  
7 ad litem's suggestion.

8        NEW SECTION.   **Sec. 29.**   A new section is added to chapter 26.09 RCW  
9 to read as follows:

10       If a person subject to a proceeding under this chapter opposes a  
11 health care professional selected by a guardian ad litem, the guardian  
12 ad litem must either use the health care professional selected by the  
13 person or obtain court approval, following a hearing, for the guardian  
14 ad litem's suggestion.

15       NEW SECTION.   **Sec. 30.**   A new section is added to chapter 26.12 RCW  
16 to read as follows:

17       If a person subject to a proceeding under this chapter opposes a  
18 health care professional selected by a guardian ad litem, the guardian  
19 ad litem must either use the health care professional selected by the  
20 person or obtain court approval, following a hearing, for the guardian  
21 ad litem's suggestion.

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