

2 SSB 6217 - H COMM AMD

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 2.56.030 and 1997 c 41 s 2 are each amended to read
8 as follows:

9 The administrator for the courts shall, under the supervision and
10 direction of the chief justice:

11 (1) Examine the administrative methods and systems employed in the
12 offices of the judges, clerks, stenographers, and employees of the
13 courts and make recommendations, through the chief justice, for the
14 improvement of the same;

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

17 (3) Make recommendations to the chief justice relating to the
18 assignment of judges where courts are in need of assistance and carry
19 out the direction of the chief justice as to the assignments of judges
20 to counties and districts where the courts are in need of assistance;

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

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

28 (6) Collect statistical and other data and make reports relating to
29 the expenditure of public moneys, state and local, for the maintenance
30 and operation of the judicial system and the offices connected
31 therewith;

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

1 (8) Act as secretary of the judicial conference referred to in RCW
2 2.56.060;

3 (9) Submit annually, as of February 1st, to the chief justice, a
4 report of the activities of the administrator's office for the
5 preceding calendar year including activities related to courthouse
6 security;

7 (10) Administer programs and standards for the training and
8 education of judicial personnel;

9 (11) Examine the need for new superior court and district judge
10 positions under a weighted caseload analysis that takes into account
11 the time required to hear all the cases in a particular court and the
12 amount of time existing judges have available to hear cases in that
13 court. The results of the weighted caseload analysis shall be reviewed
14 by the board for judicial administration which shall make
15 recommendations to the legislature. It is the intent of the
16 legislature that weighted caseload analysis become the basis for
17 creating additional district court positions, and recommendations
18 should address that objective;

19 (12) Provide staff to the judicial retirement account plan under
20 chapter 2.14 RCW;

21 (13) Attend to such other matters as may be assigned by the supreme
22 court of this state;

23 (14) Within available funds, develop a curriculum for a general
24 understanding of child development, placement, and treatment resources,
25 as well as specific legal skills and knowledge of relevant statutes
26 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,
27 interviewing skills, and special needs of the abused or neglected
28 child. This curriculum shall be completed and made available to all
29 juvenile court judges, court personnel, and service providers and be
30 updated yearly to reflect changes in statutes, court rules, or case
31 law;

32 (15) Develop, in consultation with the entities set forth in RCW
33 2.56.150(3), a comprehensive state-wide curriculum, training
34 requirements, and continuing education requirements for persons who act
35 as guardians ad litem under Title 13 or 26 RCW except these
36 requirements do not apply to the attorney general or any prosecuting
37 attorney functioning as the guardian ad litem pursuant to RCW
38 74.20.310. The curriculum, training requirements, and continuing
39 education requirements shall (~~be made available July 1, 1997, and~~)

1 include specialty sections on child development, child sexual abuse,
2 child physical abuse, child neglect, clinical and forensic
3 investigative and interviewing techniques, family reconciliation and
4 mediation services, and relevant statutory and legal requirements. The
5 curriculum, training requirements, and continuing education
6 requirements shall be made available to all superior court judges,
7 court personnel, and all persons who act as guardians ad litem and be
8 updated yearly to reflect changes in statutes, court rules, or case
9 law;

10 (16) Develop a curriculum for a general understanding of crimes of
11 malicious harassment, as well as specific legal skills and knowledge of
12 RCW 9A.36.080, relevant cases, court rules, and the special needs of
13 malicious harassment victims. This curriculum shall be made available
14 to all superior court and court of appeals judges and to all justices
15 of the supreme court;

16 (17) Develop, in consultation with the criminal justice training
17 commission and the commissions established under chapters 43.113,
18 43.115, and 43.117 RCW, a curriculum for a general understanding of
19 ethnic and cultural diversity and its implications for working with
20 youth of color and their families. The curriculum shall be available
21 to all superior court judges and court commissioners assigned to
22 juvenile court, and other court personnel. Ethnic and cultural
23 diversity training shall be provided annually so as to incorporate
24 cultural sensitivity and awareness into the daily operation of juvenile
25 courts state-wide;

26 (18) Authorize the use of closed circuit television and other
27 electronic equipment in judicial proceedings. The administrator shall
28 promulgate necessary standards and procedures and shall provide
29 technical assistance to courts as required;

30 (19) Maintain a list of all guardians ad litem appointed pursuant
31 to Titles 11, 13, and 26 RCW, who, pursuant to a founded grievance
32 action, have been removed from the guardian ad litem registry in any
33 superior court within the state; and

34 (20) Develop a model grievance procedure for use by the superior
35 courts when dealing with complaints against: A guardian ad litem under
36 chapter 11.88, 13.34, or 26.12 RCW; a court-appointed special advocate
37 appointed under chapter 13.34 or 26.12 RCW; or a parenting investigator
38 appointed under chapter 26.12 RCW.

1 **Sec. 2.** RCW 11.88.090 and 1996 c 249 s 10 are each amended to read
2 as follows:

3 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
4 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
5 11.92.180 shall affect or impair the power of any court to appoint a
6 guardian ad litem to defend the interests of any incapacitated person
7 interested in any suit or matter pending therein, or to commence and
8 prosecute any suit in his or her behalf.

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

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

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

18 The guardian ad litem shall within five days of receipt of notice
19 of appointment file with the court and serve, either personally or by
20 certified mail with return receipt, each party with a statement
21 including: His or her training relating to the duties as a guardian ad
22 litem; his or her criminal history as defined in RCW 9.94A.030 for the
23 period covering ten years prior to the appointment; his or her hourly
24 rate, if compensated; whether the guardian ad litem has had any contact
25 with a party to the proceeding prior to his or her appointment; and
26 whether he or she has an apparent conflict of interest. Within three
27 days of the later of the actual service or filing of the guardian ad
28 litem's statement, any party may set a hearing and file and serve a
29 motion for an order to show cause why the guardian ad litem should not
30 be removed for one of the following three reasons: (i) Lack of
31 expertise necessary for the proceeding; (ii) an hourly rate higher than
32 what is reasonable for the particular proceeding; or (iii) a conflict
33 of interest. Notice of the hearing shall be provided to the guardian
34 ad litem and all parties. If, after a hearing, the court enters an
35 order replacing the guardian ad litem, findings shall be included,
36 expressly stating the reasons for the removal. If the guardian ad
37 litem is not removed, the court has the authority to assess to the
38 moving party, attorneys' fees and costs related to the motion. The
39 court shall assess attorneys' fees and costs for frivolous motions.

1 No guardian ad litem need be appointed when a parent is petitioning
2 for a guardian or a limited guardian to be appointed for his or her
3 minor child and the minority of the child, as defined by RCW 11.92.010,
4 is the sole basis of the petition. The order appointing the guardian
5 ad litem shall recite the duties set forth in subsection (4) of this
6 section. The appointment of a guardian ad litem shall have no effect
7 on the legal competency of the alleged incapacitated person and shall
8 not overcome the presumption of competency or full legal and civil
9 rights of the alleged incapacitated person.

10 (3)(a) The superior court of each county shall develop and maintain
11 a registry of persons who are willing and qualified to serve as
12 guardians ad litem in guardianship matters. The court shall choose as
13 guardian ad litem a person whose name appears on the registry in a
14 system of consistent rotation, except in extraordinary circumstances
15 such as the need for particular expertise. The court shall develop
16 procedures for periodic review of the persons on the registry and for
17 probation, suspension, or removal of persons on the registry for
18 failure to perform properly their duties as guardian ad litem. In the
19 event the court does not select the person next on the list, it shall
20 include in the order of appointment a written reason for its decision.

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

22 (i) Present a written statement outlining his or her background and
23 qualifications. The background statement shall include, but is not
24 limited to, the following information:

25 (A) Level of formal education;

26 (B) Training related to the guardian ad litem's duties;

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

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

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

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

36 The written statement of qualifications shall include (~~a statement~~
37 ~~of the number of times the guardian ad litem has been removed for~~
38 ~~failure to perform his or her duties as guardian ad litem~~) the names

1 of any counties in which the person, pursuant to a founded grievance,
2 was removed from a pending case or a guardian ad litem registry; and

3 (ii) Complete the ((model)) training ((program)) and continuing
4 educational requirements as described in (d) of this subsection. The
5 training and continuing education requirements are not applicable to
6 guardians ad litem appointed pursuant to court rule solely for the
7 limited purpose of assessing a personal injury settlement.

8 (c) The background and qualification information shall be updated
9 annually.

10 (d) The department of social and health services shall convene an
11 advisory group to develop a model guardian ad litem training program
12 and establish training and continuing educational requirements. The
13 department, in consultation with the advisory group, shall update the
14 model training program biennially. The advisory group shall consist of
15 representatives from consumer, advocacy, and professional groups
16 knowledgeable in developmental disabilities, neurological impairment,
17 physical disabilities, mental illness, aging, legal, court
18 administration, the Washington state bar association, and other
19 interested parties.

20 (e) The superior court shall require ~~((utilization of the model~~
21 ~~program developed by the advisory group as))~~ that any guardian ad litem
22 appointed pursuant to this chapter comply with the training and
23 continuing education requirements described in (d) of this subsection,
24 ~~((to assure that candidates applying for registration as a qualified~~
25 ~~guardian ad litem shall have satisfactorily completed training to~~
26 ~~attain these essential minimum qualifications to act as guardian ad~~
27 ~~litem))~~ unless the guardian ad litem is appointed solely for the
28 limited purposes of assessing a personal injury settlement.

29 (4) The guardian ad litem appointed pursuant to this section shall
30 have the following duties:

31 (a) To meet and consult with the alleged incapacitated person as
32 soon as practicable following appointment and explain, in language
33 which such person can reasonably be expected to understand, the
34 substance of the petition, the nature of the resultant proceedings, the
35 person's right to contest the petition, the identification of the
36 proposed guardian or limited guardian, the right to a jury trial on the
37 issue of his or her alleged incapacity, the right to independent legal
38 counsel as provided by RCW 11.88.045, and the right to be present in
39 court at the hearing on the petition;

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

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

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

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

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

15 (e) To investigate alternate arrangements made, or which might be
16 created, by or on behalf of the alleged incapacitated person, such as
17 revocable or irrevocable trusts, or durable powers of attorney, or
18 blocked accounts in cases of personal injury settlements; whether good
19 cause exists for any such arrangements to be discontinued; and why such
20 arrangements should not be continued or created in lieu of a
21 guardianship;

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

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

26 (ii) A description of the needs of the incapacitated person for
27 care and treatment, the probable residential requirements of the
28 alleged incapacitated person and the basis upon which these findings
29 were made;

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

34 (iv) A description of any alternative arrangements previously made
35 by the alleged incapacitated person or which could be made, and whether
36 and to what extent such alternatives should be used in lieu of a
37 guardianship, and if the guardian ad litem is recommending
38 discontinuation of any such arrangements, specific findings as to why

1 such arrangements are contrary to the best interest of the alleged
2 incapacitated person;

3 (v) A description of the abilities of the alleged incapacitated
4 person and a recommendation as to whether a guardian or limited
5 guardian should be appointed. If appointment of a limited guardian is
6 recommended, the guardian ad litem shall recommend the specific areas
7 of authority the limited guardian should have and the limitations and
8 disabilities to be placed on the incapacitated person;

9 (vi) An evaluation of the person's mental ability to rationally
10 exercise the right to vote and the basis upon which the evaluation is
11 made;

12 (vii) Any expression of approval or disapproval made by the alleged
13 incapacitated person concerning the proposed guardian or limited
14 guardian or guardianship or limited guardianship;

15 (viii) Identification of persons with significant interest in the
16 welfare of the alleged incapacitated person who should be advised of
17 their right to request special notice of proceedings pursuant to RCW
18 11.92.150; ((and))

19 (ix) Unless independent counsel has appeared for the alleged
20 incapacitated person, an explanation of how the alleged incapacitated
21 person responded to the advice of the right to jury trial, to
22 independent counsel and to be present at the hearing on the petition;
23 and

24 (x) In cases of personal injury settlements, information relevant
25 to the court's analysis of the offered settlement. The information
26 relevant to the court's analysis may be specified by local court rule,
27 and need not include information specified in subsection (4)(f)(i)
28 through (ix) of this section.

29 Within forty-five days after notice of commencement of the
30 guardianship proceeding has been served upon the guardian ad litem, and
31 at least fifteen days before the hearing on the petition, unless an
32 extension or reduction of time has been granted by the court for good
33 cause, the guardian ad litem shall file its report and send a copy to
34 the alleged incapacitated person and his or her counsel, spouse, all
35 children not residing with a notified person, those persons described
36 in (f)(viii) of this subsection, and persons who have filed a request
37 for special notice pursuant to RCW 11.92.150. If the guardian ad litem
38 needs additional time to finalize his or her report, then the guardian
39 ad litem shall petition the court for a postponement of the hearing or,

1 with the consent of all other parties, an extension or reduction of
2 time for filing the report. If the hearing does not occur within sixty
3 days of filing the petition, then upon the two-month anniversary of
4 filing the petition and on or before the same day of each following
5 month until the hearing, the guardian ad litem shall file interim
6 reports summarizing his or her activities on the proceeding during that
7 time period as well as fees and costs incurred;

8 (g) To advise the court of the need for appointment of counsel for
9 the alleged incapacitated person within five court days after the
10 meeting described in (a) of this subsection unless (i) counsel has
11 appeared, (ii) the alleged incapacitated person affirmatively
12 communicated a wish not to be represented by counsel after being
13 advised of the right to representation and of the conditions under
14 which court-provided counsel may be available, or (iii) the alleged
15 incapacitated person was unable to communicate at all on the subject,
16 and the guardian ad litem is satisfied that the alleged incapacitated
17 person does not affirmatively desire to be represented by counsel.

18 (5) If the petition is brought by an interested person or entity
19 requesting the appointment of some other qualified person or entity and
20 a prospective guardian or limited guardian cannot be found, the court
21 shall order the guardian ad litem to investigate the availability of a
22 possible guardian or limited guardian and to include the findings in a
23 report to the court pursuant to subsection (4)(f) of this section.

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

37 (7) The court appointed guardian ad litem shall have the authority,
38 in the event that the alleged incapacitated person is in need of
39 emergency life-saving medical services, and is unable to consent to

1 such medical services due to incapacity pending the hearing on the
2 petition to give consent for such emergency life-saving medical
3 services on behalf of the alleged incapacitated person.

4 (8) The court-appointed guardian ad litem shall have the authority
5 to move for temporary relief under chapter 7.40 RCW to protect the
6 alleged incapacitated person from abuse, neglect, abandonment, or
7 exploitation, as those terms are defined in RCW 74.34.020, or to
8 address any other emergency needs of the alleged incapacitated person.
9 Any alternative arrangement executed before filing the petition for
10 guardianship shall remain effective unless the court grants the relief
11 requested under chapter 7.40 RCW, or unless, following notice and a
12 hearing at which all parties directly affected by the arrangement are
13 present, the court finds that the alternative arrangement should not
14 remain effective.

15 (9) The guardian ad litem shall receive a fee determined by the
16 court. The fee shall be charged to the alleged incapacitated person
17 unless the court finds that such payment would result in substantial
18 hardship upon such person, in which case the county shall be
19 responsible for such costs: PROVIDED, That if no guardian or limited
20 guardian is appointed the court may charge such fee to the petitioner
21 or the alleged incapacitated person, or divide the fee, as it deems
22 just; and if the petition is found to be frivolous or not brought in
23 good faith, the guardian ad litem fee shall be charged to the
24 petitioner. The court shall not be required to provide for the payment
25 of a fee to any salaried employee of a public agency. In cases of
26 personal injury settlements, guardian ad litem fees shall be negotiated
27 among the parties.

28 (10) Upon the presentation of the guardian ad litem report and the
29 entry of an order either dismissing the petition for appointment of
30 guardian or limited guardian or appointing a guardian or limited
31 guardian, the guardian ad litem shall be dismissed and shall have no
32 further duties or obligations unless otherwise ordered by the court.
33 If the court orders the guardian ad litem to perform further duties or
34 obligations, they shall not be performed at county expense.

35 (11) The guardian ad litem shall appear in person at all hearings
36 on the petition unless all parties provide a written waiver of the
37 requirement to appear.

1 (12) At any hearing the court may consider whether any person who
2 makes decisions regarding the alleged incapacitated person or estate
3 has breached a statutory or fiduciary duty.

4 **Sec. 3.** RCW 13.34.100 and 1996 c 249 s 13 are each amended to read
5 as follows:

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

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

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

20 (a) Level of formal education;

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

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

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

25 (e) The name of any counties in which, pursuant to a founded
26 grievance, the person was removed from a pending case or a guardian ad
27 litem registry; and

28 (f) Criminal history, as defined in RCW 9.94A.030.

29 The background information report shall be updated annually. As a
30 condition of appointment, the guardian ad litem's background
31 information record shall be made available to the court. If the
32 appointed guardian ad litem is not a member of a guardian ad litem
33 program the person shall provide the background information to the
34 court.

35 Upon appointment, the guardian ad litem, or guardian ad litem
36 program, shall provide the parties or their attorneys with a statement
37 containing: His or her training relating to the duties as a guardian
38 ad litem; the name of any counties in which, pursuant to a founded

1 grievance, the person was removed from a pending case or a guardian ad
2 litem registry; and his or her criminal history as defined in RCW
3 9.94A.030 for the period covering ten years prior to the appointment.
4 The background statement shall not include identifying information that
5 may be used to harm a guardian ad litem, such as home addresses and
6 home telephone numbers, and for volunteer guardians ad litem the court
7 may allow the use of maiden names or pseudonyms as necessary for their
8 safety.

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

13 (5) A guardian ad litem through counsel, or as otherwise authorized
14 by the court, shall have the right to present evidence, examine and
15 cross-examine witnesses, and to be present at all hearings. A guardian
16 ad litem shall receive copies of all pleadings and other documents
17 filed or submitted to the court, and notice of all hearings according
18 to court rules. The guardian ad litem shall receive all notice
19 contemplated for a parent or other party in all proceedings under this
20 chapter.

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

25 (7) For the purposes of child abuse prevention and treatment act
26 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
27 or any related state or federal legislation, a person appointed
28 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
29 represent the best interests of the minor in proceedings before the
30 court.

31 (8) When a court-appointed special advocate or volunteer guardian
32 ad litem is requested on a case, the program shall give the court the
33 name of the person it recommends and the appointment shall be effective
34 immediately. The court shall appoint the person recommended by the
35 program. If a party in a case reasonably believes the court-appointed
36 special advocate or volunteer is inappropriate or unqualified, the
37 party may request a review of the appointment by the program. The
38 program must complete the review within five judicial days and remove
39 any appointee for good cause. If the party seeking the review is not

1 satisfied with the outcome of the review, the party may file a motion
2 with the court for the removal of the court-appointed special advocate
3 on the grounds the advocate or volunteer is inappropriate or
4 unqualified.

5 **Sec. 4.** RCW 13.34.102 and 1997 c 41 s 6 are each amended to read
6 as follows:

7 (1)(a) All guardians ad litem(~~(, who have not previously served or~~
8 ~~been trained as a guardian ad litem in this state, who are appointed~~
9 ~~after January 1, 1998,)) must ((complete the curriculum developed by~~
10 ~~the office of the administrator for the courts)) comply with the
11 training requirements established under RCW 2.56.030(15), prior to
12 their appointment in cases under Title 13 RCW, except that volunteer
13 guardians ad litem or court-appointed special advocates ((accepted into
14 a volunteer program after January 1, 1998,)) may ((complete an
15 alternative curriculum)) comply with alternative training requirements
16 approved by the office of the administrator for the courts that
17 meet((s)) or exceed((s)) the state-wide ((curriculum)) requirements.~~

18 (b) All persons appointed as guardians ad litem or court-appointed
19 special advocates must comply with the continuing education
20 requirements established under RCW 2.56.030(15).

21 (2)(a) Each guardian ad litem program for compensated guardians ad
22 litem shall establish a rotational registry system for the appointment
23 of guardians ad litem. If a judicial district does not have a program
24 the court shall establish the rotational registry system. Guardians ad
25 litem shall be selected from the registry except in exceptional
26 circumstances as determined and documented by the court. The parties
27 may make a joint recommendation for the appointment of a guardian ad
28 litem from the registry. The court may order the removal of a guardian
29 ad litem from the rotational registry if the court finds that the
30 guardian ad litem charges an unreasonable fee for his or her services.

31 (b) In judicial districts with a population over one hundred
32 thousand, a list of three names shall be selected from the registry and
33 given to the parties along with the background information as specified
34 in RCW 13.34.100(3), including their hourly rate for services. Each
35 party may, within three judicial days, strike one name from the list.
36 If more than one name remains on the list, the court shall make the
37 appointment from the names on the list. In the event all three names

1 are stricken the person whose name appears next on the registry shall
2 be appointed.

3 (c) If a party reasonably believes that the appointed guardian ad
4 litem lacks the necessary expertise for the proceeding, charges an
5 hourly rate higher than what is reasonable for the particular
6 proceeding, or has a conflict of interest, the party may, within three
7 judicial days from the appointment, move for substitution of the
8 appointed guardian ad litem by filing a motion with the court.

9 (d) Upon the motion of any party the court shall, if located in a
10 judicial district with a population over one hundred thousand, remove
11 a compensated guardian ad litem who was not selected from a rotational
12 registry system. This subsection (2)(d) does not apply when the
13 guardian ad litem was appointed: (i) Under exceptional circumstances
14 authorized under (a) of this subsection; or (ii) as a result of a joint
15 recommendation of the parties.

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

18 **Sec. 5.** RCW 13.34.105 and 1993 c 241 s 3 are each amended to read
19 as follows:

20 (1) Unless otherwise directed by the court, the duties of the
21 guardian ad litem include but are not limited to the following:

22 (a) To ~~((represent))~~ investigate and ~~((be an))~~ advocate for the
23 best interests of the child;

24 (b) To collect relevant information about the child's situation;

25 (c) To monitor all court orders for compliance and to bring to the
26 court's attention any change in circumstances that may require a
27 modification of the court's order; and

28 (d) To report to the court information on: (i) The legal status of
29 a child's membership in any Indian tribe or band; and (ii) the facts
30 relating to the child's best interests.

31 (2) ~~((The))~~ A guardian ad litem who is: (a) Selected from a
32 registry; (b) appointed under exceptional circumstances pursuant to RCW
33 13.34.102(2)(a); or (c) a court-appointed special advocate shall be
34 deemed an officer of the court for the purpose of immunity from civil
35 liability unless removed from a case pursuant to a founded grievance.

36 (3) Except for information or records specified in RCW
37 13.50.100(4), the guardian ad litem shall have access to all
38 information available to the state or agency on the case. Upon

1 presentation of the order of appointment by the guardian ad litem, any
2 agency, hospital, school organization, division or department of the
3 state, doctor, nurse, or other health care provider, psychologist,
4 psychiatrist, police department, or mental health clinic shall permit
5 the guardian ad litem to inspect and copy any records relating to the
6 child or children involved in the case, without the consent of the
7 parent or guardian of the child, or of the child if the child is under
8 the age of thirteen years, unless such access is otherwise specifically
9 prohibited by law.

10 (4) The guardian ad litem shall release case information in
11 accordance with the provisions of RCW 13.50.100.

12 **Sec. 6.** RCW 26.12.175 and 1996 c 249 s 15 are each amended to read
13 as follows:

14 (1)(a) The court may appoint a guardian ad litem to represent the
15 interests of a minor or dependent child when the court believes the
16 appointment of a guardian ad litem is necessary to protect the best
17 interests of the child in any proceeding under this chapter. The
18 family court services professionals may also make a recommendation to
19 the court regarding whether a guardian ad litem should be appointed for
20 the child. The court may appoint a guardian ad litem from the court-
21 appointed special advocate program, if that program exists in the
22 county.

23 (b) Unless otherwise ordered, the guardian ad litem's role is to:
24 (i) Investigate and report to the court concerning parenting
25 arrangements for the child((7)); (ii) report on the child's wishes when
26 the child is twelve years of age or older; and ((to represent)) (iii)
27 advocate for the child's best interests. The court may require the
28 guardian ad litem to provide periodic reports to the parties regarding
29 the status of his or her investigation. The guardian ad litem shall
30 file his or her report at least sixty days prior to trial.

31 (c) The court shall enter an order for costs, fees, and
32 disbursements to cover the costs of the guardian ad litem. The court
33 may order either or both parents to pay for the costs of the guardian
34 ad litem, according to their ability to pay. If both parents are
35 indigent, the county shall bear the cost of the guardian, subject to
36 appropriation for guardians' ad litem services by the county
37 legislative authority. Guardians ad litem who are not volunteers shall

1 provide the parties with an itemized accounting of their time and
2 billing for services each month.

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

8 (b) The legislative authority of each county may authorize creation
9 of a court-appointed special advocate program. The county legislative
10 authority may adopt rules of eligibility for court-appointed special
11 advocate program services.

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

16 (a) Level of formal education;

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

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

19 (d) Number of appointments as a guardian ad litem and county or
20 counties of appointment; (~~and~~)

21 (e) The name of any counties in which, pursuant to a founded
22 grievance, the person was removed from a pending case or a guardian ad
23 litem registry; and

24 (f) Criminal history, as defined in RCW 9.94A.030.

25 The background information report shall be updated annually. As a
26 condition of appointment, the guardian ad litem's background
27 information record shall be made available to the court. If the
28 appointed guardian ad litem is not a member of a guardian ad litem
29 program the person shall provide the background information to the
30 court.

31 Upon appointment, the guardian ad litem, or guardian ad litem
32 program, shall provide the parties or their attorneys with a statement
33 containing: His or her training relating to the duties as a guardian
34 ad litem; the name of any counties in which, pursuant to a founded
35 grievance, the person was removed from a pending case or a guardian ad
36 litem registry; and his or her criminal history as defined in RCW
37 9.94A.030 for the period covering ten years prior to the appointment.
38 The background statement shall not include identifying information that
39 may be used to harm a guardian ad litem, such as home addresses and

1 home telephone numbers, and for volunteer guardians ad litem the court
2 may allow the use of maiden names or pseudonyms as necessary for their
3 safety.

4 (4) When a court-appointed special advocate or volunteer guardian
5 ad litem is requested on a case, the program shall give the court the
6 name of the person it recommends and the appointment shall be effective
7 immediately. The court shall appoint the person recommended by the
8 program. If a party in a case reasonably believes the court-appointed
9 special advocate or volunteer is inappropriate or unqualified, the
10 party may request a review of the appointment by the program. The
11 program must complete the review within five judicial days and remove
12 any appointee for good cause. If the party seeking the review is not
13 satisfied with the outcome of the review, the party may file a motion
14 with the court for the removal of the court-appointed special advocate
15 on the grounds the advocate or volunteer is inappropriate or
16 unqualified.

17 **Sec. 7.** RCW 26.12.177 and 1997 c 41 s 7 are each amended to read
18 as follows:

19 (1)(a) All guardians ad litem(~~(, who have not previously served or~~
20 ~~been trained as a guardian ad litem in this state, who are appointed~~
21 ~~after January 1, 1998,)) must ((complete the curriculum developed by~~
22 ~~the office of the administrator for the courts)) comply with the
23 training requirements established under RCW 2.56.030(15), prior to
24 their appointment in cases under Title 26 RCW, except that volunteer
25 guardians ad litem or court-appointed special advocates ((accepted into
26 a volunteer program after January 1, 1998,)) may ((complete an
27 alternative curriculum)) comply with alternative training requirements
28 approved by the office of the administrator for the courts that
29 meet((s)) or exceed((s)) the state-wide ((curriculum)) requirements.~~

30 (b) All persons appointed as guardians ad litem or court-appointed
31 special advocates must comply with the continuing education
32 requirements established under RCW 2.56.030(15).

33 (2)(a) Each guardian ad litem program for compensated guardians ad
34 litem shall establish a rotational registry system for the appointment
35 of guardians ad litem. If a judicial district does not have a program
36 the court shall establish the rotational registry system. Guardians ad
37 litem shall be selected from the registry except in exceptional
38 circumstances as determined and documented by the court. The parties

1 may make a joint recommendation for the appointment of a guardian ad
2 litem from the registry. The court may order the removal of a guardian
3 ad litem from the rotational registry if the court finds that the
4 guardian ad litem charges an unreasonable fee for his or her services.

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

14 (c) If a party reasonably believes that the appointed guardian ad
15 litem lacks the necessary expertise for the proceeding, charges an
16 hourly rate higher than what is reasonable for the particular
17 proceeding, or has a conflict of interest, the party may, within three
18 judicial days from the appointment, move for substitution of the
19 appointed guardian ad litem by filing a motion with the court.

20 (d) Upon the motion of any party the court shall, if located in a
21 judicial district with a population over one hundred thousand, remove
22 a compensated guardian ad litem who was not selected from a rotational
23 registry system. This subsection (2)(d) does not apply when the
24 guardian ad litem was appointed: (i) Under exceptional circumstances
25 authorized under (a) of this subsection; or (ii) as a result of a joint
26 recommendation of the parties.

27 (e) Under this section, within either registry referred to in (a)
28 of this subsection, a subregistry may be created that consists of
29 guardians ad litem under contract with the department of social and
30 health services' division of child support. Guardians ad litem on such
31 a subregistry shall be selected and appointed in state-initiated
32 paternity cases only.

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

35 NEW SECTION. Sec. 8. A new section is added to chapter 26.12 RCW
36 to read as follows:

37 A guardian ad litem who is: (1) Selected from a registry; (2)
38 appointed under exceptional circumstances pursuant to RCW

1 26.12.177(2)(a); or (3) a court-appointed special advocate shall be
2 deemed an officer of the court for the purpose of immunity from civil
3 liability unless removed from a case pursuant to a founded grievance.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 11.88 RCW
5 to read as follows:

6 The court shall, in each order of appointment, specify the hourly
7 rate the guardian ad litem may charge for his or her services, and
8 shall specify the maximum amount the guardian ad litem may charge
9 without additional court review and approval.

10 NEW SECTION. **Sec. 10.** A new section is added to chapter 13.34 RCW
11 to read as follows:

12 The court shall, in each order of appointment, specify the hourly
13 rate the guardian ad litem may charge for his or her services, and
14 shall specify the maximum amount the guardian ad litem may charge
15 without additional court review and approval.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 26.12 RCW
17 to read as follows:

18 The court shall, in each order of appointment, specify the hourly
19 rate the guardian ad litem may charge for his or her services, and
20 shall specify the maximum amount the guardian ad litem may charge
21 without additional court review and approval.

22 NEW SECTION. **Sec. 12.** A new section is added to chapter 11.88 RCW
23 to read as follows:

24 All guardians ad litem are prohibited from engaging in ex parte
25 communications with any judicial officer regarding the matter for which
26 he or she is appointed, except as approved pursuant to a hearing
27 conducted with adequate notice to all parties. Unauthorized
28 communication shall be immediately reported to all parties and their
29 attorneys. The court, upon its own motion, or upon the motion of a
30 party, may consider the removal of any guardian ad litem who violates
31 this section from any pending case or the guardian ad litem rotational
32 registry, and if so removed may require forfeiture of any fees for
33 professional services on any pending cases.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 13.34 RCW
2 to read as follows:

3 All guardians ad litem and court-appointed special advocates are
4 prohibited from engaging in ex parte communications with any judicial
5 officer regarding the matter for which he or she is appointed, except
6 as approved pursuant to a hearing conducted with adequate notice to all
7 parties. Unauthorized communication shall be immediately reported to
8 all parties and their attorneys. The court, upon its own motion, or
9 upon the motion of a party, may consider the removal of any guardian ad
10 litem or court-appointed special advocate who violates this section
11 from any pending case or from any court-authorized registry, and if so
12 removed may require forfeiture of any fees for professional services on
13 any pending cases.

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

16 All guardians ad litem, court-appointed special advocates, and
17 parenting investigators are prohibited from engaging in ex parte
18 communications with any judicial officer regarding the matter for which
19 he or she is appointed, except as approved pursuant to a hearing
20 conducted with adequate notice to all parties. Unauthorized
21 communication shall be immediately reported to all parties and their
22 attorneys. The court, upon its own motion, or upon the motion of a
23 party, may consider the removal of any guardian ad litem, court-
24 appointed special advocate, or parenting investigator who violates this
25 section from any pending case or from any court-authorized registry,
26 and if so removed may require forfeiture of any fees for professional
27 services on any pending cases.

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

30 All information, records, and reports obtained or created by a
31 guardian ad litem, court-appointed special advocate, or parenting
32 investigator shall be discoverable to the parties and their attorneys.
33 The guardian ad litem, court-appointed special advocate, or parenting
34 investigator shall maintain the privacy of the parties and the
35 confidentiality of information obtained, pursuant to the investigation,
36 as to third parties. Any guardian ad litem can move the court to seal
37 the court file to protect information obtained by the guardian ad litem

1 from disclosure to third persons, particularly in cases where no
2 evidentiary rulings have been made on information introduced by
3 affidavit, declaration, or other means.

4 NEW SECTION. **Sec. 16.** A new section is added to chapter 13.34 RCW
5 to read as follows:

6 This chapter shall not be construed to prohibit a guardian ad
7 litem, court-appointed special advocate, or parenting investigator from
8 releasing confidential information, records, and reports to the office
9 of the family and children's ombudsman for the purposes of carrying out
10 its duties under RCW 43.06A.030.

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

13 This chapter shall not be construed to prohibit a guardian ad
14 litem, court-appointed special advocate, or parenting investigator from
15 releasing confidential information, records, and reports to the office
16 of the family and children's ombudsman for the purposes of carrying out
17 its duties under RCW 43.06A.030.

18 NEW SECTION. **Sec. 18.** This act takes effect July 1, 1998, except
19 for sections 4 and 7 of this act, which take effect January 1, 2000."

20 **SSB 6217** - H COMM AMD
21 By Committee on Law & Justice

22

23 On page 1, line 1 of the title, after "litem;" strike the remainder
24 of the title and insert "amending RCW 2.56.030, 11.88.090, 13.34.100,
25 13.34.102, 13.34.105, 26.12.175, and 26.12.177; adding new sections to
26 chapter 11.88 RCW; adding new sections to chapter 13.34 RCW; adding new
27 sections to chapter 26.12 RCW; and providing effective dates."

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