

HOUSE BILL ANALYSIS

ESSB 5447

Title: An act relating to guardians ad litem.

Brief Description: Changing provisions relating to guardians ad litem.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin, Long, Hargrove, Stevens, Winsley, Costa and Rasmussen).

Brief Summary of Bill

- Requires the development and implementation of training and continuing education requirements for a guardian ad litem (GAL).
- Requires the development of a model grievance procedure for disputes involving a GAL, a court-appointed special advocate (CASA), or an investigator.
- Requires a GAL to disclose whether he or she has been removed from a GAL registry pursuant to a grievance or from a pending case for failure to adequately perform.
- Requires a court to specify the hourly fee and maximum amount a GAL or investigator may charge.
- Prohibits a GAL, CASA, or investigator from engaging in ex parte communications.
- Allows the removal of a GAL not selected from a rotational registry from a case in child dependency and family law proceedings upon motion of a party.
- Limits the duties of a GAL in child dependency and family law proceedings to investigating and reporting information.
- Allows information obtained by a GAL, CASA, or investigator in family law proceedings to be discovered by the parties and the Office of the Family and Children's Ombudsman, but protects such information from third parties.

HOUSE COMMITTEE ON JUDICIARY

Staff: Jim Morishima (786-7191).

Background:

A guardian ad litem (GAL) is a person appointed in a court proceeding to represent the best interests of a party to the proceeding or to investigate and report to the court on relevant matters. GALs are appointed in three types of proceedings: guardianship proceedings, child dependency proceedings, and family law proceedings such as divorces and nonparental actions for child custody.

I. Guardianship Proceedings

A court may appoint a guardian (not the same as a GAL) to help an incapacitated-person manage his or her personal or financial affairs. A person may be incapacitated- because of old age, disability, or youth. In order to establish a guardianship, a person must file a petition with the superior court.

Once a petition for a guardianship has been filed, the court must appoint a GAL to represent the best interests of the alleged incapacitated person. The GAL is appointed from a GAL registry on a rotational basis. The court may choose a GAL who is not next on the registry if extraordinary circumstances are present that require appointment of a different GAL. The GAL receives a fee determined by the court.

To be eligible for appointment as a GAL, the person must have completed a model training program developed by the Department of Social and Health Services (DSHS). The person must also provide a written statement of his or her background and qualifications which must include a statement of the number of times the GAL has been removed for failure to perform his or her duties.

Once appointed, one of the duties of the GAL is to submit a report to the court regarding the incapacitated person. The court must establish procedures for reviewing persons on the registry and for the probation, suspension, or removal of persons on the registry who fail to perform their GAL duties.

II. Child Dependency and Family Law Proceedings

In child dependency and family law proceedings, GALs represent the best interests of the children involved in the proceedings. Some GALs are paid for their services, and others are volunteers or court-appointed special advocates (CASAs). In divorce proceedings, the court may also appoint an investigator who serves a purpose similar to a GAL.

The Office of the Administrator for the Courts (OAC) must develop a comprehensive statewide curriculum for persons who act as GALs. The OAC must make this curriculum available to all superior court judges, court personnel, and GALs.

Compensated GALs must be appointed pursuant to a rotational registry system, unless the court finds that extraordinary circumstances are present, or a joint recommendation of a particular GAL is made by the parties. Volunteer GALs and CASAs are not subject to the rotational registry system. Each compensated GAL sets his or her own hourly fee. An appointment of a GAL through the rotational registry system may be challenged based on an excessive hourly fee, lack of expertise, or conflict of interest.

Each GAL program must maintain a background information file on all GALs. Upon appointment, this information must be made available to the court and to the parties.

Summary of Bill:

The Office of the Administrator for the Courts (OAC) must develop a model grievance procedure for use by the superior courts when dealing with complaints against a GAL, a CASA, or an investigator. The superior courts must report to the OAC any order removing a GAL or an investigator from a rotational GAL registry. The OAC must maintain a list of all GALs and investigators removed from a registry.

I. Guardianship Proceedings

The DSHS must establish training and continuing education requirements for GALs. All GALs must comply with the requirements unless (1) the GAL is appointed for the limited purpose of assessing a personal injury settlement, or (2) the GAL is appointed under exceptional circumstances because of a particular expertise.

In addition to meeting the DSHS's training and continuing education requirements, to be eligible for the GAL registry, the written statement of the GAL's qualifications must include the names of any counties in which the GAL was removed from a registry pursuant to a grievance action. The written statement must also include the cause number of any case in which the court has ordered the removal of the GAL for failure to perform his or her duties.

The court must specify the hourly rate the GAL may charge for his or her services, and the maximum amount the GAL may charge without additional court review and approval. In cases of personal injury settlements, GAL fees must be negotiated among the parties and approved by the court.

If a GAL is appointed in a case involving a personal injury settlement, the report the GAL submits to the court must include information relevant to the court's analysis of

the proposed settlement. The information that is relevant to the court's analysis may be specified by local court rule.

GALs are prohibited from engaging in ex parte communications with any judicial officer without court approval. A court must immediately report an unauthorized communication to all parties. The court may remove a GAL that violates this prohibition from a pending case or the rotational registry. If the GAL is removed, the court may require the GAL to forfeit any fees claimed on pending cases.

II. Child Dependency and Family Law Proceedings

The OAC must develop training and continuing education requirements for GALs. The OAC must update the requirements on an annual basis. The requirements do not apply to the Office of the Attorney General or prosecutors functioning as a GAL in a paternity action.

All GALs and investigators, except volunteers or CASAs, must comply with the OAC training requirements prior to their appointment. CASAs and volunteers may comply with alternative training requirements developed by the OAC. All GALs and CASAs must comply with the OAC continuing education requirements. Investigators in divorce proceedings must be included in the rotational registry system for GALs.

The background information file maintained on every GAL must contain the names of any counties in which the GAL was removed from a pending case for failure to perform his or her duties, and any counties in which the GAL was removed from a registry pursuant to a grievance. Upon appointment, the GAL must provide this information to the parties.

The court must specify the hourly rate the GAL or investigator may charge for his or her services, and the maximum amount the GAL or investigator may charge without additional court review and approval.

Upon motion of any party, in a judicial district with a population over 100,000, the court may remove a compensated GAL from a pending case if the GAL was not selected from a rotational registry system, unless (1) the GAL was appointed under exceptional circumstances or (2) the GAL was appointed pursuant to a joint recommendation of the parties.

A subregistry of GALs under contract with the DSHS may be created to be used for the appointment of GALs in state-initiated paternity proceedings.

The duties of the GAL are investigatory only. In child dependency proceedings, the GAL must investigate and report the facts relating to the child's best interest to the court. CASAs may make recommendations to the court based upon an independent

investigation in the best interest of the child. In family law proceedings, the GAL's duties also include reporting on the custody wishes of a child.

GALs, CASAs, and investigators are prohibited from engaging in ex parte communications with any judicial officer without court approval. A court must immediately report an unauthorized communication to all parties. The court may remove a GAL, CASA, or investigator that violates this prohibition from a pending case or the rotational registry. If the GAL or investigator is removed, the court may require the GAL or investigator to forfeit any fees claimed on pending cases.

In a family law proceedings, information obtained by a GAL, CASA, or investigator is discoverable to the parties to the proceeding, but is confidential with respect to third parties. The GAL or investigator may request that the court seal the court file to protect information from disclosure to third parties. In both child dependency and family law proceedings, a GAL, CASA, or investigator may provide confidential information to the Office of the Family and Children's Ombudsman.

Fiscal Note: Requested on January 22, 1999.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Office of Program Research