

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6305

Chapter 124, Laws of 2000

56th Legislature
2000 Regular Session

GUARDIANS AD LITEM

EFFECTIVE DATE: 6/8/00

Passed by the Senate March 7, 2000
YEAS 44 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 3, 2000
YEAS 97 NAYS 0

CLYDE BALLARD
Speaker of the
House of Representatives

FRANK CHOPP
Speaker of the
House of Representatives

Approved March 24, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6305** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

March 24, 2000 - 3:41 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6305

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Franklin and Kohl-Welles)

Read first time 01/28/2000.

1 AN ACT Relating to guardians ad litem; amending RCW 11.88.090,
2 13.34.100, 13.34.102, 13.34.105, 13.34.120, 26.12.175, 26.12.177, and
3 26.12.185; adding new sections to chapter 26.12 RCW; adding new
4 sections to chapter 11.88 RCW; adding new sections to chapter 13.34
5 RCW; and creating a new section.

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

7 **Sec. 1.** RCW 11.88.090 and 1999 c 360 s 1 are each amended to read
8 as follows:

9 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
10 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
11 11.92.180 shall affect or impair the power of any court to appoint a
12 guardian ad litem to defend the interests of any incapacitated person
13 interested in any suit or matter pending therein, or to commence and
14 prosecute any suit in his or her behalf.

15 (2) Prior to the appointment of a guardian or a limited guardian,
16 whenever it appears that the incapacitated person or incapacitated
17 person's estate could benefit from mediation and such mediation would
18 likely result in overall reduced costs to the estate, upon the motion
19 of the alleged incapacitated person or the guardian ad litem, or

1 subsequent to such appointment, whenever it appears that the
2 incapacitated person or incapacitated person's estate could benefit
3 from mediation and such mediation would likely result in overall
4 reduced costs to the estate, upon the motion of any interested person,
5 the court may:

6 (a) Require any party or other person subject to the jurisdiction
7 of the court to participate in mediation;

8 (b) Establish the terms of the mediation; and

9 (c) Allocate the cost of the mediation pursuant to RCW 11.96.140.

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

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

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

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

1 moving party, attorneys' fees and costs related to the motion. The
2 court shall assess attorneys' fees and costs for frivolous motions.

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

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

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

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

27 (A) Level of formal education;

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

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

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

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

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

38 The written statement of qualifications shall include ~~((a statement~~
39 ~~of the number of times the guardian ad litem has been removed for~~

1 ~~failure to perform his or her duties as guardian ad litem))~~ the names
2 of any counties in which the person was removed from a guardian ad
3 litem registry pursuant to a grievance action, and the name of the
4 court and the cause number of any case in which the court has removed
5 the person for cause; and

6 (ii) Complete the ~~((model))~~ training ~~((program))~~ as described in
7 ~~((+d))~~ (e) of this subsection. The training is not applicable to
8 guardians ad litem appointed pursuant to special proceeding Rule
9 98.16W.

10 (c) Superior court shall remove any person from the guardian ad
11 litem registry who misrepresents his or her qualifications pursuant to
12 a grievance procedure established by the court.

13 (d) The background and qualification information shall be updated
14 annually.

15 ~~((+d))~~ (e) The department of social and health services shall
16 convene an advisory group to develop a model guardian ad litem training
17 program and shall update the program biennially. The advisory group
18 shall consist of representatives from consumer, advocacy, and
19 professional groups knowledgeable in developmental disabilities,
20 neurological impairment, physical disabilities, mental illness,
21 domestic violence, aging, legal, court administration, the Washington
22 state bar association, and other interested parties.

23 ~~((+e))~~ (f) The superior court shall require utilization of the
24 model program developed by the advisory group as described in ~~((+d))~~
25 (e) of this subsection, to assure that candidates applying for
26 registration as a qualified guardian ad litem shall have satisfactorily
27 completed training to attain these essential minimum qualifications to
28 act as guardian ad litem.

29 (5) 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; whether good cause exists for any such arrangements
19 to be discontinued; and why such arrangements should not be continued
20 or created in lieu of a guardianship;

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

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

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

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

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

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

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

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

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

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

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

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

11 (6) If the petition is brought by an interested person or entity
12 requesting the appointment of some other qualified person or entity and
13 a prospective guardian or limited guardian cannot be found, the court
14 shall order the guardian ad litem to investigate the availability of a
15 possible guardian or limited guardian and to include the findings in a
16 report to the court pursuant to subsection (5)(f) of this section.

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

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

36 (9) The court-appointed guardian ad litem shall have the authority
37 to move for temporary relief under chapter 7.40 RCW to protect the
38 alleged incapacitated person from abuse, neglect, abandonment, or
39 exploitation, as those terms are defined in RCW 74.34.020, or to

1 address any other emergency needs of the alleged incapacitated person.
2 Any alternative arrangement executed before filing the petition for
3 guardianship shall remain effective unless the court grants the relief
4 requested under chapter 7.40 RCW, or unless, following notice and a
5 hearing at which all parties directly affected by the arrangement are
6 present, the court finds that the alternative arrangement should not
7 remain effective.

8 (10) The guardian ad litem shall receive a fee determined by the
9 court. The fee shall be charged to the alleged incapacitated person
10 unless the court finds that such payment would result in substantial
11 hardship upon such person, in which case the county shall be
12 responsible for such costs: PROVIDED, That (~~(if no guardian or limited~~
13 ~~guardian is appointed)~~) the court may charge such fee to the petitioner
14 (~~(or)~~), the alleged incapacitated person, or ((divide)) any person who
15 has appeared in the action; or may allocate the fee, as it deems
16 just(~~(+and)~~). If the petition is found to be frivolous or not brought
17 in good faith, the guardian ad litem fee shall be charged to the
18 petitioner. The court shall not be required to provide for the payment
19 of a fee to any salaried employee of a public agency.

20 (11) Upon the presentation of the guardian ad litem report and the
21 entry of an order either dismissing the petition for appointment of
22 guardian or limited guardian or appointing a guardian or limited
23 guardian, the guardian ad litem shall be dismissed and shall have no
24 further duties or obligations unless otherwise ordered by the court.
25 If the court orders the guardian ad litem to perform further duties or
26 obligations, they shall not be performed at county expense.

27 (12) The guardian ad litem shall appear in person at all hearings
28 on the petition unless all parties provide a written waiver of the
29 requirement to appear.

30 (13) At any hearing the court may consider whether any person who
31 makes decisions regarding the alleged incapacitated person or estate
32 has breached a statutory or fiduciary duty.

33 **Sec. 2.** RCW 13.34.100 and 1996 c 249 s 13 are each amended to read
34 as follows:

35 (1) The court shall appoint a guardian ad litem for a child who is
36 the subject of an action under this chapter, unless a court for good
37 cause finds the appointment unnecessary. The requirement of a guardian

1 ad litem may be deemed satisfied if the child is represented by
2 independent counsel in the proceedings.

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

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

12 (a) Level of formal education;

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

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

15 (d) Number of appointments as a guardian ad litem and the county or
16 counties of appointment; (~~and~~)

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

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

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

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

1 litem the court may allow the use of maiden names or pseudonyms as
2 necessary for their safety.

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

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

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

19 (7) For the purposes of child abuse prevention and treatment act
20 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
21 or any related state or federal legislation, a person appointed
22 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
23 represent the best interests of the minor in proceedings before the
24 court.

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

1 **Sec. 3.** RCW 13.34.102 and 1997 c 41 s 6 are each amended to read
2 as follows:

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

14 (2)(a) Each guardian ad litem program for compensated guardians ad
15 litem shall establish a rotational registry system for the appointment
16 of guardians ad litem. If a judicial district does not have a program
17 the court shall establish the rotational registry system. Guardians ad
18 litem shall be selected from the registry except in exceptional
19 circumstances as determined and documented by the court. The parties
20 may make a joint recommendation for the appointment of a guardian ad
21 litem from the registry.

22 (b) In judicial districts with a population over one hundred
23 thousand, a list of three names shall be selected from the registry and
24 given to the parties along with the background information as specified
25 in RCW 13.34.100(3), including their hourly rate for services. Each
26 party may, within three judicial days, strike one name from the list.
27 If more than one name remains on the list, the court shall make the
28 appointment from the names on the list. In the event all three names
29 are stricken the person whose name appears next on the registry shall
30 be appointed.

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

37 (d) The superior court shall remove any person from the guardian ad
38 litem registry who misrepresents his or her qualifications pursuant to
39 a grievance procedure established by the court.

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

3 **Sec. 4.** RCW 13.34.105 and 1999 c 390 s 2 are each amended to read
4 as follows:

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

7 (a) To ~~((represent))~~ investigate, collect relevant information
8 about the child's situation, and ((be an advocate for)) report to the
9 court factual information regarding the best interests of the child;

10 (b) ~~((To collect relevant information about the child's situation;~~
11 ~~(e)))~~ To monitor all court orders for compliance and to bring to
12 the court's attention any change in circumstances that may require a
13 modification of the court's order; ~~((and~~

14 ~~(d)))~~ (c) To report to the court information on the legal status of
15 a child's membership in any Indian tribe or band;

16 (d) Court-appointed special advocates and guardians ad litem may
17 make recommendations based upon an independent investigation regarding
18 the best interests of the child, which the court may consider and weigh
19 in conjunction with the recommendations of all of the parties; and

20 (e) To represent and be an advocate for the best interests of the
21 child.

22 (2) ~~((The))~~ A guardian ad litem shall be deemed an officer of the
23 court for the purpose of immunity from civil liability.

24 (3) Except for information or records specified in RCW
25 13.50.100(5), the guardian ad litem shall have access to all
26 information available to the state or agency on the case. Upon
27 presentation of the order of appointment by the guardian ad litem, any
28 agency, hospital, school organization, division or department of the
29 state, doctor, nurse, or other health care provider, psychologist,
30 psychiatrist, police department, or mental health clinic shall permit
31 the guardian ad litem to inspect and copy any records relating to the
32 child or children involved in the case, without the consent of the
33 parent or guardian of the child, or of the child if the child is under
34 the age of thirteen years, unless such access is otherwise specifically
35 prohibited by law.

36 (4) A guardian ad litem may release confidential information,
37 records, and reports to the office of the family and children's

1 ombudsman for the purposes of carrying out its duties under chapter
2 43.06A RCW.

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

5 **Sec. 5.** RCW 13.34.120 and 1998 c 328 s 4 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. A parent may submit a counselor's or health care
11 provider's evaluation of the parent, which shall either be included in
12 the social study or considered in conjunction with the social study.
13 The study shall include all social records and may also include facts
14 relating to the child's cultural heritage, and shall be made available
15 to the court. The court shall consider the social file, social study,
16 guardian ad litem report, the court-appointed special advocate's
17 report, if any, and any reports filed by a party at the disposition
18 hearing in addition to evidence produced at the fact-finding hearing.
19 At least ten working days before the disposition hearing, the
20 department shall mail to the parent and his or her attorney a copy of
21 the agency's social study and proposed service plan, which shall be in
22 writing or in a form understandable to the parents or custodians. In
23 addition, the department shall provide an opportunity for parents to
24 review and comment on the plan at the community service office. If the
25 parents disagree with the agency's plan or any part thereof, the
26 parents shall submit to the court at least twenty-four hours before the
27 hearing, in writing, or signed oral statement, an alternative plan to
28 correct the problems which led to the finding of dependency. This
29 section shall not interfere with the right of the parents or custodians
30 to submit oral arguments regarding the disposition plan at the hearing.

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

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

37 (b) A description of the specific programs, for both the parents
38 and child, that are needed in order to prevent serious harm to the

1 child; the reasons why such programs are likely to be useful; the
2 availability of any proposed services; and the agency's overall plan
3 for ensuring that the services will be delivered. The description
4 shall identify services chosen and approved by the parent;

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

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

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

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

22 (3)(a) The guardian ad litem or court-appointed special advocate
23 shall file his or her report with the court and with the parties
24 pursuant to court rule prior to a hearing for which a report is
25 required. The report shall include a written list of persons
26 interviewed and reports or documentation considered. If the report
27 makes particular recommendations, the report shall include specific
28 information on which the guardian ad litem or court-appointed special
29 advocate relied in making each particular recommendation.

30 (b) The parties to the proceeding may file written responses to the
31 guardian ad litem's or court-appointed special advocate's report with
32 the court and deliver such responses to the other parties at a
33 reasonable time or pursuant to court rule before the hearing. The
34 court shall consider any written responses to the guardian ad litem's
35 or court-appointed special advocate's report, including any factual
36 information or recommendations provided in the report.

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

1 (1)(a) The court may appoint a guardian ad litem to represent the
2 interests of a minor or dependent child when the court believes the
3 appointment of a guardian ad litem is necessary to protect the best
4 interests of the child in any proceeding under this chapter. The
5 family court services professionals may also make a recommendation to
6 the court regarding whether a guardian ad litem should be appointed for
7 the child. The court may appoint a guardian ad litem from the court-
8 appointed special advocate program, if that program exists in the
9 county.

10 (b) Unless otherwise ordered, the guardian ad litem's role is to
11 investigate and report factual information to the court concerning
12 parenting arrangements for the child, and to represent the child's best
13 interests. Guardians ad litem and investigators under this title may
14 make recommendations based upon an independent investigation regarding
15 the best interests of the child, which the court may consider and weigh
16 in conjunction with the recommendations of all of the parties. If a
17 child expresses a preference regarding the parenting plan, the guardian
18 ad litem shall report the preferences to the court, together with the
19 facts relative to whether any preferences are being expressed
20 voluntarily and the degree of the child's understanding. The court may
21 require the guardian ad litem to provide periodic reports to the
22 parties regarding the status of his or her investigation. The guardian
23 ad litem shall file his or her report at least sixty days prior to
24 trial.

25 (c) The parties to the proceeding may file with the court written
26 responses to any report filed by the guardian ad litem or investigator.
27 The court shall consider any written responses to a report filed by the
28 guardian ad litem or investigator, including any factual information or
29 recommendations provided in the report.

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

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

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

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

14 (a) Level of formal education;

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

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

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

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

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

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

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

1 addresses and home telephone numbers, and for volunteer guardians ad
2 litem the court may allow the use of maiden names or pseudonyms as
3 necessary for their 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) 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,)) and investigators appointed under this title
22 ~~must ((complete the curriculum developed by the office of the~~
23 ~~administrator for the courts)) comply with the training requirements
24 established under RCW 2.56.030(15), prior to their appointment in cases
25 under Title 26 RCW, except that volunteer guardians ad litem or court-
26 appointed special advocates (~~accepted into a volunteer program after~~
27 ~~January 1, 1998,)) may ~~((complete an))~~ comply with alternative
28 ~~((curriculum))~~ training requirements approved by the office of the
29 administrator for the courts that meet(~~(s))~~) or exceed(~~(s))~~) the state-
30 wide ~~((curriculum))~~ requirements.~~~~~~

31 (2)(a) Each guardian ad litem program for compensated guardians ad
32 litem shall establish a rotational registry system for the appointment
33 of guardians ad litem and investigators under this title. If a
34 judicial district does not have a program the court shall establish the
35 rotational registry system. Guardians ad litem and investigators under
36 this title shall be selected from the registry except in exceptional
37 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.

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

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

18 (d) Under this section, within either registry referred to in (a)
19 of this subsection, a subregistry may be created that consists of
20 guardians ad litem under contract with the department of social and
21 health services' division of child support. Guardians ad litem on such
22 a subregistry shall be selected and appointed in state-initiated
23 paternity cases only.

24 (e) The superior court shall remove any person from the guardian ad
25 litem registry who misrepresents his or her qualifications pursuant to
26 a grievance procedure established by the court.

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

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

31 All information, records, and reports obtained or created by a
32 guardian ad litem, court-appointed special advocate, or investigator
33 under this title shall be discoverable pursuant to statute and court
34 rule. The guardian ad litem, court-appointed special advocate, or
35 investigator shall not release private or confidential information to
36 any nonparty except pursuant to a court order signed by a judge. The
37 guardian ad litem, court-appointed special advocate, or investigator
38 may share private or confidential information with experts or staff he

1 or she has retained as necessary to perform the duties of guardian ad
2 litem, court-appointed special advocate, or investigator. Any expert
3 or staff retained are subject to the confidentiality rules governing
4 the guardian ad litem, court-appointed special advocate, or
5 investigator. Nothing in this section shall be interpreted to
6 authorize disclosure of guardian ad litem records in personal injury
7 actions.

8 **Sec. 9.** RCW 26.12.185 and 1999 c 390 s 4 are each amended to read
9 as follows:

10 A guardian ad litem, court-appointed special advocate, or
11 investigator under this title appointed under this chapter may release
12 confidential information, records, and reports to the office of the
13 family and children's ombudsman for the purposes of carrying out its
14 duties under chapter 43.06A RCW.

15 NEW SECTION. **Sec. 10.** A new section is added to chapter 11.88 RCW
16 to read as follows:

17 A guardian ad litem shall not engage in ex parte communications
18 with any judicial officer involved in the matter for which he or she is
19 appointed during the pendency of the proceeding, except as permitted by
20 court rule or statute for ex parte motions. Ex parte motions shall be
21 heard in open court on the record. The record may be preserved in a
22 manner deemed appropriate by the county where the matter is heard. The
23 court, upon its own motion, or upon the motion of a party, may consider
24 the removal of any guardian ad litem who violates this section from any
25 pending case or from any court-authorized registry, and if so removed
26 may require forfeiture of any fees for professional services on the
27 pending case.

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

30 A guardian ad litem or court-appointed special advocate shall not
31 engage in ex parte communications with any judicial officer involved in
32 the matter for which he or she is appointed during the pendency of the
33 proceeding, except as permitted by court rule or statute for ex parte
34 motions. Ex parte motions shall be heard in open court on the record.
35 The record may be preserved in a manner deemed appropriate by the
36 county where the matter is heard. The court, upon its own motion, or

1 upon the motion of a party, may consider the removal of any guardian ad
2 litem or court-appointed special advocate who violates this section
3 from any pending case or from any court-authorized registry, and if so
4 removed may require forfeiture of any fees for professional services on
5 the pending case.

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

8 A guardian ad litem, court-appointed special advocate, or
9 investigator shall not engage in ex parte communications with any
10 judicial officer involved in the matter for which he or she is
11 appointed during the pendency of the proceeding, except as permitted by
12 court rule or statute for ex parte motions. Ex parte motions shall be
13 heard in open court on the record. The record may be preserved in a
14 manner deemed appropriate by the county where the matter is heard. The
15 court, upon its own motion, or upon the motion of a party, may consider
16 the removal of any guardian ad litem, court-appointed special advocate,
17 or investigator who violates this section from any pending case or from
18 any court-authorized registry, and if so removed may require forfeiture
19 of any fees for professional services on the pending case.

20 NEW SECTION. **Sec. 13.** A new section is added to chapter 11.88 RCW
21 to read as follows:

22 The court shall specify the hourly rate the guardian ad litem may
23 charge for his or her services, and shall specify the maximum amount
24 the guardian ad litem may charge without additional court review and
25 approval. The court shall specify rates and fees in the order of
26 appointment or at the earliest date the court is able to determine the
27 appropriate rates and fees and prior to the guardian ad litem billing
28 for his or her services. This section shall apply except as provided
29 by local court rule.

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 13.34 RCW
31 to read as follows:

32 The court shall specify the hourly rate the guardian ad litem may
33 charge for his or her services, and shall specify the maximum amount
34 the guardian ad litem may charge without additional court review and
35 approval. The court shall specify rates and fees in the order of
36 appointment or at the earliest date the court is able to determine the

1 appropriate rates and fees and prior to the guardian ad litem billing
2 for his or her services. This section shall apply except as provided
3 by local court rule.

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

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

16 NEW SECTION. **Sec. 16.** Each superior court shall adopt rules
17 establishing and governing procedures for filing, investigating, and
18 adjudicating grievances made by or against guardians ad litem under
19 Titles 11, 13, and 26 RCW.

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