
HOUSE BILL 1401

State of Washington 65th Legislature 2017 Regular Session

By Representatives Ortiz-Self, Stonier, Ryu, Peterson, Santos,
Jenkins, Appleton, and Bergquist

Read first time 01/19/17. Referred to Committee on Judiciary.

1 AN ACT Relating to court removal of child welfare guardians ad
2 litem; amending RCW 13.34.100; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the integrity
5 of court-appointed special advocates and volunteer guardians ad litem
6 is necessary to protect the best interest of children in child
7 welfare proceedings.

8 Although courts must be notified regarding the removal of a
9 guardian ad litem from a county's registry pursuant to a grievance,
10 there is no requirement that a county must act on that information.
11 For that reason, the legislature intends to require counties to
12 remove child welfare volunteer guardians ad litem from their
13 registries when counties are notified that the person has been
14 removed from another county's registry pursuant to the disposition of
15 a grievance or if the court is otherwise made aware that a guardian
16 ad litem has been found by a court to have made a materially false
17 statement that he or she knows to be false during an official
18 proceeding under oath.

19 **Sec. 2.** RCW 13.34.100 and 2014 c 108 s 2 are each amended to
20 read as follows:

1 (1) The court shall appoint a guardian ad litem for a child who
2 is the subject of an action under this chapter, unless a court for
3 good cause finds the appointment unnecessary. The requirement of a
4 guardian ad litem may be deemed satisfied if the child is represented
5 by an independent attorney in the proceedings. The court shall
6 attempt to match a child with special needs with a guardian ad litem
7 who has specific training or education related to the child's
8 individual needs.

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

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

18 (a) Level of formal education;

19 (b) General training related to the guardian ad litem's duties;

20 (c) Specific training related to issues potentially faced by
21 children in the dependency system;

22 (d) Specific training or education related to child disability or
23 developmental issues;

24 (e) Number of years' experience as a guardian ad litem;

25 (f) Number of appointments as a guardian ad litem and the county
26 or counties of appointment;

27 (g) The names of any counties in which the person was removed
28 from a guardian ad litem registry pursuant to a grievance action, and
29 the name of the court and the cause number of any case in which the
30 court has removed the person for cause;

31 (h) Founded allegations of abuse or neglect as defined in RCW
32 26.44.020;

33 (i) The results of an examination of state and national criminal
34 identification data. The examination shall consist of a background
35 check as allowed through the Washington state criminal records
36 privacy act under RCW 10.97.050, the Washington state patrol criminal
37 identification system under RCW 43.43.832 through 43.43.834, and the
38 federal bureau of investigation. The background check shall be done
39 through the Washington state patrol criminal identification section

1 and must include a national check from the federal bureau of
2 investigation based on the submission of fingerprints; and

3 (j) Criminal history, as defined in RCW 9.94A.030, for the period
4 covering ten years prior to the appointment.

5 The background information record shall be updated annually. As a
6 condition of appointment, the guardian ad litem's background
7 information record shall be made available to the court. If the
8 appointed guardian ad litem is not a member of a guardian ad litem
9 program a suitable person appointed by the court to act as guardian
10 ad litem shall provide the background information record to the
11 court.

12 Upon appointment, the guardian ad litem, or guardian ad litem
13 program, shall provide the parties or their attorneys with a copy of
14 the background information record. The portion of the background
15 information record containing the results of the criminal background
16 check and the criminal history shall not be disclosed to the parties
17 or their attorneys. The background information record shall not
18 include identifying information that may be used to harm a guardian
19 ad litem, such as home addresses and home telephone numbers, and for
20 volunteer guardians ad litem the court may allow the use of maiden
21 names or pseudonyms as necessary for their safety.

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

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

34 (6)(a) The court must appoint an attorney for a child in a
35 dependency proceeding six months after granting a petition to
36 terminate the parent and child relationship pursuant to RCW 13.34.180
37 and when there is no remaining parent with parental rights.

38 The court must appoint an attorney for a child when there is no
39 remaining parent with parental rights for six months or longer prior
40 to July 1, 2014, if the child is not already represented.

1 The court may appoint one attorney to a group of siblings, unless
2 there is a conflict of interest, or such representation is otherwise
3 inconsistent with the rules of professional conduct.

4 (b) Legal services provided by an attorney appointed pursuant to
5 (a) of this subsection do not include representation of the child in
6 any appellate proceedings relative to the termination of the parent
7 and child relationship.

8 (c)(i) Subject to the availability of amounts appropriated for
9 this specific purpose, the state shall pay the costs of legal
10 services provided by an attorney appointed pursuant to (a) of this
11 subsection, if the legal services are provided in accordance with the
12 standards of practice, voluntary training, and caseload limits
13 developed and recommended by the statewide children's representation
14 work group pursuant to section 5, chapter 180, Laws of 2010. Caseload
15 limits must be calculated pursuant to (c)(ii) of this subsection.

16 (ii) Counties are encouraged to set caseloads as low as possible
17 and to account for the individual needs of the children in care.
18 Notwithstanding the caseload limits developed and recommended by the
19 statewide children's representation work group pursuant to section 5,
20 chapter 180, Laws of 2010, when one attorney represents a sibling
21 group, the first child is counted as one case, and each child
22 thereafter is counted as one-half case to determine compliance with
23 the caseload standards pursuant to (c)(i) of this subsection and RCW
24 2.53.045.

25 (iii) The office of civil legal aid is responsible for
26 implementation of (c)(i) and (ii) of this subsection as provided in
27 RCW 2.53.045.

28 (7)(a) The court may appoint an attorney to represent the child's
29 position in any dependency action on its own initiative, or upon the
30 request of a parent, the child, a guardian ad litem, a caregiver, or
31 the department.

32 (b)(i) If the court has not already appointed an attorney for a
33 child, or the child is not represented by a privately retained
34 attorney:

35 (A) The child's caregiver, or any individual, may refer the child
36 to an attorney for the purposes of filing a motion to request
37 appointment of an attorney at public expense; or

38 (B) The child or any individual may retain an attorney for the
39 child for the purposes of filing a motion to request appointment of
40 an attorney at public expense.

1 (ii) Nothing in this subsection (7)(b) shall be construed to
2 change or alter the confidentiality provisions of RCW 13.50.100.

3 (c) Pursuant to this subsection, the department or supervising
4 agency and the child's guardian ad litem shall each notify a child of
5 his or her right to request an attorney and shall ask the child
6 whether he or she wishes to have an attorney. The department or
7 supervising agency and the child's guardian ad litem shall notify the
8 child and make this inquiry immediately after:

9 (i) The date of the child's twelfth birthday;

10 (ii) Assignment of a case involving a child age twelve or older;
11 or

12 (iii) July 1, 2010, for a child who turned twelve years old
13 before July 1, 2010.

14 (d) The department or supervising agency and the child's guardian
15 ad litem shall repeat the notification and inquiry at least annually
16 and upon the filing of any motion or petition affecting the child's
17 placement, services, or familial relationships.

18 (e) The notification and inquiry is not required if the child has
19 already been appointed an attorney.

20 (f) The department or supervising agency shall note in the
21 child's individual service and safety plan, and the guardian ad litem
22 shall note in his or her report to the court, that the child was
23 notified of the right to request an attorney and indicate the child's
24 position regarding appointment of an attorney.

25 (g) At the first regularly scheduled hearing after:

26 (i) The date of the child's twelfth birthday;

27 (ii) The date that a dependency petition is filed pursuant to
28 this chapter on a child age twelve or older; or

29 (iii) July 1, 2010, for a child who turned twelve years old
30 before July 1, 2010;

31 the court shall inquire whether the child has received notice of his
32 or her right to request an attorney from the department or
33 supervising agency and the child's guardian ad litem. The court shall
34 make an additional inquiry at the first regularly scheduled hearing
35 after the child's fifteenth birthday. No inquiry is necessary if the
36 child has already been appointed an attorney.

37 (8) For the purposes of child abuse prevention and treatment act
38 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L.
39 93-247, or any related state or federal legislation, a person

1 appointed pursuant to this section shall be deemed a guardian ad
2 litem.

3 (9) When a court-appointed special advocate or volunteer guardian
4 ad litem is requested on a case, the program shall give the court the
5 name of the person it recommends. The program shall attempt to match
6 a child with special needs with a guardian ad litem who has specific
7 training or education related to the child's individual needs. The
8 court shall immediately appoint the person recommended by the
9 program.

10 (10) If a party in a case reasonably believes the court-appointed
11 special advocate or volunteer guardian ad litem is inappropriate or
12 unqualified, the party may request a review of the appointment by the
13 program. The program must complete the review within five judicial
14 days and remove any appointee for good cause. If the party seeking
15 the review is not satisfied with the outcome of the review, the party
16 may file a motion with the court for the removal of the court-
17 appointed special advocate or volunteer guardian ad litem on the
18 grounds the advocate or volunteer is inappropriate or unqualified.

19 (11) The court shall remove any person from serving as a court-
20 appointed special advocate or volunteer guardian ad litem if the
21 court is notified that the person has been removed from another
22 county's registry pursuant to the disposition of a grievance or if
23 the court is otherwise made aware that the individual was found by a
24 court to have made a materially false statement that he or she knows
25 to be false during an official proceeding under oath.

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