

FINAL BILL REPORT

ESSB 6257

C 249 L 96

Synopsis as Enacted

Brief Description: Improving guardian and guardian ad litem systems to protect minors and incapacitated persons.

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

Senate Committee on Human Services & Corrections

Senate Committee on Ways & Means

House Committee on Law & Justice

Background: Washington law recognizes guardians and guardians ad litem (GALs). A guardian may be appointed for incapacitated persons to manage either or both their personal or financial affairs. A guardian is a person appointed to manage the personal or financial affairs of an incapacitated person or minor.

The GALs conduct interviews of the interested parties and report their findings and recommendations to the court. GALs are temporary appointments and they may be succeeded by a guardian. They are appointed in child abuse and neglect and custody cases.

GALs are appointed by the court to represent the best interests of children and incapacitated adults who are involved in the legal system. For children, the GALs are usually appointed in child abuse and neglect cases and child custody cases.

For adults, GALs are used when a person files a guardianship for an alleged incapacitated person. In many cases, the court grants the GALs very broad powers.

GALs are appointed in different ways depending on the county and type of case. Some courts utilize (1) the services of court-operated GAL programs, (2) independent attorneys, or (3) volunteer programs authorized by statute under the court-appointed special advocate program (CASA). Some jurisdictions use all three types of programs.

The CASA programs use trained community volunteers to conduct the investigations or duties requested by the court. There are 19 CASA programs which are spread among 20 counties. Other programs are being developed in four additional counties.

Training programs and requirements are approved by the courts and vary by jurisdiction. Fees also vary by jurisdiction, type of case involved, and the type of appointment. Court-operated programs generally use a set hourly fee, and independent attorneys may submit their bills for court approval. CASA volunteers may receive reimbursement for their expenses, but are not paid for their services.

GAL programs, which provide services on child abuse and neglect cases, are required to maintain a background information record for each GAL in the program. The information is updated annually and is made available to the court. It has been suggested that the information should also be available to the parties and their attorneys.

Once the GAL is appointed, it is very difficult to have a GAL removed from a case. It has been suggested that the affidavit of prejudice procedure used for judges should also be available for removal of a GAL. This procedure is used to remove a person whom the party believes is prejudiced or is unable to render a fair or impartial decision.

GALs report their findings at court hearings and trials. It is recommended that the GALs should also file periodic reports to keep the parties apprised of the direction of the case.

In some instances, the GAL may be required to obtain an evaluation of the child or persons involved in the case. It has been suggested that, absent a court order, the GAL should not be allowed to select a health care provider or evaluator who is chosen in opposition to the wishes of the person being evaluated, or their parents in the case of a child.

Summary: The Office of the Administrator for the Courts (OAC) is required to develop a comprehensive statewide curriculum for all persons who act as guardians ad litem under the RCW titles pertaining to juveniles and domestic relations (cases involving child abuse, neglect or custody). The curriculum includes specialty sections on child development, family reconciliation, mediation, child sexual abuse, child physical abuse, child neglect, clinical and forensic investigative and interviewing techniques, and relevant statutory and legal requirements. The curriculum is completed and made available to all superior court judges, court personnel, and all persons who act as guardians ad litem by July 1, 1997.

The OAC must review the advisability and feasibility of the statewide mandatory use of court-appointed special advocates to act as guardians ad litem in juvenile and domestic relations cases. The plan must include recommendations regarding funding of volunteer programs.

The OAC must conduct a study on the feasibility and desirability of requiring all persons to be certified as qualified guardians ad litem prior to their eligibility for appointment as guardians ad litem under the statutes pertaining to probate and trust, juveniles and domestic relations. OAC must also review problems and concerns about the role of GALs and make recommendations to address issues of fairness and impartiality. The reviews and report are due December 1, 1996.

Every two years, DSHS must update its model training program for GALs who are involved in guardianship and limited guardianship cases. The superior courts must ensure the GALs who work on guardianship cases have completed a model training program.

A petition for guardianship or limited guardianship must describe any alternative arrangements previously made by the alleged incapacitated person (AIP), such as trusts, powers of attorney or health care directives, and must identify any nominations of guardian made in a power of attorney. The petition must explain why a guardianship is necessary in cases where the person already made alternative arrangements.

An AIP has the right to be represented by a willing attorney of his or her choosing. If an AIP opposes a health care professional selected by a GAL, the GAL must use the professional selected by the AIP but may obtain a supplemental examination. The AIP may testify and present evidence at any hearing on his or her alleged incapacity.

A GAL under Title 11 must provide the court and all parties with his or her background, qualifications and hourly rate. A GAL under Titles 13 and 26 must provide the court with background and qualifications and must provide the parties his or her criminal history, training and the hourly rate if paid. A party or the court may file an order to show cause for removal of the GAL if they believe the GAL lacks the expertise necessary, charges more than a reasonable fee, or has a conflict of interest.

The background statements in dependency and domestic relations cases must not include home addresses or home telephone numbers, and the court may allow the use of pseudonyms or maiden names to increase the safety of the CASA/GALs.

The GAL for an AIP must examine the alternative arrangements to a guardianship which were made by the AIP. The previous alternative arrangements are continued unless an injunction is filed or the court orders otherwise following a hearing. The GAL for an AIP must attend all hearings on the petition unless all parties waive the attendance requirement.

No attorney may be appointed to act as a judge pro tempore in the superior court if he or she currently serves as a compensated GAL. An exception is allowed for judicial districts with less than 100,000 people and districts located in eastern Washington.

GALs in domestic relations and dependency cases who have not served or been trained as GALs and who are appointed after January 1, 1998, must complete the comprehensive statewide curriculum developed by the OAC prior to their appointment. Volunteer GALs may take a training program which is approved by the OAC.

Each GAL program (for paid GALs) or the superior court of each county is required to maintain a rotational registry of persons who are willing and qualified to serve as guardians ad litem. In judicial districts with a population over 100,000 the parties are given a list of three potential GALs. Each party may strike on name from the list, after which the court makes the appointment. Once the appointment is made, a party may move for the substitution of a GAL if he or she believes the GAL lacks the necessary qualifications, charges a fee too high, or has a conflict of interest. The parties may independently agree upon a GAL who is listed on the registry. The court may appoint a person who is not on the registry in exceptional circumstances. The rotational registry does not apply to the "volunteer" CASA. For CASA/GALs, the removal process begins with a request to the program to remove an appointee. If the request is denied, a party may file a motion for substitution.

Votes on Final Passage:

Senate	45	2	
House	96	0	(House amended)
Senate			(Senate refused to concur)

Conference Committee

House 98 0

Senate 46 0

Effective: June 6, 1996