
HOUSE BILL 2881

State of Washington

54th Legislature

1996 Regular Session

By Representatives Talcott, Conway, Cooke, Cody, Scheuerman, Chappell, Keiser, Tokuda, Silver and Kessler

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1 AN ACT Relating to guardians and guardians ad litem for minors and
2 incapacitated persons; amending RCW 2.56.030, 4.08.060, 8.25.270,
3 11.16.083, 11.52.014, 11.52.020, 11.76.080, 11.92.190, 11.96.180,
4 13.24.050, 13.34.100, 13.34.120, 26.12.175, 26.26.140, 26.33.070,
5 26.44.053, 65.12.145, 90.03.150, 91.08.230, 11.88.005, 11.88.010,
6 11.88.020, 11.88.030, 11.88.040, 11.88.045, 11.88.090, and 11.88.095;
7 adding a new section to chapter 2.56 RCW; adding new sections to
8 chapter 11.88 RCW; adding new sections to chapter 13.34 RCW; adding new
9 sections to chapter 26.12 RCW; and creating new sections.

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

11 NEW SECTION. **Sec. 1.** It is the intent of this act to make
12 improvements to the guardian and guardian ad litem systems currently in
13 place for the protection of minors and incapacitated persons.

14 **Sec. 2.** RCW 2.56.030 and 1994 c 240 s 1 are each amended to read
15 as follows:

16 The administrator for the courts shall, under the supervision and
17 direction of the chief justice:

- 1 (1) Examine the administrative methods and systems employed in the
2 offices of the judges, clerks, stenographers, and employees of the
3 courts and make recommendations, through the chief justice, for the
4 improvement of the same;
- 5 (2) Examine the state of the dockets of the courts and determine
6 the need for assistance by any court;
- 7 (3) Make recommendations to the chief justice relating to the
8 assignment of judges where courts are in need of assistance and carry
9 out the direction of the chief justice as to the assignments of judges
10 to counties and districts where the courts are in need of assistance;
- 11 (4) Collect and compile statistical and other data and make reports
12 of the business transacted by the courts and transmit the same to the
13 chief justice to the end that proper action may be taken in respect
14 thereto;
- 15 (5) Prepare and submit budget estimates of state appropriations
16 necessary for the maintenance and operation of the judicial system and
17 make recommendations in respect thereto;
- 18 (6) Collect statistical and other data and make reports relating to
19 the expenditure of public moneys, state and local, for the maintenance
20 and operation of the judicial system and the offices connected
21 therewith;
- 22 (7) Obtain reports from clerks of courts in accordance with law or
23 rules adopted by the supreme court of this state on cases and other
24 judicial business in which action has been delayed beyond periods of
25 time specified by law or rules of court and make report thereof to
26 supreme court of this state;
- 27 (8) Act as secretary of the judicial conference referred to in RCW
28 2.56.060;
- 29 (9) Formulate and submit to the judicial council of this state
30 recommendations of policies for the improvement of the judicial system;
- 31 (10) Submit annually, as of February 1st, to the chief justice and
32 the judicial council, a report of the activities of the administrator's
33 office for the preceding calendar year;
- 34 (11) Administer programs and standards for the training and
35 education of judicial personnel;
- 36 (12) Examine the need for new superior court and district judge
37 positions under a weighted caseload analysis that takes into account
38 the time required to hear all the cases in a particular court and the
39 amount of time existing judges have available to hear cases in that

1 court. The results of the weighted caseload analysis shall be reviewed
2 by the board for judicial administration and the judicial council, both
3 of which shall make recommendations to the legislature (~~by January 1,~~
4 ~~1989~~). It is the intent of the legislature that weighted caseload
5 analysis become the basis for creating additional district court
6 positions, and recommendations should address that objective;

7 (13) Provide staff to the judicial retirement account plan under
8 chapter 2.14 RCW;

9 (14) Attend to such other matters as may be assigned by the supreme
10 court of this state;

11 (15) Within available funds, develop a curriculum for a general
12 understanding of child development, placement, and treatment resources,
13 as well as specific legal skills and knowledge of relevant statutes
14 including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules,
15 interviewing skills, and special needs of the abused or neglected
16 child. This curriculum shall be completed and made available to all
17 juvenile court judges, court personnel, and service providers (~~by July~~
18 ~~1, 1988. The curriculum shall~~) and be updated yearly to reflect
19 changes in statutes, court rules, or case law;

20 (16) Develop, in consultation with all public benefit nonprofit
21 corporations that are eligible to receive state funds under RCW
22 43.330.135, a comprehensive state-wide curriculum for all persons who
23 act as guardians ad litem under Title 13 or 26 RCW. The curriculum
24 shall be made available January 1, 1997, and include specialty sections
25 on child development, child sexual abuse, child physical abuse, child
26 neglect, investigative and interviewing techniques, and relevant
27 statutory and legal requirements. The curriculum shall be made
28 available to all superior court judges, court personnel, and all
29 persons who act as guardians ad litem;

30 (17) Develop a curriculum for a general understanding of crimes of
31 malicious harassment, as well as specific legal skills and knowledge of
32 RCW 9A.36.080, relevant cases, court rules, and the special needs of
33 malicious harassment victims. This curriculum shall be (~~completed~~
34 ~~and~~) made available to all superior court and court of appeals judges
35 and to all justices of the supreme court (~~by July 1, 1989~~);

36 (~~(17)~~) (18) Develop, in consultation with the criminal justice
37 training commission and the commissions established under chapters
38 43.113, 43.115, and 43.117 RCW, a curriculum for a general
39 understanding of ethnic and cultural diversity and its implications for

1 working with youth of color and their families. The curriculum shall
2 be (~~completed and made~~) available to all superior court judges and
3 court commissioners assigned to juvenile court, and other court
4 personnel (~~by October 1, 1993~~). Ethnic and cultural diversity
5 training shall be provided annually so as to incorporate cultural
6 sensitivity and awareness into the daily operation of juvenile courts
7 state-wide;

8 (~~(18)~~) (19) Authorize the use of closed circuit television and
9 other electronic equipment in judicial proceedings. The administrator
10 shall promulgate necessary standards and procedures and shall provide
11 technical assistance to courts as required.

12 NEW SECTION. Sec. 3. A new section is added to chapter 2.56 RCW
13 to read as follows:

14 (1) The administrator for the courts shall develop a plan for the
15 state-wide mandatory use of court-appointed special advocates as
16 described in RCW 26.12.175 to act as guardians ad litem in all cases
17 under Titles 13 and 26 RCW. The plan shall include recommendations
18 regarding the increase of court fees or assessments as necessary to
19 fully fund the implementation and continuation of the plan.

20 (2) The administrator shall also conduct a study on the feasibility
21 and desirability of requiring all persons who act as guardians ad litem
22 under Titles 11, 13, and 26 RCW to be certified as qualified guardians
23 ad litem prior to their eligibility for appointment.

24 (3) In developing the plan and conducting the study the
25 administrator shall consult with: (a) The presidents or directors of
26 all public benefit nonprofit corporations that are eligible to receive
27 state funds under RCW 43.330.135; (b) the attorney general, or a
28 designee; (c) the secretary of the department of social and health
29 services, or a designee; (d) the superior court judges association; (e)
30 the Washington state bar association; (f) public defenders who
31 represent children under Title 13 or 26 RCW; (g) private attorneys who
32 represent parents under Title 13 or 26 RCW; (h) professionals who
33 evaluate families for the purposes of determining the custody or
34 placement decisions of children; (i) the office of financial
35 management; (j) persons who act as volunteer guardians ad litem; and
36 (k) parents who have dealt with guardians ad litem in court cases. For
37 the purposes of studying the feasibility of a certification requirement

1 for guardians ad litem acting under Title 11 RCW the administrator
2 shall consult with the advisory group formed under RCW 11.88.090.

3 NEW SECTION. **Sec. 4.** The plan and study required under section 3
4 of this act shall be presented to the governor and to the appropriate
5 committees of the legislature no later than December 1, 1996.

6 **Sec. 5.** RCW 4.08.060 and 1899 c 91 s 1 are each amended to read as
7 follows:

8 When an ~~((insane))~~ incapacitated person, as defined in RCW
9 11.88.010, is a party to an action in the superior courts he or she
10 shall appear by guardian, or if he or she has no guardian, or in the
11 opinion of the court the guardian is an improper person, the court
12 shall appoint one to act as guardian ad litem. Said guardian shall be
13 appointed as follows:

14 (1) When the ~~((insane))~~ incapacitated person is plaintiff, upon
15 the application of a relative or friend of the ~~((insane))~~ incapacitated
16 person.

17 (2) When the ~~((insane))~~ incapacitated person is defendant, upon the
18 application of a relative or friend of such ~~((insane))~~ incapacitated
19 person, such application shall be made within thirty days after the
20 service of summons if served in the state of Washington, and if served
21 out of the state or service is made by publication, then such
22 application shall be made within sixty days after the first publication
23 of summons or within sixty days after the service out of the state. If
24 no such application be made within the time above limited, application
25 may be made by any party to the action.

26 **Sec. 6.** RCW 8.25.270 and 1977 ex.s. c 80 s 12 are each amended to
27 read as follows:

28 When it ~~((shall))~~ appears in any petition or otherwise at any time
29 during the proceedings for condemnation brought pursuant to chapters
30 8.04, 8.08, 8.12, 8.16, 8.20, and 8.24 RCW(~~(, each as now or hereafter~~
31 ~~amended,)) that any ~~((infant))~~ minor, or ~~((allegedly incompetent or~~
32 ~~disabled))~~ alleged incapacitated person, as defined in RCW 11.88.010,
33 is interested in any property that is to be taken or damaged, the court
34 shall appoint a guardian ad litem for ~~((such infant))~~ the minor or
35 ~~((allegedly incompetent or disabled))~~ alleged incapacitated person to
36 appear and assist in ~~((his, her or their))~~ the person's defense, unless~~

1 a guardian or limited guardian has previously been appointed, in which
2 case the duty to appear and assist shall be delegated to the properly
3 qualified guardian or limited guardian. The court shall make such
4 orders or decrees as it shall deem necessary to protect and secure the
5 interest of the ((infant)) minor or ((allegedly incompetent or
6 disabled)) alleged incapacitated person ((in the property sought to be
7 condemned or the compensation which shall be awarded therefore)).

8 **Sec. 7.** RCW 11.16.083 and 1977 ex.s. c 234 s 1 are each amended to
9 read as follows:

10 Notwithstanding any other provision of this title, no notice of any
11 hearing in probate or probate proceeding need be given to any legally
12 competent person who is interested in any hearing in any probate as an
13 heir, legatee, or devisee of the decedent who has in person or by
14 attorney waived in writing notice of such hearing or proceeding. Such
15 waiver of notice may apply to either a specific hearing or proceeding,
16 or to any and all hearings and proceedings to be held during the
17 administration of the estate in which event such waiver of notice shall
18 be of continuing effect unless subsequently revoked by the filing of a
19 written notice of revocation of the waiver and the mailing of a copy
20 thereof to the personal representative and his or her attorney. Unless
21 notice of a hearing is required to be given by publication, if all
22 persons entitled to notice thereof shall have waived such notice, the
23 court may hear the matter forthwith. A guardian of the estate or a
24 guardian ad litem may make such waivers on behalf of ((his
25 incompetent)) an incapacitated person, as defined in RCW 11.88.010, and
26 a trustee may make such waivers on behalf of any competent or
27 ((incompetent)) incapacitated beneficiary of his or her trust. A
28 consul or other representative of a foreign government, whose
29 appearance has been entered as provided by law on behalf of any person
30 residing in a foreign country, may make such waiver of notice on behalf
31 of such person. Any person who submits to the jurisdiction of the
32 court in any hearing shall be deemed to have waived notice thereof.

33 **Sec. 8.** RCW 11.52.014 and 1965 c 145 s 11.52.014 are each amended
34 to read as follows:

35 Notice of such hearing shall be given in the manner prescribed in
36 RCW 11.76.040. If there be any ((incompetent)) heir who is an
37 incapacitated person, as defined in RCW 11.88.010, of the decedent, the

1 court shall appoint a guardian ad litem for such (~~incompetent~~) heir,
2 who shall appear at the hearing and represent the interest of (~~such~~
3 ~~incompetent~~) the heir.

4 **Sec. 9.** RCW 11.52.020 and 1985 c 194 s 2 are each amended to read
5 as follows:

6 In event a homestead has been, or shall be selected in the manner
7 provided by law, whether the selection of such homestead results in
8 vesting the complete or partial title in the survivor, it shall be the
9 duty of the court, upon petition of any person interested, and upon
10 being satisfied that the value thereof does not exceed at the time of
11 the death the amount specified in RCW 11.52.010, exclusive of general
12 taxes and special assessments which were liens at the time of the death
13 of the deceased and exclusive of the unpaid balance of any contract to
14 purchase, mortgage, or mechanic's, laborer's, or materialmen's liens
15 thereon, and exclusive of funeral expenses, expenses of last sickness
16 and of administration, which expenses may be deducted from the gross
17 value in determining the value to be set off to the surviving spouse,
18 to enter a decree, upon notice as provided in RCW 11.52.014 or upon
19 longer notice if the court so orders, setting off and awarding such
20 homestead to the survivor, thereby vesting the title thereto in fee
21 simple in the survivor: PROVIDED, That if there be any (~~incompetent~~)
22 heir(~~s~~) who is an incapacitated person, as defined in RCW 11.88.010,
23 of the decedent, the court shall appoint a guardian ad litem for (~~such~~
24 ~~incompetent~~) the heir who shall appear at the hearing and represent
25 the interest of (~~such incompetent~~) the heir.

26 **Sec. 10.** RCW 11.76.080 and 1977 ex.s. c 80 s 15 are each amended
27 to read as follows:

28 If there be any alleged (~~incompetent or disabled~~) incapacitated
29 person as defined in RCW 11.88.010 interested in the estate who has no
30 legally appointed guardian or limited guardian, the court:

31 (1) At any stage of the proceeding in its discretion and for such
32 purpose or purposes as it shall indicate, may, and

33 (2) For hearings held pursuant to RCW 11.52.010, 11.52.020,
34 11.68.040 and 11.76.050, (~~each as now or hereafter amended,~~) or for
35 entry of an order adjudicating testacy or intestacy and heirship when
36 no personal representative is appointed to administer the estate of the
37 decedent, shall appoint some disinterested person as guardian ad litem

1 to represent such(~~allegedly incompetent or disabled~~) alleged
2 incapacitated person with reference to any petition, proceeding report,
3 or adjudication of testacy or intestacy without the appointment of a
4 personal representative to administer the estate of decedent in which
5 the alleged (~~incompetent or disabled~~) incapacitated person may have
6 an interest, who, on behalf of the alleged (~~incompetent or disabled~~)
7 incapacitated person, may contest the same as any other person
8 interested might contest it, and who shall be allowed by the court
9 reasonable compensation for his or her services: PROVIDED, HOWEVER,
10 That where a surviving spouse is the sole beneficiary under the terms
11 of a will, the court may grant a motion by the personal representative
12 to waive the appointment of a guardian ad litem for a person who is the
13 minor child of such surviving spouse and the decedent and who is
14 incompetent solely for the reason of (~~his~~) being under eighteen years
15 of age.

16 NEW SECTION. Sec. 11. A new section is added to chapter 11.88 RCW
17 to read as follows:

18 (1) Any party or attorney to an action under this title may file a
19 motion of prejudice regarding the appointment of a guardian ad litem.
20 The motion shall be supported by an affidavit stating the guardian is
21 prejudiced against the party or attorney and the party or attorney
22 cannot, or believes they cannot, have a fair and impartial
23 investigation by the guardian ad litem. The motion and affidavit shall
24 be filed within five days of receipt of the notice of the appointment
25 or receipt of the background information report required under RCW
26 11.88.090, whichever is later. A party or attorney may not file more
27 than one affidavit of prejudice against a guardian ad litem in any
28 action. The first such motion filed by any party shall be
29 automatically granted.

30 (2) The filing of a motion of prejudice shall not prevent the
31 guardian ad litem from acting in an emergency, upon court approval,
32 until a subsequent guardian ad litem has been appointed.

33 (3) No practicing attorney may be appointed to act as guardian ad
34 litem under this title, if the attorney also acts as judge pro tempore
35 or commissioner pro tempore in the superior court.

36 Sec. 12. RCW 11.92.190 and 1977 ex.s. c 309 s 14 are each amended
37 to read as follows:

1 No residential treatment facility which provides nursing or other
2 care may detain a person within such facility against ~~((their))~~ his or
3 her will. Any court order, other than an order issued in accordance
4 with the involuntary treatment provisions of chapters 10.77, 71.05, and
5 72.23 RCW, which purports to authorize such involuntary detention or
6 purports to authorize a guardian or limited guardian to consent to such
7 involuntary detention on behalf of an ~~((incompetent or disabled))~~
8 incapacitated person shall be void and of no force or effect. This
9 section does not apply to the detention of a minor upon the application
10 of a parent under chapter 70.96A or 71.34 RCW.

11 Nothing in this section shall be construed to require a court order
12 authorizing placement of an ~~((incompetent or disabled))~~ incapacitated
13 person in a residential treatment facility if such order is not
14 otherwise required by law: PROVIDED, That notice of any residential
15 placement of an ~~((incompetent or disabled))~~ incapacitated person shall
16 be served, either before or after placement, by the guardian or limited
17 guardian on such person, the guardian ad litem of record, and any
18 attorney of record.

19 **Sec. 13.** RCW 11.96.180 and 1994 c 221 s 64 are each amended to
20 read as follows:

21 (1) The court, upon its own motion or on request of any one or more
22 of the required parties to the dispute as that term is defined in RCW
23 11.96.170(6)(c), at any stage of a judicial proceeding or at any time
24 in a nonjudicial resolution procedure, may appoint a guardian ad litem
25 to represent the interests of a minor, incapacitated, unborn, or
26 unascertained person, or person whose identity or address is unknown,
27 or a designated class of persons who are not ascertained or are not in
28 being. When not precluded by a conflict of interest, a guardian ad
29 litem may be appointed to represent several persons or interests. The
30 guardian ad litem shall meet the requirements of, and be appointed in
31 accordance with, RCW 11.88.090.

32 (2) The court-appointed guardian ad litem supersedes the special
33 representative if so provided in the court order.

34 (3) The court may appoint the guardian ad litem at an ex parte
35 hearing, or the court may order a hearing as provided in RCW 11.96.070
36 with notice as provided in RCW 11.96.080, 11.96.100, and 11.96.110.

1 **Sec. 14.** RCW 13.24.050 and 1955 c 284 s 5 are each amended to read
2 as follows:

3 Any judge of this state who appoints counsel or guardian ad litem
4 pursuant to the provision of the compact may, in his or her discretion,
5 fix a fee to be paid out of funds available for disposition by the
6 court but no such fee shall exceed (~~twenty-five dollars~~) the rate as
7 established pursuant to section 28 of this act.

8 NEW SECTION. **Sec. 15.** A new section is added to chapter 13.34 RCW
9 to read as follows:

10 (1) Any party or attorney to an action under this title may file a
11 motion of prejudice regarding the appointment of a guardian ad litem.
12 The motion shall be supported by an affidavit stating the guardian is
13 prejudiced against the party or attorney and the party or attorney
14 cannot, or believes they cannot, have a fair and impartial
15 investigation by the guardian ad litem. The motion and affidavit shall
16 be filed within five days of receipt of the notice of the appointment
17 or receipt of the background information report required under RCW
18 13.34.100, whichever is later. A party or attorney may not file more
19 than one affidavit of prejudice against a guardian ad litem in any
20 action. The first such motion filed by any party shall be
21 automatically granted.

22 (2) The filing of a motion of prejudice shall not prevent the
23 guardian ad litem from acting in an emergency, upon court approval,
24 until a subsequent guardian ad litem has been appointed.

25 (3) No practicing attorney may be appointed to act as guardian ad
26 litem under this title, if the attorney also acts as judge pro tempore
27 or commissioner pro tempore in the superior court.

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

30 (1) Any party or attorney to an action under this title may file a
31 motion of prejudice regarding the appointment of a guardian ad litem.
32 The motion shall be supported by an affidavit stating the guardian is
33 prejudiced against the party or attorney and the party or attorney
34 cannot, or believes they cannot, have a fair and impartial
35 investigation by the guardian ad litem. The motion and affidavit shall
36 be filed within five days of receipt of the notice of the appointment
37 or receipt of the background information report required under RCW

1 26.12.175 or 26.44.053, whichever is later. A party or attorney may
2 not file more than one affidavit of prejudice against a guardian ad
3 litem in any action. The first such motion filed by any party shall be
4 automatically granted.

5 (2) The filing of a motion of prejudice shall not prevent the
6 guardian ad litem from acting in an emergency, upon court approval,
7 until a subsequent guardian ad litem has been appointed.

8 (3) No practicing attorney may be appointed to act as guardian ad
9 litem under this title, if the attorney also acts as judge pro tempore
10 or commissioner pro tempore in the superior court.

11 **Sec. 17.** RCW 13.34.100 and 1994 c 110 s 2 are each amended to read
12 as follows:

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

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

23 (3) Each guardian ad litem program shall maintain a background
24 information record for each guardian ad litem in the program. The
25 background file shall include, but is not limited to, the following
26 information:

27 (a) Level of formal education;

28 (b) Training related to the guardian'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; ((and))

32 (e) Number of complaints against the guardian ad litem, filed with
33 the guardian ad litem program, the Washington state bar association, or
34 the superior court, including the nature of the complaint and its
35 resolution;

36 (f) Number of affidavits of prejudice, if any, filed against the
37 guardian ad litem, including the number per year and the county in
38 which it was filed; and

1 (g) Criminal history, as defined in RCW 9.94A.030. The background
2 statement shall not include identifying information that may be used to
3 harm a guardian ad litem, such as home addresses and home telephone
4 numbers, and for volunteer guardians ad litem the court may allow the
5 use of maiden names or pseudonyms as necessary for their safety.

6 The background information report shall be updated annually. As a
7 condition of appointment, the guardian ad litem's background
8 information record shall be made available to the court, and
9 immediately provided to the parties or their attorneys. If the
10 appointed guardian ad litem is not a member of a guardian ad litem
11 program the person shall immediately provide the required background
12 information to the court, and to the parties or their attorneys. The
13 guardian ad litem program shall immediately file the notice of
14 appointment and background statement with the court and send copies to
15 the parties.

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

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

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

32 (7) For the purposes of child abuse prevention and treatment act
33 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
34 or any related state or federal legislation, a person appointed
35 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
36 represent the best interests of the minor in proceedings before the
37 court.

1 **Sec. 18.** RCW 13.34.120 and 1994 c 288 s 2 are each amended to read
2 as follows:

3 (1) To aid the court in its decision on disposition, a social
4 study, consisting of a written evaluation of matters relevant to the
5 disposition of the case, shall be made by the person or agency filing
6 the petition. The study shall include all social records and may also
7 include facts relating to the child's cultural heritage, and shall be
8 made available to the court. The court shall consider the social file,
9 social study, guardian ad litem report, the court-appointed special
10 advocate's report, if any, and any reports filed by a party at the
11 disposition hearing in addition to evidence produced at the fact-
12 finding hearing. At least ten working days before the disposition
13 hearing, the department shall mail to the parent and his or her
14 attorney a copy of the agency's social study and proposed service plan,
15 which shall be in writing or in a form understandable to the parents or
16 custodians. In addition, the department shall provide an opportunity
17 for parents to review and comment on the plan at the community service
18 office. If the parents disagree with the agency's plan or any part
19 thereof, the parents shall submit to the court at least twenty-four
20 hours before the hearing, in writing, or signed oral statement, an
21 alternative plan to correct the problems which led to the finding of
22 dependency. This section shall not interfere with the right of the
23 parents or custodians to submit oral arguments regarding the
24 disposition plan at the hearing.

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

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

31 (b) A description of the specific programs, for both the parents
32 and child, that are needed in order to prevent serious harm to the
33 child; the reasons why such programs are likely to be useful; the
34 availability of any proposed services; and the agency's overall plan
35 for ensuring that the services will be delivered;

36 (c) If removal is recommended, a full description of the reasons
37 why the child cannot be protected adequately in the home, including a
38 description of any previous efforts to work with the parents and the
39 child in the home; the in-home treatment programs which have been

1 considered and rejected; the preventive services that have been offered
2 or provided and have failed to prevent the need for out-of-home
3 placement, unless the health, safety, and welfare of the child cannot
4 be protected adequately in the home; and the parents' attitude toward
5 placement of the child;

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

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

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

14 **Sec. 19.** RCW 26.12.175 and 1993 c 289 s 4 are each amended to read
15 as follows:

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

25 (b) Unless otherwise ordered, the guardian ad litem's role is to
26 investigate and report to the court concerning parenting arrangements
27 for the child, and to represent the child's best interests. The
28 guardian ad litem shall provide periodic reports to the court and the
29 parties regarding the status of the guardian ad litem's investigation
30 and the guardian ad litem's periodic findings and recommendations. The
31 report shall be provided at least every three months. The interim
32 actions of a guardian ad litem are revisable by the court upon the
33 motion of a party.

34 (c) The court shall enter an order for costs, fees, and
35 disbursements to cover the costs of the guardian ad litem in accordance
36 with the fee schedule established pursuant to section 28 of this act.
37 The court may order either or both parents to pay for the costs of the
38 guardian ad litem, according to their ability to pay. If both parents

1 are indigent, the county shall bear the cost of the guardian, subject
2 to appropriation for guardians' ad litem services by the county
3 legislative authority. Guardians ad litem who are not volunteers shall
4 provide the parties with monthly itemized accountings of their time and
5 billings for services.

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

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

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

19 (a) Level of formal education;

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

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

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

24 (e) Number of complaints against the guardian ad litem, filed with
25 the guardian ad litem program, the Washington state bar association, or
26 the superior court, and including the nature of the complaint and its
27 resolution;

28 (f) Number of affidavits of prejudice, if any, filed against the
29 guardian ad litem, including the number per year and the county in
30 which it was filed; and

31 (g) Criminal history, as defined in RCW 9.94A.030. The background
32 statement shall not include identifying information that may be used to
33 harm a guardian ad litem, such as home addresses and home telephone
34 numbers, and for volunteer guardians ad litem the court may allow the
35 use of maiden names or pseudonyms as necessary for their safety.

36 The background information report shall be updated annually. As a
37 condition of appointment, the guardian ad litem's background
38 information record shall be made available to the court, and
39 immediately provided to the parties or their attorneys. If the

1 appointed guardian ad litem is not a member of a guardian ad litem
2 program the person shall immediately provide the required background
3 information to the court, and to the parties or their attorneys. The
4 guardian ad litem program shall immediately file the notice of
5 appointment and background statement with the court and send copies to
6 the parties.

7 **Sec. 20.** RCW 26.26.140 and 1994 c 146 s 4 are each amended to read
8 as follows:

9 The court may order reasonable fees of experts and the child's
10 guardian ad litem, and other costs of the action, including blood or
11 genetic test costs, to be paid by the parties in proportions and at
12 times determined by the court. The guardian ad litem fees shall be set
13 in accordance to the fee schedule established pursuant to section 28 of
14 this act. The court may order that all or a portion of a party's
15 reasonable attorney's fees be paid by another party, except that an
16 award of attorney's fees assessed against the state or any of its
17 agencies or representatives shall be under RCW 4.84.185.

18 **Sec. 21.** RCW 26.33.070 and 1984 c 155 s 7 are each amended to read
19 as follows:

20 (1) The court shall appoint a guardian ad litem for any parent or
21 alleged father under eighteen years of age in any proceeding under this
22 chapter. The court may appoint a guardian ad litem for a child adoptee
23 or any incompetent party in any proceeding under this chapter. The
24 guardian ad litem for a parent or alleged father, in addition to
25 determining what is in the best interest of the party, shall make an
26 investigation and report to the court concerning whether any written
27 consent to adoption or petition for relinquishment signed by the parent
28 or alleged father was signed voluntarily and with an understanding of
29 the consequences of the action.

30 (2) The county in which a petition is filed shall pay the fees of
31 a guardian ad litem or attorney appointed under this chapter. The
32 guardian ad litem fees shall be set in accordance to the fee schedule
33 established pursuant to section 28 of this act.

34 **Sec. 22.** RCW 26.44.053 and 1994 c 110 s 1 are each amended to read
35 as follows:

1 (1) In any judicial proceeding under this chapter or chapter 13.34
2 RCW in which it is alleged that a child has been subjected to child
3 abuse or neglect, the court shall appoint a guardian ad litem for the
4 child. The requirement of a guardian ad litem may be deemed satisfied
5 if the child is represented by counsel in the proceedings.

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

10 (a) Level of formal education;

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

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

13 (d) Number of appointments as a guardian ad litem;

14 (e) Number of complaints against the guardian ad litem, filed with
15 the guardian ad litem program, the Washington state bar association, or
16 the superior court, including the nature of the complaint and its
17 resolution;

18 (f) Number of affidavits of prejudice, if any, filed against the
19 guardian ad litem, including the number per year and the county in
20 which it was filed; and

21 (g) 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, and
25 immediately provided to the parties or their attorneys. If the
26 appointed guardian ad litem is not a member of a guardian ad litem
27 program the person shall immediately provide the required background
28 information to the court, and to the parties or their attorneys. The
29 background statement shall not include identifying information that may
30 be used to harm a guardian ad litem, such as home addresses and home
31 telephone numbers, and for volunteer guardians ad litem the court may
32 allow the use of maiden names or pseudonyms as necessary for their
33 safety.

34 (3) At any time prior to or during a hearing in such a case, the
35 court may, on its own motion, or the motion of the guardian ad litem,
36 or other parties, order the examination by a physician, psychologist,
37 or psychiatrist, of any parent or child or other person having custody
38 of the child at the time of the alleged child abuse or neglect, if the
39 court finds such an examination is necessary to the proper

1 determination of the case. The hearing may be continued pending the
2 completion of such examination. The physician, psychologist, or
3 psychiatrist conducting such an examination may be required to testify
4 concerning the results of such examination and may be asked to give his
5 or her opinion as to whether the protection of the child requires that
6 he or she not be returned to the custody of his or her parents or other
7 persons having custody of him or her at the time of the alleged child
8 abuse or neglect. Persons so testifying shall be subject to cross-
9 examination as are other witnesses. No information given at any such
10 examination of the parent or any other person having custody of the
11 child may be used against such person in any subsequent criminal
12 proceedings against such person or custodian concerning the abuse or
13 neglect of the child.

14 ~~((+3+))~~ (4) A parent or other person having legal custody of a
15 child alleged to be abused or neglected shall be a party to any
16 proceeding that may impair or impede such person's interest in and
17 custody or control of the child.

18 NEW SECTION. Sec. 23. A new section is added to chapter 13.34 RCW
19 to read as follows:

20 (1) All guardians ad litem appointed under this title, after
21 January 1, 1998, shall have completed the comprehensive state-wide
22 curriculum developed by the office of the administrator for the courts,
23 under RCW 2.56.030(16), prior to their appointment.

24 (2) The superior court of each county shall maintain a registry of
25 persons who are willing and qualified to serve as guardians ad litem
26 under this title. The court shall only appoint as guardian ad litem,
27 the person whose name appears next on the registry. If the person
28 whose name appears next on the registry is: Unable to accept the
29 appointment, unwilling to accept the appointment, or subject to an
30 affidavit of prejudice, the person's name shall be placed at the bottom
31 of the registry. The rotational registry system shall not apply to
32 court-appointed special advocate programs.

33 (3) The interim actions of a guardian ad litem are revisable by the
34 court upon the motion of a party.

35 NEW SECTION. Sec. 24. A new section is added to chapter 26.12 RCW
36 to read as follows:

1 (1) All guardians ad litem appointed under this title, after
2 January 1, 1998, shall have completed the comprehensive state-wide
3 curriculum developed by the office of the administrator for the courts,
4 under RCW 2.56.030(16), prior to their appointment.

5 (2) The superior court of each county shall maintain a registry of
6 persons who are willing and qualified to serve as guardians ad litem
7 under this title. The court shall only appoint as guardian ad litem
8 the person whose name appears next on the registry. If the person
9 whose name appears next on the registry is: Unable to accept the
10 appointment, unwilling to accept the appointment, or subject to an
11 affidavit of prejudice, the person's name shall be placed at the bottom
12 of the registry. The rotational registry system shall not apply to
13 court-appointed special advocate programs.

14 (3) The interim actions of a guardian ad litem are revisable by the
15 court upon the motion of a party.

16 **Sec. 25.** RCW 65.12.145 and 1907 c 250 s 21 are each amended to
17 read as follows:

18 The court shall appoint a disinterested person to act as guardian
19 ad litem for minors and other incapacitated persons (~~under~~
20 ~~disability~~), as defined in chapter 11.88 RCW, and for all other
21 persons not in being who may appear to have an interest in the land.
22 The (~~compensation of the said~~) guardian's compensation shall be
23 determined by the court, and paid as a part of the expense of the
24 proceeding. The guardian ad litem fees shall be set in accordance to
25 the fee schedule established pursuant to section 28 of this act.

26 **Sec. 26.** RCW 90.03.150 and 1977 ex.s. c 80 s 75 are each amended
27 to read as follows:

28 Whenever any defendant in any proceeding instituted under this
29 chapter is (~~an infant~~) a minor, or an alleged (~~incompetent or~~
30 ~~disabled~~) incapacitated person, as defined in chapter 11.88 RCW, for
31 whom the court has not yet appointed either a guardian or a limited
32 guardian, the court shall appoint a guardian ad litem for such (~~minor~~
33 ~~or alleged incompetent or disabled~~) defendant.

34 **Sec. 27.** RCW 91.08.230 and 1911 c 23 s 21 are each amended to read
35 as follows:

1 (~~When it shall appear from said petition or otherwise, at any time~~
2 ~~during the proceedings upon such petition, that any infant, insane or~~
3 ~~distracted~~)) Whenever a minor or incapacitated person, as defined in
4 chapter 11.88 RCW, is interested in any property that is to be taken or
5 damaged under this chapter, the court shall appoint a guardian ad litem
6 for such ((~~infant or insane or distracted~~)) person to appear and defend
7 for ((~~him, her or them; and~~)) the person. The court shall make such
8 order or decree as it shall deem proper to protect and secure the
9 interest of ((~~such infant or insane or distracted~~)) the minor or
10 incapacitated person ((~~in such property, or the compensation which~~
11 ~~shall be awarded therefor~~)).

12 NEW SECTION. Sec. 28. A new section is added to chapter 13.34 RCW
13 to read as follows:

14 The maximum hourly fee allowed for the services a person acting as
15 a guardian ad litem appointed under Titles 4, 8, 11, 13, 26, 43, 65,
16 70, 71, 74, 90, and 91 RCW as shall be fixed, after recommendation by
17 the judges of the judicial district involved, by the legislative
18 authority of the county comprising the judicial district, or by the
19 legislative authorities acting jointly where the judicial district is
20 comprised of more than one county. The legislative authority may set
21 differing fee schedules for appointments under separate titles, or for
22 the funding of court-appointed special advocate programs, and may
23 establish a sliding fee scale for the indigent.

24 The judges of the superior court shall use the fee schedule as
25 fixed by the county legislative authority when setting, awarding, or
26 approving fees for guardians ad litem.

27 NEW SECTION. Sec. 29. A new section is added to chapter 11.88 RCW
28 to read as follows:

29 A guardian ad litem, appointed under this title, may not select or
30 designate the health care providers or evaluators for the incapacitated
31 person, in opposition to the person's wishes, absent a court order.

32 NEW SECTION. Sec. 30. A new section is added to chapter 13.34 RCW
33 to read as follows:

34 A guardian ad litem, appointed under this title, may not select or
35 designate the health care providers or evaluators for the parents or
36 minor, in opposition to their wishes, absent a court order.

1 NEW SECTION. **Sec. 31.** A new section is added to chapter 26.12 RCW
2 to read as follows:

3 A guardian ad litem, appointed under this title, may not select or
4 designate the health care providers or evaluators for the parents or
5 minor, in opposition to their wishes, absent a court order.

6 NEW SECTION. **Sec. 32.** It is the intent of sections 33 through 40
7 of this act to encourage the courts to intrude into the lives and
8 financial affairs of incapacitated persons through judicially
9 supervised guardianships only when an alternative arrangement cannot
10 meet their needs, and then only in the least intrusive and restrictive
11 form possible to meet their needs; and to make improvements in the
12 administration of guardianship proceedings.

13 **Sec. 33.** RCW 11.88.005 and 1990 c 122 s 1 are each amended to read
14 as follows:

15 (1) It is the intent of the legislature to protect the liberty and
16 autonomy of all people of this state, and to enable them to exercise
17 their rights under the law to the maximum extent, consistent with the
18 capacity of each person. The legislature recognizes that people with
19 incapacities have unique abilities and needs, and that some people with
20 incapacities cannot exercise their rights or provide for their basic
21 needs without the help of a guardian or other fiduciary. However,
22 their liberty and autonomy should be restricted through ((the
23 ~~guardianship process~~)) judicial intervention only to the minimum extent
24 necessary to adequately provide for their own health or safety, or to
25 adequately manage their financial affairs.

26 (2) It is the intent of the legislature that the courts should
27 intervene, through the guardianship process, into the personal and
28 financial affairs of persons who have become incapacitated only to the
29 limited extent that alternative arrangements chosen by the person are
30 inadequate to address their needs and cannot be made adequate through
31 creative application by the court of its inherent equity powers. The
32 legislature intends that the courts respect and implement those
33 decisions the person made, before becoming fully incapacitated,
34 concerning both the form of the arrangement chosen to address their
35 needs and the family members or other persons chosen to act as
36 fiduciaries under those arrangements.

1 **Sec. 34.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read
2 as follows:

3 (1) The superior court of each county shall have power to appoint
4 guardians for the persons and/or estates of incapacitated persons, and
5 guardians for the estates of nonresidents of the state who have
6 property in the county needing care and attention and to exercise their
7 inherent equity powers to address the needs of incapacitated persons in
8 a restrained manner consistent with the legislative intent expressed in
9 RCW 11.88.005.

10 (a) For purposes of this chapter, a person may be deemed
11 incapacitated as to person when the superior court determines the
12 individual has a significant risk of personal harm based upon a
13 demonstrated inability to adequately provide for nutrition, health,
14 housing, or physical safety.

15 (b) For purposes of this chapter, a person may be deemed
16 incapacitated as to the person's estate when the superior court
17 determines the individual is at significant risk of financial harm
18 based upon a demonstrated inability to adequately manage property or
19 financial affairs.

20 (c) A determination of incapacity is a legal not a medical
21 decision, based upon a demonstration of management insufficiencies over
22 time in the area of person or estate. Age, eccentricity, poverty, or
23 medical diagnosis alone shall not be sufficient to justify a finding of
24 incapacity.

25 (d) A person may also be determined incapacitated if he or she is
26 under the age of majority as defined in RCW 26.28.010.

27 (e) For purposes of giving informed consent for health care
28 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any
29 person who is (i) incompetent by reason of mental illness,
30 developmental disability, senility, habitual drunkenness, excessive use
31 of drugs, or other mental incapacity, of either managing his or her
32 property or caring for himself or herself, or both, or (ii)
33 incapacitated as defined in (a), (b), or (d) of this subsection.

34 (f) For purposes of the terms "incompetent," "disabled," or "not
35 legally competent," as those terms are used in the Revised Code of
36 Washington to apply to persons incapacitated under this chapter, those
37 terms shall be interpreted to mean "incapacitated" persons for purposes
38 of this chapter.

1 (2) The superior court for each county shall have power to appoint
2 limited guardians for the persons and estates, or either thereof, of
3 incapacitated persons, who by reason of their incapacity have need for
4 protection and assistance, but who are capable of managing some of
5 their personal and financial affairs. After considering all evidence
6 presented as a result of such investigation, the court shall impose, by
7 order, only such specific limitations and restrictions on an
8 incapacitated person to be placed under a limited guardianship as the
9 court finds necessary for such person's protection and assistance. A
10 person shall not be presumed to be incapacitated nor shall a person
11 lose any legal rights or suffer any legal disabilities as the result of
12 being placed under a limited guardianship, except as to those rights
13 and disabilities specifically set forth in the court order establishing
14 such a limited guardianship. In addition, the court order shall state
15 the period of time for which it shall be applicable.

16 (3) Venue for petitions (~~for guardianship or limited~~
17 ~~guardianship~~) under this chapter shall lie in the county wherein the
18 alleged incapacitated person is domiciled, or if such person resides in
19 a facility supported in whole or in part by local, state, or federal
20 funding sources, in either the county where the facility is located,
21 the county of domicile prior to residence in the supported facility, or
22 the county where a parent or spouse of the alleged incapacitated person
23 is domiciled.

24 If the alleged incapacitated person's residency has changed within
25 one year of the filing of the petition, any interested person may move
26 for a change of venue for any proceedings (~~seeking the appointment of~~
27 ~~a guardian or a limited guardian~~) under this chapter to the county of
28 the alleged incapacitated person's last place of residence of one year
29 or more. The motion shall be granted when it appears to the court that
30 such venue would be in the best interests of the alleged incapacitated
31 person and would promote more complete consideration of all relevant
32 matters.

33 (4) (~~Under RCW 11.94.010, a principal may nominate, by a durable~~
34 ~~power of attorney, the guardian or limited guardian of his or her~~
35 ~~estate or person for consideration by the court if guardianship~~
36 ~~proceedings for the principal's person or estate are thereafter~~
37 ~~commenced. The court shall make its appointment in accordance with the~~
38 ~~principal's most recent nomination in a durable power of attorney~~
39 ~~except for good cause or disqualification.)) If an alleged~~

1 incapacitated person has executed a power of attorney showing an intent
2 that his or her agent's authority shall be exercisable notwithstanding
3 the person's disability or incapacity and an intent that his or her
4 agent have general power to manage the person's property and financial
5 affairs, then such agent shall have all the power of a full guardian of
6 the estate of the person, and no guardian of the estate of that person
7 shall be necessary.

8 (5) If an alleged incapacitated person has executed a power of
9 attorney showing an intent that his or her agent's authority shall be
10 exercisable notwithstanding the person's disability or incapacity and
11 an intent that his or her agent have general power to provide informed
12 consent for health care decisions on his or her behalf, then such agent
13 shall have all the power of a full guardian of the person of the
14 alleged incapacitated person, and no guardian of the person of that
15 person shall be necessary.

16 (6) If an alleged incapacitated person has appointed one or more
17 agents who exercise the powers of guardians pursuant to subsection (4)
18 or (5) of this section, and if the court finds the existence of
19 probable cause that the person is incapacitated, then the court, upon
20 the petition of an agent, may enter an order declaring that any persons
21 asserting the validity of acts thereafter taken by the alleged
22 incapacitated person shall have the burden of proving the legal
23 capacity of the actor at the time of the act. Nothing in subsection
24 (4) or (5) of this section restricts the inherent equity power of the
25 courts to protect the interests of an alleged incapacitated person if
26 it is shown that the agent has breached the agent's fiduciary duties to
27 the alleged incapacitated person.

28 (7) At any time in a proceeding on a petition under this chapter,
29 but as early in the proceeding as possible, any person may by motion
30 request that the court determine and declare that an alternative
31 arrangement made by an alleged incapacitated person is valid and
32 adequate to meet the incapacitated person's needs. Such motion shall
33 automatically stay the proceeding on the petition and suspend any
34 investigation into the person's capacity by a court observer until the
35 court rules upon the motion following a hearing with such notice to
36 such potentially interested persons as the court directs by order. If
37 the court does not dismiss the petition based upon the motion, the time
38 limits under this chapter shall be extended by the period from the
39 filing of the motion to the entry of the court's ruling on it.

1 (8) The degree of mental capacity necessary to validly execute a
2 power of attorney, trust agreement, or other instrument intended as an
3 alternative to a judicially supervised guardianship shall be that
4 degree of mental capacity that is necessary to execute a valid will.
5 No finding of incapacity or other order in a proceeding under this
6 chapter shall prevent any person from executing a will or other
7 dispositive instrument, but the validity of such an instrument, if
8 challenged by an interested party, shall be determined based upon the
9 mental capacity of the maker at the moment that he or she executed the
10 instrument.

11 (9) When a court imposes a full guardianship for an incapacitated
12 person, the person shall be considered incompetent for purposes of
13 rationally exercising the right to vote and shall lose the right to
14 vote, unless the court specifically finds that the person is rationally
15 capable of exercising the franchise. Imposition of a limited
16 guardianship for an incapacitated person shall not result in the loss
17 of the right to vote unless the court determines that the person is
18 incompetent for purposes of rationally exercising the franchise.

19 **Sec. 35.** RCW 11.88.020 and 1990 c 122 s 3 are each amended to read
20 as follows:

21 Any suitable person over the age of eighteen years, or any parent
22 under the age of eighteen years may, if not otherwise disqualified, be
23 appointed guardian or limited guardian of the person and/or the estate
24 of an incapacitated person; any trust company (~~(regularly organized~~
25 ~~under the laws of this state)) supervised by the department of
26 financial institutions and national banks when authorized so to do may
27 act as guardian or limited guardian of the estate of an incapacitated
28 person; and any nonprofit corporation may act as guardian or limited
29 guardian of the person and/or estate of an incapacitated person (~~(if~~
30 ~~the articles of incorporation or bylaws of such corporation permit such~~
31 ~~action and such corporation is in compliance with all applicable~~
32 ~~provisions of Title 24 RCW)). However, after January 1, 1998, no
33 nonprofit corporation except a public benefit nonprofit corporation, as
34 defined in RCW 24.03.005, may act as guardian or limited guardian of
35 the estate and/or person of an incapacitated person or as a fiduciary
36 under an alternative arrangement for such a person. No person is
37 qualified to serve as a guardian who is~~~~

1 (1) under eighteen years of age except as otherwise provided
2 herein;

3 (2) of unsound mind;

4 (3) convicted of a felony or of a misdemeanor involving moral
5 turpitude;

6 (4) a nonresident of this state who has not appointed a resident
7 agent to accept service of process in all actions or proceedings with
8 respect to the estate and caused such appointment to be filed with the
9 court;

10 (5) a corporation not authorized to act as a fiduciary, guardian,
11 or limited guardian in the state;

12 (6) a person whom the court finds unsuitable.

13 **Sec. 36.** RCW 11.88.030 and 1995 c 297 s 1 are each amended to read
14 as follows:

15 (1) Any person or entity may petition (~~for the appointment of a~~
16 ~~qualified person, trust company, national bank, or nonprofit~~
17 ~~corporation authorized in RCW 11.88.020 as now or hereafter amended as~~
18 ~~the guardian or limited guardian of an~~) the superior court to appoint
19 a guardian for or otherwise address the needs of an alleged
20 incapacitated person. No liability for filing a petition (~~for~~
21 ~~guardianship or limited guardianship~~) under this chapter shall attach
22 to a petitioner acting in good faith and upon reasonable basis. A
23 petition for guardianship (~~or limited guardianship~~) shall state:

24 (a) The name, (~~age,~~) residence, and post office address of the
25 alleged incapacitated person;

26 (b) (~~The nature of the alleged incapacity in accordance with RCW~~
27 ~~11.88.010~~) That the alleged incapacitated person has demonstrated
28 inability to adequately provide for his or her nutrition, health,
29 housing, or physical safety, or inability to adequately manage his or
30 her property or financial affairs, or both;

31 (c) (~~The approximate value and description of property, including~~
32 ~~any compensation, pension, insurance, or allowance, to which the~~
33 ~~alleged incapacitated person may be entitled~~) Whether the alleged
34 incapacitated person has made any arrangements intended to address his
35 or her needs in the event of incapacity, and a summary of any such
36 arrangements;

1 (d) Whether there is, in any state, a guardian or limited guardian,
2 or pending guardianship action for the person or estate of the alleged
3 incapacitated person;

4 (e) The residence and post office address of the person or persons,
5 if any, whom petitioner asks to be appointed if the court determines it
6 necessary to appoint a guardian or limited guardian;

7 (f) The names and addresses, and nature of the relationship, so far
8 as known or can be reasonably ascertained, of the persons most closely
9 related by blood or marriage to the alleged incapacitated person;

10 (g) The name and address of the person or facility having the care
11 and custody of the alleged incapacitated person((;

12 ~~(h) The reason why the appointment of a guardian or limited~~
13 ~~guardian is sought and the interest of the petitioner in the~~
14 ~~appointment, and whether the appointment is sought as guardian or~~
15 ~~limited guardian of the person, the estate, or both, and why no~~
16 ~~alternative to guardianship is appropriate;~~

17 ~~(i) The nature and degree of the alleged incapacity and the~~
18 ~~specific areas of protection and assistance requested and the~~
19 ~~limitation of rights requested to be included in the court's order of~~
20 ~~appointment;~~

21 ~~(j) The requested term of the limited guardianship to be included~~
22 ~~in the court's order of appointment;~~

23 ~~(k) Whether the petitioner is proposing a specific individual to~~
24 ~~act as guardian ad litem and, if so, the individual's knowledge of or~~
25 ~~relationship to any of the parties, and why the individual is~~
26 ~~proposed)).~~

27 (2)(a) The attorney general may petition for the appointment of a
28 guardian or limited guardian in any case in which there is cause to
29 believe that a guardianship is necessary and no private party is able
30 and willing to petition.

31 (b) Prepayment of a filing fee shall not be required in any
32 guardianship or limited guardianship brought by the attorney general.
33 Payment of the filing fee shall be ordered from the estate of the
34 incapacitated person at the hearing on the merits of the petition,
35 unless in the judgment of the court, such payment would impose a
36 hardship upon the incapacitated person, in which case the filing shall
37 be waived.

38 (3) No filing fee shall be charged by the court for filing
39 ((either)) a petition ((for guardianship or a petition for limited

1 ~~guardianship))~~ under this chapter if the petition alleges that the
2 alleged incapacitated person has total assets of a value of less than
3 three thousand dollars.

4 (4)(a) Notice that a guardianship proceeding has been commenced
5 shall be personally served upon the alleged incapacitated person
6 ~~((and))~~ by the ((guardian ad litem)) court observer or other
7 disinterested person along with a copy of the petition for appointment
8 of a guardian. Such notice shall be served not more than five court
9 days after the petition has been filed.

10 (b) Notice under this subsection shall include a clear and easily
11 readable statement ~~((of))~~ that the legal rights of the alleged
12 incapacitated person that could be restricted or transferred to a
13 guardian by a guardianship order as well as the due process rights to
14 counsel of choice ~~((and to a jury trial))~~ to advocate the person's
15 preferences in an evidentiary hearing or trial before a judge or jury
16 on the issue of incapacity. Such notice shall be in substantially the
17 following form and shall be in capital letters, double-spaced, and in
18 a type size not smaller than ten-point type:

19 IMPORTANT NOTICE
20 PLEASE READ CAREFULLY

21 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
22 COUNTY SUPERIOR COURT ~~((BY IF A GUARDIAN IS~~
23 ~~APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING))~~. THE COURT
24 CAN TAKE AWAY ALMOST ALL OF YOUR RIGHTS, INCLUDING YOUR RIGHTS:

25 (1) TO ~~((MARRY OR DIVORCE))~~ MAKE YOUR OWN MEDICAL, HEALTH, AND
26 PERSONAL CARE DECISIONS;

27 (2) TO ~~((VOTE OR HOLD AN ELECTED OFFICE))~~ CONTROL AND SPEND YOUR
28 OWN MONEY AND CONTROL YOUR OWN PROPERTY;

29 (3) TO ~~((ENTER INTO))~~ MAKE A VALID CONTRACT ((OR MAKE OR REVOKE A
30 WILL)), DEED, OR OTHER LEGAL DOCUMENT;

31 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

32 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

33 (6) TO ~~((POSSESS A LICENSE TO DRIVE))~~ VOTE OR HOLD AN ELECTIVE
34 OFFICE;

35 (7) TO ~~((BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY))~~ MARRY OR
36 DIVORCE;

37 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

38 (9) TO DECIDE WHO SHALL PROVIDE YOUR CARE AND ASSISTANCE;

1 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

2 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

3 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
4 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
5 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

6 YOU HAVE THE DUE PROCESS RIGHT TO (~~(ASK FOR A JURY TO DECIDE WHETHER OR~~
7 ~~NOT YOU NEED A GUARDIAN TO HELP)) PRESENT TESTIMONY AND EVIDENCE TO A
8 JUDGE OR, IF YOU REQUEST, TO A JURY BEFORE THE COURT TAKES AWAY YOUR
9 RIGHTS OR APPOINTS A GUARDIAN FOR YOU.~~

10 YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO
11 DECIDE WHETHER OR NOT (~~(YOU NEED)) TO TAKE AWAY ANY OF YOUR RIGHTS AND~~
12 APPOINT A GUARDIAN FOR YOU.

13 (5) All petitions filed under the provisions of this section shall
14 be heard within (~~(sixty)) seventy days unless an extension of time is~~
15 requested by a party within such (~~(sixty)) seventy day period and~~
16 granted for good cause shown. If an extension is granted, the court
17 shall set a new hearing date.

18 **Sec. 37.** RCW 11.88.040 and 1995 c 297 s 2 are each amended to read
19 as follows:

20 Before appointing a guardian or a limited guardian, notice of a
21 hearing, to be held not less than ten days after service thereof, shall
22 be served personally upon the alleged incapacitated person, if over
23 fourteen years of age, or served upon his or her attorney, and served
24 upon the (~~(guardian ad litem)) court observer.~~

25 Before appointing a guardian or a limited guardian, notice of a
26 hearing, to be held not less than ten days after service thereof, shall
27 be given by registered or certified mail to the last known address
28 requesting a return receipt signed by the addressee or an agent
29 appointed by the addressee, or by personal service in the manner
30 provided for services of summons, to the following:

31 (1) The alleged incapacitated person, or minor, if under fourteen
32 years of age;

33 (2) A parent, if the alleged incapacitated person is a minor, all
34 known children not residing with a notified person, and the spouse of
35 the alleged incapacitated person if any;

1 (3) Any other person who has been appointed as guardian or limited
2 guardian, or the person with whom the alleged incapacitated person
3 resides. No notice need be given to those persons named in subsections
4 (2) and (3) of this section if they have signed the petition for the
5 appointment of the guardian or limited guardian or have waived notice
6 of the hearing.

7 (4) If the petition is by a parent asking for appointment as
8 guardian or limited guardian of a minor child under the age of fourteen
9 years, or if the petition is accompanied by the written consent of a
10 minor of the age of fourteen years or upward, who consents to the
11 appointment of the guardian or limited guardian asked for, or if the
12 petition is by a nonresident guardian of any minor or incapacitated
13 person, then the court may appoint the guardian without notice of the
14 hearing. The court for good cause may reduce the number of days of
15 notice, but in every case, at least three days notice shall be given.

16 The alleged incapacitated person shall be present in court at the
17 final hearing on the petition: PROVIDED, That this requirement may be
18 waived at the discretion of the court for good cause other than mere
19 inconvenience shown in the report to be provided by the ((guardian ad
20 litem)) court observer pursuant to RCW 11.88.090 ((~~as now or hereafter~~
21 ~~amended~~)), or if no ((guardian ad litem)) court observer is required to
22 be appointed pursuant to RCW 11.88.090, ((~~as now or hereafter~~
23 ~~amended~~)) at the discretion of the court for good cause shown by a
24 party. Alternatively, the court may remove itself to the place of
25 residence of the alleged incapacitated person and conduct the final
26 hearing in the presence of the alleged incapacitated person. Final
27 hearings on the petition may be held in closed court without admittance
28 of any person other than those necessary to the action or proceeding.

29 ((~~If presence of the alleged incapacitated person is waived and the~~
30 ~~court does not remove itself to the place of residence of such person,~~
31 ~~the guardian ad litem shall appear in person at the final hearing on~~
32 ~~the petition.~~))

33 **Sec. 38.** RCW 11.88.045 and 1995 c 297 s 3 are each amended to read
34 as follows:

35 (1)(a) Alleged incapacitated individuals shall have the right to be
36 represented by counsel at any stage in guardianship proceedings. The
37 court shall provide counsel to represent any alleged incapacitated
38 person at public expense when either: (i) The individual is unable to

1 afford counsel, or (ii) the expense of counsel would result in
2 substantial hardship to the individual, or (iii) the individual does
3 not have practical access to funds with which to pay counsel. If the
4 individual can afford counsel but lacks practical access to funds, the
5 court shall provide counsel and may impose a reimbursement requirement
6 as part of a final order. When, in the opinion of the court, the
7 rights and interests of an alleged or adjudicated incapacitated person
8 cannot otherwise be adequately protected and represented, the court on
9 its own motion shall appoint an attorney at any time to represent such
10 person. Counsel shall be provided as soon as practicable after a
11 petition is filed and long enough before any final hearing to allow
12 adequate time for consultation and preparation. Absent a convincing
13 showing in the record to the contrary, a period of less than three
14 weeks shall be presumed by a reviewing court to be inadequate time for
15 consultation and preparation.

16 (b) Counsel for an alleged incapacitated individual shall act as an
17 advocate for the client and shall not substitute counsel's own judgment
18 for that of the client on the subject of what may be in the client's
19 best interests. Counsel's role shall be distinct from that of the
20 (~~guardian ad litem~~) court observer, who is expected to promote the
21 best interest of the alleged incapacitated individual, rather than the
22 alleged incapacitated individual's expressed preferences.

23 (c) If an alleged incapacitated person is represented by counsel
24 and does not communicate with counsel, counsel may ask the court for
25 leave to withdraw for that reason. If satisfied, after affording the
26 alleged incapacitated person an opportunity for a hearing, that the
27 request is justified, the court may grant the request and allow the
28 case to proceed with the alleged incapacitated person unrepresented.

29 (2) (~~During the pendency of any guardianship, any~~) An attorney
30 purporting to represent a person alleged or adjudicated to be
31 incapacitated (~~shall petition to be appointed to represent the~~
32 incapacitated or alleged incapacitated person. Fees for representation
33 described in this section shall be subject to approval by the court
34 pursuant to the provisions of RCW 11.92.180) is subject to appropriate
35 sanctions by the court for unprofessional conduct. Reasonable fees for
36 such representation may be approved and paid by any fiduciary, other
37 than the attorney, who controls assets of the represented person. If
38 requested by such a fiduciary, the attorney, or the client, the court
39 may approve or disapprove the requested fees after considering, in a

1 manner that best preserves the confidences and secrets of the client,
2 the services for which payment is sought.

3 (3) The alleged incapacitated person is further entitled, unless
4 the right is expressly waived, to give and present testimony and other
5 evidence to the court, or, upon request, to a jury ((trial)), on the
6 issues of his or her alleged incapacity. The standard of proof to be
7 applied in a contested case, whether before a jury or the court, shall
8 be that of clear, cogent, and convincing evidence.

9 (4) In all proceedings for appointment of a guardian or limited
10 guardian, the court must be presented with a written report from a
11 physician licensed to practice under chapter 18.71 or 18.57 RCW or
12 licensed or certified psychologist selected by the ((~~guardian ad~~
13 ~~litem~~)) alleged incapacitated person or his or her counsel. If the
14 court observer has not received confirmation within fourteen days of
15 the petition filing date from such a professional that he or she will
16 deliver to the court observer a report satisfying this section within
17 forty-two days of the petition filing date, then the court observer may
18 select such a professional. The physician or psychologist shall have
19 personally examined and interviewed the alleged incapacitated person
20 within thirty days of preparation of the report to the court and shall
21 have expertise in the type of disorder or incapacity the alleged
22 incapacitated person is believed to have. The report shall contain the
23 following information and shall be set forth in substantially the
24 following format:

25 (a) The name and address of the examining physician or
26 psychologist;

27 (b) The education and experience of the physician or psychologist
28 pertinent to the case;

29 (c) The dates of examinations of the alleged incapacitated person;

30 (d) A summary of the relevant medical, functional, neurological,
31 psychological, or psychiatric history of the alleged incapacitated
32 person as known to the examining physician or psychologist;

33 (e) The findings of the examining physician or psychologist as to
34 the condition of the alleged incapacitated person;

35 (f) Current medications;

36 (g) The effect of current medications on the alleged incapacitated
37 person's ability to understand or participate in guardianship
38 proceedings;

1 (h) Opinions on the specific assistance the alleged incapacitated
2 person needs;

3 (i) Identification of persons with whom the physician or
4 psychologist has met or spoken regarding the alleged incapacitated
5 person.

6 The court shall not enter an order appointing a guardian or limited
7 guardian until a medical or psychological report meeting the above
8 requirements is filed.

9 The requirement of filing a medical report is waived if the basis
10 of the guardianship is minority.

11 **Sec. 39.** RCW 11.88.090 and 1995 c 297 s 4 are each amended to read
12 as follows:

13 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
14 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
15 11.92.180(~~(, as now or hereafter amended,)~~) shall affect or impair the
16 power of any court to appoint a guardian ad litem to defend the
17 interests of any incapacitated person interested in any suit or matter
18 pending therein, or to commence and prosecute any suit in his or her
19 behalf.

20 (2) Upon receipt of a petition (~~(for appointment of guardian or~~
21 ~~limited guardian)~~) under this chapter, except as provided herein, the
22 court shall appoint a (~~(guardian ad litem)~~) court observer to
23 (~~(represent)~~) investigate and report to the court concerning the best
24 interests of the alleged incapacitated person, who shall be a person
25 found or known by the court to:

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

28 (b) Have the requisite knowledge, training, or expertise to perform
29 the duties required by this section. The court observer shall be
30 recognized as a referee under RCW 2.24.060(2) and may address the court
31 in chambers to request orders to aid in the investigation required by
32 this section, but only prior to the filing of the required report.

33 No (~~(guardian ad litem)~~) court observer need be appointed when a
34 parent is petitioning for a guardian or a limited guardian to be
35 appointed for his or her minor child and the minority of the child, as
36 defined by RCW 11.92.010, is the sole basis of the petition. The order
37 appointing the (~~(guardian ad litem)~~) court observer shall recite the
38 duties set forth in subsection (5) of this section. The appointment of

1 a (~~guardian ad litem~~) court observer shall have no effect on the
2 legal competency of the alleged incapacitated person and shall not
3 overcome the presumption of competency or full legal and civil rights
4 of the alleged incapacitated person. Health care directives executed
5 under chapter 70.122 RCW and all powers of attorney executed by an
6 alleged incapacitated person prior to the appointment of a guardian ad
7 litem shall remain in effect until the court specifically orders
8 otherwise.

9 (3)(a) The superior court of each county shall (~~develop by~~
10 ~~September 1, 1991,~~) maintain a registry of persons who are willing and
11 are determined by a judge of such court to be qualified to serve as
12 (~~guardians ad litem~~) court observers in guardianship matters. The
13 court shall (~~choose~~) only appoint as (~~guardians ad litem only~~)
14 court observer the person(~~s~~) whose name(~~s~~) appears next on the
15 registry, (~~except in extraordinary circumstances~~) using a sequential
16 or other method that precludes individual selection. If the person
17 whose name appears next on the registry is: Unable to accept the
18 appointment, unwilling to accept the appointment, or subject to an
19 affidavit of prejudice, the person's name shall be placed at the bottom
20 of the registry.

21 (b) To be eligible for the registry a person shall be licensed,
22 have formal training, or have substantial experience in a medical or
23 social services field or as a lawyer or paralegal and shall:

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

27 (A) Level of formal education;

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

29 (C) Number of years' experience as a court observer;

30 (D) Number of appointments as a court observer and the county or
31 counties of appointment;

32 (E) Number of complaints against the court observer, filed with the
33 guardian ad litem program, the Washington state bar association, or the
34 superior court, including the nature of the complaint and its
35 resolution;

36 (F) Number of affidavits of prejudice, if any, filed against the
37 court observer, including the number per year and the county in which
38 it was filed;

39 (G) Criminal history, as defined in RCW 9.94A.030; and

1 (H) Evidence of the person's knowledge, training, and experience in
2 each of the following: Needs of impaired elderly people, physical
3 disabilities, mental illness, developmental disabilities, and other
4 areas relevant to the needs of incapacitated persons, legal procedure,
5 and the requirements of chapters 11.88 and 11.92 RCW. The background
6 statement shall not include identifying information that may be used to
7 harm a court observer, such as home addresses and home telephone
8 numbers, and for volunteer court observers the court may allow the use
9 of maiden names or pseudonyms as necessary for their safety; and

10 ~~(ii) Complete a training program ((adopted by the court, or, in the~~
11 ~~absence of a locally adopted program, a candidate for inclusion upon~~
12 ~~the registry shall have completed a model training program)) as~~
13 ~~described in ((d)) (c) of this subsection within the previous three~~
14 ~~years.~~

15 ~~(c) ((The superior court of each county shall approve training~~
16 ~~programs designed to:~~

17 ~~(i) Train otherwise qualified human service professionals in those~~
18 ~~aspects of legal procedure and the requirements of chapters 11.88 and~~
19 ~~11.92 RCW with which a guardian ad litem should be familiar;~~

20 ~~(ii) Train otherwise qualified legal professionals in those aspects~~
21 ~~of medicine, social welfare, and social service delivery systems with~~
22 ~~which a guardian ad litem should be familiar.)) The background~~
23 information report shall be updated annually. As a condition of
24 appointment, the court observer's background information record shall
25 be made available to the court, and immediately provided to the parties
26 or their attorneys. If the appointed court observer is not a member of
27 a guardian ad litem program the person shall immediately provide the
28 required background information to the court, and to the parties or
29 their attorneys. The guardian ad litem program shall immediately file
30 the notice of appointment and background statement with the court and
31 send copies to the parties.

32 ~~(d) ((The superior court of each county may approve a guardian ad~~
33 ~~litem training program on or before June 1, 1991.)) The department of~~
34 ~~social and health services((, —aging— and —adult— services~~
35 ~~administration,)) shall convene an advisory group to develop a model~~
36 ~~((guardian ad litem)) court observer training program and shall update~~
37 the program annually. The advisory group shall consist of
38 representatives from consumer, advocacy, and professional groups
39 knowledgeable in developmental disabilities, neurological impairment,

1 physical disabilities, mental illness, aging, legal, court
2 administration, the Washington state bar association, and other
3 interested parties.

4 ~~((e) Any superior court that has not adopted a guardian ad litem
5 training program by September 1, 1991, shall require utilization of a
6 model program developed by the advisory group as described in (d) of
7 this subsection, to assure that candidates applying for registration as
8 a qualified guardian ad litem shall have satisfactorily completed
9 training to attain these essential minimum qualifications to act as
10 guardian ad litem.))~~

11 (4) The ~~((guardian ad litem's))~~ court observer's written statement
12 of background and qualifications required by ~~((RCW 11.88.090))~~
13 subsection (3)(b)(i) of this section shall be made part of the record
14 in each matter in which the person is appointed ~~((guardian ad litem))~~
15 court observer. As a condition of appointment, the court observer's
16 background information shall be immediately provided to the parties or
17 their attorneys.

18 (5) The ~~((guardian ad litem))~~ court observer appointed pursuant to
19 this section shall have the following duties:

20 (a) To meet and consult with the alleged incapacitated person as
21 soon as practicable following appointment and explain, in language
22 which such person can reasonably be expected to understand, the
23 substance of the petition, the nature of the resultant proceedings, the
24 person's right to contest the petition, the identification of the
25 proposed guardian or limited guardian, the right to an evidentiary
26 hearing or a bench or jury trial on the issue of his or her alleged
27 incapacity, the right to independent legal counsel as provided by RCW
28 11.88.045, and the right to be present in court at the hearing on the
29 petition;

30 (b) To obtain a written report according to RCW 11.88.045; and such
31 other written or oral reports from other qualified professionals as are
32 necessary to permit the ~~((guardian ad litem))~~ court observer to
33 complete the report required by this section;

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

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

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

1 (d) To consult as necessary to complete the investigation and
2 report required by this section with those known relatives, friends, or
3 other persons the ((~~guardian ad litem~~)) court observer determines have
4 had a significant, continuing interest in the welfare of the alleged
5 incapacitated person;

6 (e) To provide the court with a written report which shall include
7 the following:

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

10 (ii) A description of the needs of the incapacitated person for
11 care and treatment, the probable residential requirements of the
12 alleged incapacitated person and the basis upon which these findings
13 were made;

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

18 (iv) A description of the abilities of the alleged incapacitated
19 person and a recommendation as to whether a guardian or limited
20 guardian should be appointed. If appointment of a limited guardian is
21 recommended, the ((~~guardian ad litem~~)) court observer shall recommend
22 the specific areas of authority the limited guardian should have and
23 the limitations and disabilities to be placed on the incapacitated
24 person;

25 (v) An evaluation of the person's mental ability to rationally
26 exercise the right to vote and the basis upon which the evaluation is
27 made;

28 (vi) Any expression of approval or disapproval made by the alleged
29 incapacitated person concerning the proposed guardian or limited
30 guardian or guardianship or limited guardianship;

31 (vii) Identification of persons with significant interest in the
32 welfare of the alleged incapacitated person who should be advised of
33 their right to request special notice of proceedings pursuant to RCW
34 11.92.150; ((and))

35 (viii) Unless independent counsel has appeared for the alleged
36 incapacitated person, an explanation of how the alleged incapacitated
37 person responded to the advice of the right to jury trial, to
38 independent counsel and to be present at the hearing on the petition;
39 and

1 (ix) A description of any alternatives to a guardianship that the
2 court might consider to address the needs of the alleged incapacitated
3 person.

4 Within forty-five days after notice of commencement of the
5 guardianship proceeding has been served upon the (~~guardian ad litem~~)
6 court observer, and at least (~~ten~~) twenty-one days before the hearing
7 on the petition, unless an extension or reduction of time has been
8 granted by the court for good cause, the (~~guardian ad litem~~) court
9 observer shall file its report and send a copy to the alleged
10 incapacitated person and his or her counsel, spouse, all children not
11 residing with a notified person, those persons described in (e)(vii) of
12 this subsection, and persons who have filed a request for special
13 notice pursuant to RCW 11.92.150;

14 (f) To advise the court of the need for appointment of counsel for
15 the alleged incapacitated person within five court days after the
16 meeting described in (a) of this subsection unless (i) counsel has
17 appeared, (ii) the alleged incapacitated person affirmatively
18 communicated a wish not to be represented by counsel after being
19 advised of the right to representation and of the conditions under
20 which court-provided counsel may be available, or (iii) the alleged
21 incapacitated person was unable to communicate at all on the subject,
22 and the (~~guardian ad litem~~) court observer is satisfied that the
23 alleged incapacitated person does not affirmatively desire to be
24 represented by counsel;

25 (g) Provide periodic reports to the court and the parties regarding
26 the status of the court observer's investigation and his or her
27 periodic findings and recommendations. The report shall be provided at
28 least every three months; and

29 (h) Provide to the parties monthly itemized accountings of the
30 court observer's time and billings for services.

31 (6) If the petition is brought by an interested person or entity
32 requesting the appointment of some other qualified person or entity and
33 a prospective guardian or limited guardian cannot be found, the court
34 (~~shall order the guardian ad litem to~~) observer shall investigate the
35 availability of a possible guardian or limited guardian and to include
36 the findings in a report to the court pursuant to RCW 11.88.090(5)(e)
37 (~~as now or hereafter amended~~).

38 (7) The court (~~appointed guardian ad litem shall have the~~
39 ~~authority, in the event that the alleged incapacitated person is in~~

1 ~~need of emergency life saving medical services, and is unable to~~
2 ~~consent to such medical services due to incapacity pending the hearing~~
3 ~~on the petition to give consent for such emergency life saving medical~~
4 ~~services on behalf of the alleged incapacitated person)) may, at any~~
5 ~~time after his or her appointment, request in writing an emergency~~
6 ~~appointment of a temporary full or limited guardian of the alleged~~
7 ~~incapacitated person's estate or person, and the court may exercise its~~
8 ~~inherent equity powers to appoint and empower a temporary guardian upon~~
9 ~~such notice, hearing, and proof as it considers appropriate under the~~
10 ~~circumstances.~~

11 (8) The ~~((guardian ad litem))~~ court observer shall receive a fee
12 determined by the court commensurate with the qualifications required
13 of a court observer. In entering the order the court shall utilize the
14 fee schedule established pursuant to section 28 of this act. The fee
15 shall be charged to the alleged incapacitated person unless the court
16 finds that such payment would result in substantial hardship upon such
17 person, in which case the county shall be responsible for such costs:
18 PROVIDED, That ~~((if no guardian or limited guardian is appointed))~~ the
19 court may charge all or a portion of such fee to the petitioner ~~((or~~
20 ~~the alleged incapacitated person, or divide the fee,))~~ as it deems
21 just~~((; and if the petition is found to be frivolous or not brought in~~
22 ~~good faith, the guardian ad litem fee shall be charged to the~~
23 ~~petitioner)).~~ The court shall not be required to provide for the
24 payment of a fee to any salaried employee of a public agency.

25 (9) The court observer shall appear in person at the final hearing
26 on the petition unless his or her presence is waived by all parties to
27 the proceeding. Upon the ~~((presentation of the guardian ad litem~~
28 ~~report and the))~~ entry of an order either dismissing the petition for
29 appointment of guardian or limited guardian or appointing a guardian or
30 limited guardian, the ~~((guardian ad litem))~~ court observer shall be
31 dismissed and shall have no further duties or obligations unless
32 otherwise ordered by the court. If the court orders the ~~((guardian ad~~
33 ~~litem))~~ court observer to perform further duties or obligations, they
34 shall not be performed at county expense.

35 (10) The interim actions of a court observer are revisable by the
36 court upon the motion of a party.

37 **Sec. 40.** RCW 11.88.095 and 1995 c 297 s 5 are each amended to read
38 as follows:

1 (1) In determining the disposition of a petition for guardianship,
2 the court's order shall be based upon findings as to the capacities,
3 condition, and needs of the alleged incapacitated person, and shall not
4 be based solely upon agreements made by the parties.

5 (2) Every order appointing a full or limited guardian of the person
6 or estate shall include:

7 (a) Findings as to the capacities, condition, and needs of the
8 alleged incapacitated person;

9 (b) The amount of the bond, if any, or a bond review period;

10 (c) When the next report of the guardian is due;

11 (d) Whether the ((~~guardian ad litem~~)) court observer shall continue
12 acting as ((~~guardian ad litem~~)) court observer and if so, with what
13 duties;

14 (e) Whether a review hearing shall be required upon the filing of
15 the inventory;

16 (f) The authority of the guardian, if any, for investment and
17 expenditure of the ward's estate; and

18 (g) Names and addresses of those persons described in RCW
19 11.88.090(5)(d), if any, whom the court believes should receive copies
20 of further pleadings filed by the guardian with respect to the
21 guardianship.

22 (3) If the court determines that a limited guardian should be
23 appointed, the order shall specifically set forth the limits by either
24 stating exceptions to the otherwise full authority of the guardian or
25 by stating the specific authority of the guardian.

26 (4) In determining the disposition of a petition for appointment of
27 a guardian or limited guardian of the estate only, the court shall
28 consider whether the alleged incapacitated person is capable of giving
29 informed medical consent or of making other personal decisions and, if
30 not, whether a guardian or limited guardian of the person of the
31 alleged incapacitated person should be appointed for that purpose.

32 (5) Unless otherwise ordered, any powers of attorney or durable
33 powers of attorney shall be revoked upon appointment of a guardian or
34 limited guardian of the estate.

35 If there is an existing medical power of attorney, the court must
36 make a specific finding of fact regarding the continued validity of
37 that medical power of attorney before appointing a guardian or limited
38 guardian for the person.

1 (6) In disposing by final order of any petition filed under this
2 chapter, the court shall charge against the estate of the alleged
3 incapacitated person the costs and necessary expenses incurred by the
4 petitioner to properly commence the proceeding, but not the attorneys'
5 fees of the petitioner or other third parties incurred to advocate
6 their positions in the proceeding, unless the court determines it
7 unjust to allocate such costs or fees in that manner.

--- END ---