

2 **ESSB 6305** - H COMM AMD
3 By Committee on Judiciary

ADOPTED AS AMENDED 3/3/00

4

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

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

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

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

29 (3) Upon receipt of a petition for appointment of guardian or
30 limited guardian, except as provided herein, the court shall appoint a
31 guardian ad litem to represent the best interests of the alleged
32 incapacitated person, who shall be a person found or known by the court
33 to:

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

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

3 The guardian ad litem shall within five days of receipt of notice
4 of appointment file with the court and serve, either personally or by
5 certified mail with return receipt, each party with a statement
6 including: His or her training relating to the duties as a guardian ad
7 litem; his or her criminal history as defined in RCW 9.94A.030 for the
8 period covering ten years prior to the appointment; his or her hourly
9 rate, if compensated; whether the guardian ad litem has had any contact
10 with a party to the proceeding prior to his or her appointment; and
11 whether he or she has an apparent conflict of interest. Within three
12 days of the later of the actual service or filing of the guardian ad
13 litem's statement, any party may set a hearing and file and serve a
14 motion for an order to show cause why the guardian ad litem should not
15 be removed for one of the following three reasons: (i) Lack of
16 expertise necessary for the proceeding; (ii) an hourly rate higher than
17 what is reasonable for the particular proceeding; or (iii) a conflict
18 of interest. Notice of the hearing shall be provided to the guardian
19 ad litem and all parties. If, after a hearing, the court enters an
20 order replacing the guardian ad litem, findings shall be included,
21 expressly stating the reasons for the removal. If the guardian ad
22 litem is not removed, the court has the authority to assess to the
23 moving party, attorneys' fees and costs related to the motion. The
24 court shall assess attorneys' fees and costs for frivolous motions.

25 No guardian ad litem need be appointed when a parent is petitioning
26 for a guardian or a limited guardian to be appointed for his or her
27 minor child and the minority of the child, as defined by RCW 11.92.010,
28 is the sole basis of the petition. The order appointing the guardian
29 ad litem shall recite the duties set forth in subsection (5) of this
30 section. The appointment of a guardian ad litem shall have no effect
31 on the legal competency of the alleged incapacitated person and shall
32 not overcome the presumption of competency or full legal and civil
33 rights of the alleged incapacitated person.

34 (4)(a) The superior court of each county shall develop and maintain
35 a registry of persons who are willing and qualified to serve as
36 guardians ad litem in guardianship matters. The court shall choose as
37 guardian ad litem a person whose name appears on the registry in a
38 system of consistent rotation, except in extraordinary circumstances
39 such as the need for particular expertise. The court shall develop

1 procedures for periodic review of the persons on the registry and for
2 probation, suspension, or removal of persons on the registry for
3 failure to perform properly their duties as guardian ad litem. In the
4 event the court does not select the person next on the list, it shall
5 include in the order of appointment a written reason for its decision.

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

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

10 (A) Level of formal education;

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

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

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

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

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

21 The written statement of qualifications shall include ((a statement
22 of the number of times the guardian ad litem has been removed for
23 failure to perform his or her duties as guardian ad litem) the names
24 of any counties in which the person was removed from a guardian ad
25 litem registry pursuant to a grievance action, and the name of the
26 court and the cause number of any case in which the court has removed
27 the person for cause); and

28 (ii) Complete the ((model)) training ((program)) as described in
29 ((+d))) (e) of this subsection. The training is not applicable to
30 guardians ad litem appointed pursuant to special proceeding Rule
31 98.16W.

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

35 (d) The background and qualification information shall be updated
36 annually.

37 ((+d))) (e) The department of social and health services shall
38 convene an advisory group to develop a model guardian ad litem training
39 program and shall update the program biennially. The advisory group

1 shall consist of representatives from consumer, advocacy, and
2 professional groups knowledgeable in developmental disabilities,
3 neurological impairment, physical disabilities, mental illness,
4 domestic violence, aging, legal, court administration, the Washington
5 state bar association, and other interested parties.

6 ((+e+)) (f) The superior court shall require utilization of the
7 model program developed by the advisory group as described in ((+d+))
8 (e) of this subsection, to assure that candidates applying for
9 registration as a qualified guardian ad litem shall have satisfactorily
10 completed training to attain these essential minimum qualifications to
11 act as guardian ad litem.

12 (5) The guardian ad litem appointed pursuant to this section shall
13 have the following duties:

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

23 (b) To obtain a written report according to RCW 11.88.045; and such
24 other written or oral reports from other qualified professionals as are
25 necessary to permit the guardian ad litem to complete the report
26 required by this section;

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

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

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

33 (d) To consult as necessary to complete the investigation and
34 report required by this section with those known relatives, friends, or
35 other persons the guardian ad litem determines have had a significant,
36 continuing interest in the welfare of the alleged incapacitated person;

37 (e) To investigate alternate arrangements made, or which might be
38 created, by or on behalf of the alleged incapacitated person, such as
39 revocable or irrevocable trusts, ((or)) durable powers of attorney, or

1 blocked accounts; whether good cause exists for any such arrangements
2 to be discontinued; and why such arrangements should not be continued
3 or created in lieu of a guardianship;

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

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

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

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

16 (iv) A description of any alternative arrangements previously made
17 by the alleged incapacitated person or which could be made, and whether
18 and to what extent such alternatives should be used in lieu of a
19 guardianship, and if the guardian ad litem is recommending
20 discontinuation of any such arrangements, specific findings as to why
21 such arrangements are contrary to the best interest of the alleged
22 incapacitated person;

23 (v) A description of the abilities of the alleged incapacitated
24 person and a recommendation as to whether a guardian or limited
25 guardian should be appointed. If appointment of a limited guardian is
26 recommended, the guardian ad litem shall recommend the specific areas
27 of authority the limited guardian should have and the limitations and
28 disabilities to be placed on the incapacitated person;

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

32 (vii) Any expression of approval or disapproval made by the alleged
33 incapacitated person concerning the proposed guardian or limited
34 guardian or guardianship or limited guardianship;

35 (viii) Identification of persons with significant interest in the
36 welfare of the alleged incapacitated person who should be advised of
37 their right to request special notice of proceedings pursuant to RCW
38 11.92.150; and

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

5 Within forty-five days after notice of commencement of the
6 guardianship proceeding has been served upon the guardian ad litem, and
7 at least fifteen days before the hearing on the petition, unless an
8 extension or reduction of time has been granted by the court for good
9 cause, the guardian ad litem shall file its report and send a copy to
10 the alleged incapacitated person and his or her counsel, spouse, all
11 children not residing with a notified person, those persons described
12 in (f)(viii) of this subsection, and persons who have filed a request
13 for special notice pursuant to RCW 11.92.150. If the guardian ad litem
14 needs additional time to finalize his or her report, then the guardian
15 ad litem shall petition the court for a postponement of the hearing or,
16 with the consent of all other parties, an extension or reduction of
17 time for filing the report. If the hearing does not occur within sixty
18 days of filing the petition, then upon the two-month anniversary of
19 filing the petition and on or before the same day of each following
20 month until the hearing, the guardian ad litem shall file interim
21 reports summarizing his or her activities on the proceeding during that
22 time period as well as fees and costs incurred;

23 (g) To advise the court of the need for appointment of counsel for
24 the alleged incapacitated person within five court days after the
25 meeting described in (a) of this subsection unless (i) counsel has
26 appeared, (ii) the alleged incapacitated person affirmatively
27 communicated a wish not to be represented by counsel after being
28 advised of the right to representation and of the conditions under
29 which court-provided counsel may be available, or (iii) the alleged
30 incapacitated person was unable to communicate at all on the subject,
31 and the guardian ad litem is satisfied that the alleged incapacitated
32 person does not affirmatively desire to be represented by counsel.

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

1 (7) The parties to the proceeding may file responses to the
2 guardian ad litem report with the court and deliver such responses to
3 the other parties and the guardian ad litem at any time up to the
4 second day prior to the hearing. If a guardian ad litem fails to file
5 his or her report in a timely manner, the hearing shall be continued to
6 give the court and the parties at least fifteen days before the hearing
7 to review the report. At any time during the proceeding upon motion of
8 any party or on the court's own motion, the court may remove the
9 guardian ad litem for failure to perform his or her duties as specified
10 in this chapter, provided that the guardian ad litem shall have five
11 days' notice of any motion to remove before the court enters such
12 order. In addition, the court in its discretion may reduce a guardian
13 ad litem's fee for failure to carry out his or her duties.

14 (8) The court appointed guardian ad litem shall have the authority,
15 in the event that the alleged incapacitated person is in need of
16 emergency life-saving medical services, and is unable to consent to
17 such medical services due to incapacity pending the hearing on the
18 petition to give consent for such emergency life-saving medical
19 services on behalf of the alleged incapacitated person.

20 (9) The court-appointed guardian ad litem shall have the authority
21 to move for temporary relief under chapter 7.40 RCW to protect the
22 alleged incapacitated person from abuse, neglect, abandonment, or
23 exploitation, as those terms are defined in RCW 74.34.020, or to
24 address any other emergency needs of the alleged incapacitated person.
25 Any alternative arrangement executed before filing the petition for
26 guardianship shall remain effective unless the court grants the relief
27 requested under chapter 7.40 RCW, or unless, following notice and a
28 hearing at which all parties directly affected by the arrangement are
29 present, the court finds that the alternative arrangement should not
30 remain effective.

31 (10) The guardian ad litem shall receive a fee determined by the
32 court. The fee shall be charged to the alleged incapacitated person
33 unless the court finds that such payment would result in substantial
34 hardship upon such person, in which case the county shall be
35 responsible for such costs: PROVIDED, That ((if no guardian or limited
36 guardian is appointed)) the court may charge such fee to the petitioner
37 ((or)) the alleged incapacitated person, or ((divide)) any person who
38 has appeared in the action; or may allocate the fee, as it deems
39 just((; and)). If the petition is found to be frivolous or not brought

1 in good faith, the guardian ad litem fee shall be charged to the
2 petitioner. The court shall not be required to provide for the payment
3 of a fee to any salaried employee of a public agency.

4 (11) Upon the presentation of the guardian ad litem report and the
5 entry of an order either dismissing the petition for appointment of
6 guardian or limited guardian or appointing a guardian or limited
7 guardian, the guardian ad litem shall be dismissed and shall have no
8 further duties or obligations unless otherwise ordered by the court.
9 If the court orders the guardian ad litem to perform further duties or
10 obligations, they shall not be performed at county expense.

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

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

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

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

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

29 (3) Each guardian ad litem program shall maintain a background
30 information record for each guardian ad litem in the program. The
31 background file shall include, but is not limited to, the following
32 information:

33 (a) Level of formal education;
34 (b) Training related to the guardian's duties;
35 (c) Number of years' experience as a guardian ad litem;
36 (d) Number of appointments as a guardian ad litem and the county or
37 counties of appointment; ((and))

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

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

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. If the
9 appointed guardian ad litem is not a member of a guardian ad litem
10 program the person shall provide the background information to the
11 court.

12 Upon appointment, the guardian ad litem, or guardian ad litem
13 program, shall provide the parties or their attorneys with a statement
14 containing: His or her training relating to the duties as a guardian
ad litem; the name of any counties in which the person was removed from
a guardian ad litem registry pursuant to a grievance action, and the
name of the court and the cause number of any case in which the court
has removed the person for cause; and his or her criminal history as
19 defined in RCW 9.94A.030 for the period covering ten years prior to the
20 appointment. The background statement shall not include identifying
21 information that may be used to harm a guardian ad litem, such as home
22 addresses and home telephone numbers, and for volunteer guardians ad
23 litem the court may allow the use of maiden names or pseudonyms as
24 necessary for their safety.

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

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

37 (6) If the child requests legal counsel and is age twelve or older,
38 or if the guardian ad litem or the court determines that the child

1 needs to be independently represented by counsel, the court may appoint
2 an attorney to represent the child's position.

3 (7) For the purposes of child abuse prevention and treatment act
4 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
5 or any related state or federal legislation, a person appointed
6 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to
7 represent the best interests of the minor in proceedings before the
8 court.

9 (8) When a court-appointed special advocate or volunteer guardian
10 ad litem is requested on a case, the program shall give the court the
11 name of the person it recommends and the appointment shall be effective
12 immediately. The court shall appoint the person recommended by the
13 program. If a party in a case reasonably believes the court-appointed
14 special advocate or volunteer is inappropriate or unqualified, the
15 party may request a review of the appointment by the program. The
16 program must complete the review within five judicial days and remove
17 any appointee for good cause. If the party seeking the review is not
18 satisfied with the outcome of the review, the party may file a motion
19 with the court for the removal of the court-appointed special advocate
20 on the grounds the advocate or volunteer is inappropriate or
21 unqualified.

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

24 (1) All guardians ad litem((, who have not previously served or
25 been trained as a guardian ad litem in this state, who are appointed
26 after January 1, 1998,)) must ((complete the curriculum developed by
27 the office of the administrator for the courts)) comply with the
28 training requirements established under RCW 2.56.030(15), prior to
29 their appointment in cases under Title 13 RCW, except that volunteer
30 guardians ad litem or court-appointed special advocates ((accepted into
31 a volunteer program after January 1, 1998,)) may ((complete an)) comply
32 with alternative ((curriculum)) training requirements approved by the
33 office of the administrator for the courts that meet((s)) or
34 exceed((s)) the state-wide ((curriculum)) requirements.

35 (2)(a) Each guardian ad litem program for compensated guardians ad
36 litem shall establish a rotational registry system for the appointment
37 of guardians ad litem. If a judicial district does not have a program
38 the court shall establish the rotational registry system. Guardians ad

1 litem shall be selected from the registry except in exceptional
2 circumstances as determined and documented by the court. The parties
3 may make a joint recommendation for the appointment of a guardian ad
4 litem from the registry.

5 (b) In judicial districts with a population over one hundred
6 thousand, a list of three names shall be selected from the registry and
7 given to the parties along with the background information as specified
8 in RCW 13.34.100(3), including their hourly rate for services. Each
9 party may, within three judicial days, strike one name from the list.
10 If more than one name remains on the list, the court shall make the
11 appointment from the names on the list. In the event all three names
12 are stricken the person whose name appears next on the registry shall
13 be appointed.

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

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

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

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

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

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

32 (b) ~~((To collect relevant information about the child's situation;~~
33 ~~(c)))~~ To monitor all court orders for compliance and to bring to
34 the court's attention any change in circumstances that may require a
35 modification of the court's order; ~~((and~~

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

1 (d) Court-appointed special advocates and guardians ad litem may
2 make recommendations based upon an independent investigation regarding
3 the best interests of the child, which the court may consider and weigh
4 in conjunction with the recommendations of all of the parties; and
5 (e) To represent and be an advocate for the best interests of the
6 child.

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

9 (3) Except for information or records specified in RCW
10 13.50.100(5), the guardian ad litem shall have access to all
11 information available to the state or agency on the case. Upon
12 presentation of the order of appointment by the guardian ad litem, any
13 agency, hospital, school organization, division or department of the
14 state, doctor, nurse, or other health care provider, psychologist,
15 psychiatrist, police department, or mental health clinic shall permit
16 the guardian ad litem to inspect and copy any records relating to the
17 child or children involved in the case, without the consent of the
18 parent or guardian of the child, or of the child if the child is under
19 the age of thirteen years, unless such access is otherwise specifically
20 prohibited by law.

21 (4) A guardian ad litem may release confidential information,
22 records, and reports to the office of the family and children's
23 ombudsman for the purposes of carrying out its duties under chapter
24 43.06A RCW.

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

27 **Sec. 5.** RCW 13.34.120 and 1998 c 328 s 4 are each amended to read
28 as follows:

29 (1) To aid the court in its decision on disposition, a social
30 study, consisting of a written evaluation of matters relevant to the
31 disposition of the case, shall be made by the person or agency filing
32 the petition. A parent may submit a counselor's or health care
33 provider's evaluation of the parent, which shall either be included in
34 the social study or considered in conjunction with the social study.
35 The study shall include all social records and may also include facts
36 relating to the child's cultural heritage, and shall be made available
37 to the court. The court shall consider the social file, social study,
38 guardian ad litem report, the court-appointed special advocate's

1 report, if any, and any reports filed by a party at the disposition
2 hearing in addition to evidence produced at the fact-finding hearing.
3 At least ten working days before the disposition hearing, the
4 department shall mail to the parent and his or her attorney a copy of
5 the agency's social study and proposed service plan, which shall be in
6 writing or in a form understandable to the parents or custodians. In
7 addition, the department shall provide an opportunity for parents to
8 review and comment on the plan at the community service office. If the
9 parents disagree with the agency's plan or any part thereof, the
10 parents shall submit to the court at least twenty-four hours before the
11 hearing, in writing, or signed oral statement, an alternative plan to
12 correct the problems which led to the finding of dependency. This
13 section shall not interfere with the right of the parents or custodians
14 to submit oral arguments regarding the disposition plan at the hearing.

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

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

21 (b) A description of the specific programs, for both the parents
22 and child, that are needed in order to prevent serious harm to the
23 child; the reasons why such programs are likely to be useful; the
24 availability of any proposed services; and the agency's overall plan
25 for ensuring that the services will be delivered. The description
26 shall identify services chosen and approved by the parent;

27 (c) If removal is recommended, a full description of the reasons
28 why the child cannot be protected adequately in the home, including a
29 description of any previous efforts to work with the parents and the
30 child in the home; the in-home treatment programs which have been
31 considered and rejected; the preventive services that have been offered
32 or provided and have failed to prevent the need for out-of-home
33 placement, unless the health, safety, and welfare of the child cannot
34 be protected adequately in the home; and the parents' attitude toward
35 placement of the child;

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

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

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

5 (3)(a) The guardian ad litem or court-appointed special advocate
6 shall file his or her report with the court and with the parties
7 pursuant to court rule prior to a hearing for which a report is
8 required. The report shall include a written list of persons
9 interviewed and reports or documentation considered. If the report
10 makes particular recommendations, the report shall include specific
11 information on which the guardian ad litem or court-appointed special
12 advocate relied in making each particular recommendation.

13 (b) The parties to the proceeding may file written responses to the
14 guardian ad litem's or court-appointed special advocate's report with
15 the court and deliver such responses to the other parties at a
16 reasonable time or pursuant to court rule before the hearing. The
17 court shall consider any written responses to the guardian ad litem's
18 or court-appointed special advocate's report, including any factual
19 information or recommendations provided in the report.

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

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

31 (b) Unless otherwise ordered, the guardian ad litem's role is to
32 investigate and report factual information to the court concerning
33 parenting arrangements for the child, and to represent the child's best
34 interests. Guardians ad litem and investigators under this title may
35 make recommendations based upon an independent investigation regarding
36 the best interests of the child, which the court may consider and weigh
37 in conjunction with the recommendations of all of the parties. If a
38 child expresses a preference regarding the parenting plan, the guardian

1 ad litem shall report the preferences to the court, together with the
2 facts relative to whether any preferences are being expressed
3 voluntarily and the degree of the child's understanding. The court may
4 require the guardian ad litem to provide periodic reports to the
5 parties regarding the status of his or her investigation. The guardian
6 ad litem shall file his or her report at least sixty days prior to
7 trial.

8 (c) The parties to the proceeding may file with the court written
9 responses to any report filed by the guardian ad litem or investigator.
10 The court shall consider any written responses to a report filed by the
11 guardian ad litem or investigator, including any factual information or
12 recommendations provided in the report.

13 (d) The court shall enter an order for costs, fees, and
14 disbursements to cover the costs of the guardian ad litem. The court
15 may order either or both parents to pay for the costs of the guardian
16 ad litem, according to their ability to pay. If both parents are
17 indigent, the county shall bear the cost of the guardian, subject to
18 appropriation for guardians' ad litem services by the county
19 legislative authority. Guardians ad litem who are not volunteers shall
20 provide the parties with an itemized accounting of their time and
21 billing for services each month.

22 (2)(a) If the guardian ad litem appointed is from the county court-
23 appointed special advocate program, the program shall supervise any
24 guardian ad litem assigned to the case. The court-appointed special
25 advocate program shall be entitled to notice of all proceedings in the
26 case.

27 (b) The legislative authority of each county may authorize creation
28 of a court-appointed special advocate program. The county legislative
29 authority may adopt rules of eligibility for court-appointed special
30 advocate program services.

31 (3) Each guardian ad litem program shall maintain a background
32 information record for each guardian ad litem in the program. The
33 background file shall include, but is not limited to, the following
34 information:

35 (a) Level of formal education;
36 (b) Training related to the guardian's duties;
37 (c) Number of years' experience as a guardian ad litem;
38 (d) Number of appointments as a guardian ad litem and county or
39 counties of appointment; ((and))

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

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

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. If the
9 appointed guardian ad litem is not a member of a guardian ad litem
10 program the person shall provide the background information to the
11 court.

12 Upon appointment, the guardian ad litem, or guardian ad litem
13 program, shall provide the parties or their attorneys with a statement
14 containing: His or her training relating to the duties as a guardian
ad litem; the name of any counties in which the person was removed from
a guardian ad litem registry pursuant to a grievance action, and the
name of the court and the cause number of any case in which the court
has removed the person for cause; and his or her criminal history as
19 defined in RCW 9.94A.030 for the period covering ten years prior to the
20 appointment. The background statement shall not include identifying
21 information that may be used to harm a guardian ad litem, such as home
22 addresses and home telephone numbers, and for volunteer guardians ad
23 litem the court may allow the use of maiden names or pseudonyms as
24 necessary for their safety.

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

1 **Sec. 7.** RCW 26.12.177 and 1997 c 41 s 7 are each amended to read
2 as follows:

3 (1) All guardians ad litem((, who have not previously served or
4 been trained as a guardian ad litem in this state, who are appointed
5 after January 1, 1998,)) and investigators appointed under this title
6 must ((complete the curriculum developed by the office of the
7 administrator for the courts)) comply with the training requirements
8 established under RCW 2.56.030(15), prior to their appointment in cases
9 under Title 26 RCW, except that volunteer guardians ad litem or court-
10 appointed special advocates ((accepted into a volunteer program after
11 January 1, 1998,)) may ((complete an)) comply with alternative
12 ((curriculum)) training requirements approved by the office of the
13 administrator for the courts that meet((s)) or exceed((s)) the state-
14 wide ((curriculum)) requirements.

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

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

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

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

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

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

12 **NEW SECTION.** **Sec. 8.** A new section is added to chapter 26.12 RCW
13 to read as follows:

14 All information, records, and reports obtained or created by a
15 guardian ad litem, court-appointed special advocate, or investigator
16 under this title shall be discoverable pursuant to statute and court
17 rule. The guardian ad litem, court-appointed special advocate, or
18 investigator shall not release private or confidential information to
19 any nonparty except pursuant to a court order signed by a judge. The
20 guardian ad litem, court-appointed special advocate, or investigator
21 may share private or confidential information with experts or staff he
22 or she has retained as necessary to perform the duties of guardian ad
23 litem, court-appointed special advocate, or investigator. Any expert
24 or staff retained are subject to the confidentiality rules governing
25 the guardian ad litem, court-appointed special advocate, or
26 investigator. Nothing in this section shall be interpreted to
27 authorize disclosure of guardian ad litem records in personal injury
28 actions.

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

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

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

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

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

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

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

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

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

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

7 The court shall specify the hourly rate the guardian ad litem may
8 charge for his or her services, and shall specify the maximum amount
9 the guardian ad litem may charge without additional court review and
10 approval. The court shall specify rates and fees in the order of
11 appointment or at the earliest date the court is able to determine the
12 appropriate rates and fees and prior to the guardian ad litem billing
13 for his or her services. This section shall apply except as provided
14 by local court rule.

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

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

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

27 Except for guardians ad litem appointed by the court from the
28 subregistry created under RCW 26.12.177(2)(d), the court shall specify
29 the hourly rate the guardian ad litem or investigator under this title
30 may charge for his or her services, and shall specify the maximum
31 amount the guardian ad litem or investigator under this title may
32 charge without additional court review and approval. The court shall
33 specify rates and fees in the order of appointment or at the earliest
34 date the court is able to determine the appropriate rates and fees and
35 prior to the guardian ad litem billing for his or her services. This
36 section shall apply except as provided by local court rule.

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

5 Correct the title.

EFFECT: In dependency proceedings, restores current law that the duties of a GAL include representing and being an advocate for the best interests of the child, and removes the provisions specifying that GALS may be advocates only in nonjudicial proceedings and forums.

In family law proceedings, restores current law that a GAL's role is to represent the child's best interests and removes the provision in the underlying bill that the GAL's role includes advocating in nonjudicial proceedings in the best interests of the child.

In dependency proceedings, requires the GAL's or CASA's report to be filed with the court and parties prior to the hearing and allows parties to file written responses prior to the hearing. The report must include a written list of persons interviewed and reports or documentation considered. The report must include specific information on which the GAL or CASA relied in making a particular recommendation. Requires the court to consider responses to a GAL or CASA report.

In family law proceedings, allows parties to file written responses to the GAL's or investigator's report and requires the court to consider these responses.

Requires each superior court to adopt rules establishing procedures for filing, investigating and adjudicating grievances made by or against GALs.

Requires the DSHS advisory group that develops model training for guardianship GALS to include representatives knowledgeable in domestic violence.

Provides that the sections requiring courts to set GAL fees apply except as provided by court rule.

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