

HOUSE BILL ANALYSIS

ESSB 6305

Title: An act relating to guardians ad litem.

Brief Description: Changing provisions relating to guardians ad litem.

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

Brief Summary of Bill

- Requires all guardians ad litem (GALs) and investigators to complete training requirements.
- Requires a GAL to disclose whether he or she has been removed from a registry pursuant to a grievance or from a case for cause.
- Requires the court to remove a GAL from a registry for misrepresenting his or her qualifications.
- Limits the advocacy role of GALs and court-appointed special advocates (CASAs) in dependency and family law proceedings to nonjudicial forums only, and specifies that their duties include investigating and reporting factual information to the court.
- Prohibits a GAL, CASA, or investigator from engaging in ex parte communications.
- Requires the court to specify the hourly rate and maximum amount a GAL may charge.
- Provides that, in family law proceedings, the records and information of a GAL, CASA, or investigator are discoverable by the parties but confidential with respect to third parties.

HOUSE COMMITTEE ON JUDICIARY

Staff: Edie Adams (786-7180).

Background:

A guardian ad litem (GAL) is a person appointed in a court proceeding to represent the best interests of a party or to investigate and report to the court on relevant matters. A GAL position is temporary and expires when the case is completed or dismissed. A GAL may be appointed in guardianship proceedings, child dependency proceedings, and family law proceedings.

Guardianship Proceedings: If a petition for guardianship is filed, the court appoints a GAL to represent the best interests of the alleged incapacitated person. The GAL is appointed from a GAL registry on a rotational basis. The GAL receives a fee determined by the court which is charged to the alleged incapacitated person unless that would result in substantial hardship, in which case the county is responsible for the costs. If a guardian is not appointed, the court may charge the GAL fee to the petitioner, the alleged incapacitated person, or both.

To be eligible for the registry and appointment as a GAL, the person must have completed a model training program and must provide a written statement of background and qualifications. The written statement of qualifications must include a statement of the number of times the GAL has been removed for failure to perform his or her duties.

The court establishes procedures for review of persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform GAL duties.

Child Dependency and Family Law Proceedings: The GAL represents the best interests of a child who is the subject of a dependency proceeding or a child affected in a family law proceeding. Some GALs are paid for their services while others are volunteers that work through a GAL program or are court-appointed special advocates (CASAs) that work through the CASA program. In dissolution proceedings, the court may appoint an investigator who serves a purpose similar to a GAL.

Compensated GALs must be appointed based on a rotational registry system, unless the court finds there are extraordinary circumstances, or if a joint recommendation of a GAL is made by the parties. Each compensated GAL sets his or her own hourly fee.

Each GAL program must maintain a background information file on all GALs that must include specified information, including education, training, experience, number of prior appointments, and criminal history. Upon appointment, this information must be made available to the court and to the parties.

Summary of Bill:

A number of changes are made to provisions affecting GALs in guardianship cases, child dependency cases, and family law cases.

Guardianship Proceedings: All appointed GALs must comply with the training program adopted by the Department of Social and Health Services (DSHS) unless the GAL is appointed for the limited purpose of assessing a settlement.

To be eligible for a GAL registry, a GAL must include in the written statement of qualifications the counties where the GAL was removed from a registry pursuant to a grievance and the court and cause number of any case from which the GAL was removed for cause. The court must remove a GAL who misrepresents his or her qualifications from the registry pursuant to a grievance process.

The court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval. The fees of a GAL may be charged to the petitioner, the alleged incapacitated person, or any other person who appears in the proceeding.

GALs are prohibited from engaging in ex parte communications with any judicial officer regarding the matter for which the GAL is appointed, except as permitted for ex parte motions. Ex parte motions must be heard in open court on the record. The court may remove a GAL who violates this prohibition from a pending case or from the registry and if removed, the court may require the GAL to forfeit any fees claimed on the pending case.

Child Dependency and Family Law Proceedings: All GALs and investigators must comply with the training requirements prior to their appointment, except that volunteer GALs or CASAs may comply with alternative training approved by the Administrator for the Courts. Investigators must be included in the rotational registry system and selected from the registry.

The background information file maintained by each GAL program must include the counties where the GAL was removed from a registry pursuant to a grievance process and the court and cause number of any case from which the GAL was removed for cause. Upon appointment, the GAL must provide this information to the parties. The court must remove a GAL who misrepresents his or her qualifications from the registry pursuant to a grievance process.

The ability of a GAL or CASA to advocate in the best interests of a child are limited to nonjudicial forums or proceedings. A GAL or CASA may investigate and report factual information regarding the child's best interests and make recommendations

regarding the child's best interests. In family law proceedings, the GAL must report any preferences expressed by a child regarding the parenting plan.

The court must specify the hourly rate the GAL may charge and the maximum amount the GAL may charge without prior court approval.

GALs, CASAs, and parenting investigators are prohibited from engaging in ex parte communications under the same restrictions and conditions specified for GALs in guardianship proceedings.

In family law proceedings, the information, records, and reports obtained or created by a GAL, CASA, or parenting investigator are discoverable pursuant to statute and court rule, but are confidential with respect to third parties unless disclosure is authorized by court order.

A sub-registry of GALs who are under contract with the DSHS may be created, and GALs on this sub-registry may be appointed only in state-initiated paternity cases.

GALs, CASAs, and investigators, appointed in family law cases, may release confidential information to the Office of the Family and Children's Ombudsman. (NOTE: There is a similar provision to this section already in current law - RCW 26.12.185.)

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.