

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2735**

61st Legislature  
2010 Regular Session

Passed by the House February 13, 2010  
Yeas 95 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 5, 2010  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2735** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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HOUSE BILL 2735

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Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Representatives Goodman, Appleton, Rolfes, Seaquist, Finn, Rodne, Williams, Haigh, Pettigrew, Nelson, Darneille, Hasegawa, and Ormsby

Read first time 01/13/10. Referred to Committee on Judiciary.

1 AN ACT Relating to the representation of children in dependency  
2 matters; amending RCW 13.34.100, 13.34.105, and 13.34.215; and creating  
3 new sections.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that  
6 inconsistent practices in and among counties in Washington have  
7 resulted in few children being notified of their right to request legal  
8 counsel in their dependency and termination proceedings under RCW  
9 13.34.100.

10 (2) The legislature recognizes that when children are provided  
11 attorneys in their dependency and termination proceedings, it is  
12 imperative to provide them with well-trained advocates so that their  
13 legal rights around health, safety, and well-being are protected.  
14 Attorneys, who have different skills and obligations than guardians ad  
15 litem and court-appointed special advocates, especially in forming a  
16 confidential and privileged relationship with a child, should be  
17 trained in meaningful and effective child advocacy, the child welfare  
18 system and services available to a child client, child and adolescent  
19 brain development, child and adolescent mental health, and the distinct

1 legal rights of dependent youth, among other things. Well-trained  
2 attorneys can provide legal counsel to a child on issues such as  
3 placement options, visitation rights, educational rights, access to  
4 services while in care and services available to a child upon aging out  
5 of care. Well-trained attorneys for a child can:

- 6 (a) Ensure the child's voice is considered in judicial proceedings;
- 7 (b) Engage the child in his or her legal proceedings;
- 8 (c) Explain to the child his or her legal rights;
- 9 (d) Assist the child, through the attorney's counseling role, to  
10 consider the consequences of different decisions; and
- 11 (e) Encourage accountability, when appropriate, among the different  
12 systems that provide services to children.

13 **Sec. 2.** RCW 13.34.100 and 2009 c 480 s 2 are each amended to read  
14 as follows:

15 (1) The court shall appoint a guardian ad litem for a child who is  
16 the subject of an action under this chapter, unless a court for good  
17 cause finds the appointment unnecessary. The requirement of a guardian  
18 ad litem may be deemed satisfied if the child is represented by  
19 independent counsel in the proceedings. The court shall attempt to  
20 match a child with special needs with a guardian ad litem who has  
21 specific training or education related to the child's individual needs.

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

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

- 31 (a) Level of formal education;
- 32 (b) General training related to the guardian ad litem's duties;
- 33 (c) Specific training related to issues potentially faced by  
34 children in the dependency system;
- 35 (d) Specific training or education related to child disability or  
36 developmental issues;
- 37 (e) Number of years' experience as a guardian ad litem;

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

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

7 (h) Founded allegations of abuse or neglect as defined in RCW  
8 26.44.020;

9 (i) The results of an examination of state and national criminal  
10 identification data. The examination shall consist of a background  
11 check as allowed through the Washington state criminal records privacy  
12 act under RCW 10.97.050, the Washington state patrol criminal  
13 identification system under RCW 43.43.832 through 43.43.834, and the  
14 federal bureau of investigation. The background check shall be done  
15 through the Washington state patrol criminal identification section and  
16 must include a national check from the federal bureau of investigation  
17 based on the submission of fingerprints; and

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

20 The background information record shall be updated annually. As a  
21 condition of appointment, the guardian ad litem's background  
22 information record shall be made available to the court. If the  
23 appointed guardian ad litem is not a member of a guardian ad litem  
24 program a suitable person appointed by the court to act as guardian ad  
25 litem shall provide the background information record to the court.

26 Upon appointment, the guardian ad litem, or guardian ad litem  
27 program, shall provide the parties or their attorneys with a copy of  
28 the background information record. The portion of the background  
29 information record containing the results of the criminal background  
30 check and the criminal history shall not be disclosed to the parties or  
31 their attorneys. The background information record shall not include  
32 identifying information that may be used to harm a guardian ad litem,  
33 such as home addresses and home telephone numbers, and for volunteer  
34 guardians ad litem the court may allow the use of maiden names or  
35 pseudonyms as necessary for their safety.

36 (4) The appointment of the guardian ad litem shall remain in effect  
37 until the court discharges the appointment or no longer has

1 jurisdiction, whichever comes first. The guardian ad litem may also be  
2 discharged upon entry of an order of guardianship.

3 (5) A guardian ad litem through counsel, or as otherwise authorized  
4 by the court, shall have the right to present evidence, examine and  
5 cross-examine witnesses, and to be present at all hearings. A guardian  
6 ad litem shall receive copies of all pleadings and other documents  
7 filed or submitted to the court, and notice of all hearings according  
8 to court rules. The guardian ad litem shall receive all notice  
9 contemplated for a parent or other party in all proceedings under this  
10 chapter.

11 (6)(a) Pursuant to this subsection, the department or supervising  
12 agency and the child's guardian ad litem shall each notify a child of  
13 his or her right to request counsel and shall ask the child whether he  
14 or she wishes to have counsel. The department or supervising agency  
15 and the child's guardian ad litem shall notify the child and make this  
16 inquiry immediately after:

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

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

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

21 (b) The department or supervising agency and the child's guardian  
22 ad litem shall repeat the notification and inquiry at least annually  
23 and upon the filing of any motion or petition affecting the child's  
24 placement, services, or familial relationships.

25 (c) The notification and inquiry is not required if the child has  
26 already been appointed counsel.

27 (d) The department or supervising agency shall note in the child's  
28 individual service and safety plan, and the guardian ad litem shall  
29 note in his or her report to the court, that the child was notified of  
30 the right to request counsel and indicate the child's position  
31 regarding appointment of counsel.

32 (e) At the first regularly scheduled hearing after:

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

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

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

1 the court shall inquire whether the child has received notice of  
2 his or her right to request legal counsel from the department or  
3 supervising agency and the child's guardian ad litem. The court shall  
4 make an additional inquiry at the first regularly scheduled hearing  
5 after the child's fifteenth birthday. No inquiry is necessary if the  
6 child has already been appointed counsel.

7 (f) If the child requests legal counsel and is age twelve or older,  
8 or if the guardian ad litem or the court determines that the child  
9 needs to be independently represented by counsel, the court may appoint  
10 an attorney to represent the child's position.

11 (7) For the purposes of child abuse prevention and treatment act  
12 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,  
13 or any related state or federal legislation, a person appointed  
14 pursuant to (~~RCW 13.34.100~~) this section shall be deemed a guardian  
15 ad litem to represent the best interests of the minor in proceedings  
16 before the court.

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

23 (9) If a party in a case reasonably believes the court-appointed  
24 special advocate or volunteer guardian ad litem is inappropriate or  
25 unqualified, the party may request a review of the appointment by the  
26 program. The program must complete the review within five judicial  
27 days and remove any appointee for good cause. If the party seeking the  
28 review is not satisfied with the outcome of the review, the party may  
29 file a motion with the court for the removal of the court-appointed  
30 special advocate or volunteer guardian ad litem on the grounds the  
31 advocate or volunteer is inappropriate or unqualified.

32 **Sec. 3.** RCW 13.34.105 and 2008 c 267 s 13 are each amended to read  
33 as follows:

34 (1) Unless otherwise directed by the court, the duties of the  
35 guardian ad litem for a child subject to a proceeding under this  
36 chapter, including an attorney specifically appointed by the court to

1 serve as a guardian ad litem, include but are not limited to the  
2 following:

3 (a) To investigate, collect relevant information about the child's  
4 situation, and report to the court factual information regarding the  
5 best interests of the child;

6 (b) To meet with, interview, or observe the child, depending on the  
7 child's age and developmental status, and report to the court any views  
8 or positions expressed by the child on issues pending before the court;

9 (c) To monitor all court orders for compliance and to bring to the  
10 court's attention any change in circumstances that may require a  
11 modification of the court's order;

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

14 (e) Court-appointed special advocates and guardians ad litem may  
15 make recommendations based upon an independent investigation regarding  
16 the best interests of the child, which the court may consider and weigh  
17 in conjunction with the recommendations of all of the parties; (~~and~~)

18 (f) To represent and be an advocate for the best interests of the  
19 child; and

20 (g) To inform the child, if the child is twelve years old or older,  
21 of his or her right to request counsel and to ask the child whether he  
22 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The  
23 guardian ad litem shall report to the court that the child was notified  
24 of this right and indicate the child's position regarding appointment  
25 of counsel. The guardian ad litem shall report to the court his or her  
26 independent recommendation as to whether appointment of counsel is in  
27 the best interest of the child.

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

30 (3) Except for information or records specified in RCW  
31 13.50.100(7), the guardian ad litem shall have access to all  
32 information available to the state or agency on the case. Upon  
33 presentation of the order of appointment by the guardian ad litem, any  
34 agency, hospital, school organization, division or department of the  
35 state, doctor, nurse, or other health care provider, psychologist,  
36 psychiatrist, police department, or mental health clinic shall permit  
37 the guardian ad litem to inspect and copy any records relating to the  
38 child or children involved in the case, without the consent of the

1 parent or guardian of the child, or of the child if the child is under  
2 the age of thirteen years, unless such access is otherwise specifically  
3 prohibited by law.

4 (4) A guardian ad litem may release confidential information,  
5 records, and reports to the office of the family and children's  
6 ombudsman for the purposes of carrying out its duties under chapter  
7 43.06A RCW.

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

10 **Sec. 4.** RCW 13.34.215 and 2009 c 520 s 36 are each amended to read  
11 as follows:

12 (1) A child may petition the juvenile court to reinstate the  
13 previously terminated parental rights of his or her parent under the  
14 following circumstances:

15 (a) The child was previously found to be a dependent child under  
16 this chapter;

17 (b) The child's parent's rights were terminated in a proceeding  
18 under this chapter;

19 (c) The child has not achieved his or her permanency plan within  
20 three years of a final order of termination; and

21 (d) The child must be at least twelve years old at the time the  
22 petition is filed. Upon the child's motion for good cause shown, or on  
23 its own motion, the court may hear a petition filed by a child younger  
24 than twelve years old.

25 (2) If the child is eligible to petition the juvenile court under  
26 subsection (1) of this section and a parent whose rights have been  
27 previously terminated contacts the department or supervising agency or  
28 the child's guardian ad litem regarding reinstatement, the department  
29 or supervising agency or the guardian ad litem must notify the eligible  
30 child about his or her right to petition for reinstatement of parental  
31 rights.

32 (3) A child seeking to petition under this section shall be  
33 provided counsel at no cost to the child.

34 ((+3)) (4) The petition must be signed by the child in the absence  
35 of a showing of good cause as to why the child could not do so.

36 ((+4)) (5) If, after a threshold hearing to consider the parent's  
37 apparent fitness and interest in reinstatement of parental rights, the



1 court finds by a preponderance of the evidence that the best interests  
2 of the child may be served by reinstatement of parental rights, the  
3 juvenile court shall order that a hearing on the merits of the petition  
4 be held.

5 ~~((+5))~~ (6) The court shall give prior notice for any proceeding  
6 under this section, or cause prior notice to be given, to the  
7 department or the supervising agency, the child's attorney, and the  
8 child. The court shall also order the department or supervising agency  
9 to give prior notice of any hearing to the child's former parent whose  
10 parental rights are the subject of the petition, any parent whose  
11 rights have not been terminated, the child's current foster parent,  
12 relative caregiver, guardian or custodian, and the child's tribe, if  
13 applicable.

14 ~~((+6))~~ (7) The juvenile court shall conditionally grant the  
15 petition if it finds by clear and convincing evidence that the child  
16 has not achieved his or her permanency plan and is not likely to  
17 imminently achieve his or her permanency plan and that reinstatement of  
18 parental rights is in the child's best interest. In determining  
19 whether reinstatement is in the child's best interest the court shall  
20 consider, but is not limited to, the following:

21 (a) Whether the parent whose rights are to be reinstated is a fit  
22 parent and has remedied his or her deficits as provided in the record  
23 of the prior termination proceedings and prior termination order;

24 (b) The age and maturity of the child, and the ability of the child  
25 to express his or her preference;

26 (c) Whether the reinstatement of parental rights will present a  
27 risk to the child's health, welfare, or safety; and

28 (d) Other material changes in circumstances, if any, that may have  
29 occurred which warrant the granting of the petition.

30 ~~((+7))~~ (8) In determining whether the child has or has not  
31 achieved his or her permanency plan or whether the child is likely to  
32 achieve his or her permanency plan, the department or supervising  
33 agency shall provide the court, and the court shall review, information  
34 related to any efforts to achieve the permanency plan including efforts  
35 to achieve adoption or a permanent guardianship.

36 ~~((+8))~~ (9)(a) If the court conditionally grants the petition under  
37 subsection ~~((+6))~~ (7) of this section, the case will be continued for  
38 six months and a temporary order of reinstatement entered. During this

1 period, the child shall be placed in the custody of the parent. The  
2 department or supervising agency shall develop a permanency plan for  
3 the child reflecting the plan to be reunification and shall provide  
4 transition services to the family as appropriate.

5 (b) If the child must be removed from the parent due to abuse or  
6 neglect allegations prior to the expiration of the conditional six-  
7 month period, the court shall dismiss the petition for reinstatement of  
8 parental rights if the court finds the allegations have been proven by  
9 a preponderance of the evidence.

10 (c) If the child has been successfully placed with the parent for  
11 six months, the court order reinstating parental rights remains in  
12 effect and the court shall dismiss the dependency.

13 ~~((+9))~~ (10) After the child has been placed with the parent for  
14 six months, the court shall hold a hearing. If the placement with the  
15 parent has been successful, the court shall enter a final order of  
16 reinstatement of parental rights, which shall restore all rights,  
17 powers, privileges, immunities, duties, and obligations of the parent  
18 as to the child, including those relating to custody, control, and  
19 support of the child. The court shall dismiss the dependency and  
20 direct the clerk's office to provide a certified copy of the final  
21 order of reinstatement of parental rights to the parent at no cost.

22 ~~((+10))~~ (11) The granting of the petition under this section does  
23 not vacate or otherwise affect the validity of the original termination  
24 order.

25 ~~((+11))~~ (12) Any parent whose rights are reinstated under this  
26 section shall not be liable for any child support owed to the  
27 department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other  
28 services provided to a child for the time period from the date of  
29 termination of parental rights to the date parental rights are  
30 reinstated.

31 ~~((+12))~~ (13) A proceeding to reinstate parental rights is a  
32 separate action from the termination of parental rights proceeding and  
33 does not vacate the original termination of parental rights. An order  
34 granted under this section reinstates the parental rights to the child.  
35 This reinstatement is a recognition that the situation of the parent  
36 and child have changed since the time of the termination of parental  
37 rights and reunification is now appropriate.

1           (~~(13)~~) (14) This section is retroactive and applies to any child  
2 who is under the jurisdiction of the juvenile court at the time of the  
3 hearing regardless of the date parental rights were terminated.

4           (~~(14)~~) (15) The state, the department, the supervising agency,  
5 and its employees are not liable for civil damages resulting from any  
6 act or omission in the provision of services under this section, unless  
7 the act or omission constitutes gross negligence. This section does  
8 not create any duty and shall not be construed to create a duty where  
9 none exists. This section does not create a cause of action against  
10 the state, the department, the supervising agency, or its employees  
11 concerning the original termination.

12           NEW SECTION.   **Sec. 5.** By December 31, 2010, and within available  
13 resources, the administrative office of the courts, working in  
14 coordination with the state supreme court commission on children in  
15 foster care, shall develop recommendations for voluntary training and  
16 caseload standards for attorneys who represent youth in dependency  
17 proceedings under chapter 13.34 RCW. The administrative office of the  
18 courts shall report its recommendations to the appropriate committees  
19 of the legislature by December 31, 2010.

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