
SENATE BILL 5461

State of Washington

63rd Legislature

2013 Regular Session

By Senators Darneille, Harper, Kohl-Welles, and Frockt

Read first time 01/31/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to representation of children in dependency
2 matters; amending RCW 13.34.100 and 13.34.105; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
6 dependency proceedings often determine many critical aspects of a
7 child's future, including where the child lives, whether the child
8 resides with siblings, where the child attends school, and how long the
9 child remains in state care. Children have many legal rights at stake
10 in these proceedings, and representation by an attorney can be
11 invaluable in ensuring that the child's rights are respected. The
12 legislature further recognizes that varying practices throughout the
13 state have resulted in inconsistent protection of the rights of the
14 state's children, especially those in the most vulnerable situations.

15 (2) The legislature takes note of the 2012 holding of the
16 Washington supreme court in *In re the Dependency of MSR and TSR*, where
17 the court held that children have at least as much of a due process
18 right to counsel in dependency proceedings as their parents. The court
19 further noted that children have fundamental liberty interests at stake

1 in dependency proceedings, including a right to freedom from harm, a
2 right to reasonable safety, and a right to maintain family
3 relationships. Whether individual children are entitled to an attorney
4 is determined by a balancing test, yet the current inconsistent
5 practices in attorney appointment across the state may lead to many
6 children being denied their constitutional right to legal
7 representation. The balancing test will always favor appointment of
8 counsel for certain groups of highly vulnerable children, including
9 those whose parents' parental rights have been terminated; those who
10 have had multiple foster care placements; those who may be
11 institutionalized; and those who have had disciplinary problems in
12 school, at a minimum. Children in other situations may also have a
13 right to counsel, and the process to assert this right must be
14 accessible to all children.

15 **Sec. 2.** RCW 13.34.100 and 2010 c 180 s 2 are each amended to read
16 as follows:

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

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

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

- 34 (a) Level of formal education;
- 35 (b) General training related to the guardian ad litem's duties;
- 36 (c) Specific training related to issues potentially faced by
37 children in the dependency system;

1 (d) Specific training or education related to child disability or
2 developmental issues;

3 (e) Number of years' experience as a guardian ad litem;

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

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

10 (h) Founded allegations of abuse or neglect as defined in RCW
11 26.44.020;

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

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

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

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

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

5 (5) When a court-appointed special advocate or volunteer guardian
6 ad litem is requested on a case, the program must give the court the
7 name of the person it recommends. The program must attempt to match a
8 child with special needs with a guardian ad litem who has specific
9 training or education related to the child's individual needs. The
10 court must immediately appoint the person recommended by the program.

11 (6) If a party in a case reasonably believes the court-appointed
12 special advocate or volunteer guardian ad litem is inappropriate or
13 unqualified, the party may request a review of the appointment by the
14 program. The program must complete the review within five judicial
15 days and remove any appointee for good cause. If the party seeking the
16 review is not satisfied with the outcome of the review, the party may
17 file a motion with the court for the removal of the court-appointed
18 special advocate or volunteer guardian ad litem on the grounds the
19 advocate or volunteer is inappropriate or unqualified.

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

28 ~~((+6+))~~ (8)(a) The court must appoint an attorney for the child in
29 the dependency:

30 (i) Within seventy-two hours of granting a petition to terminate
31 the parent and child relationship pursuant to RCW 13.34.180;

32 (ii) Within seventy-two hours of placing the child in a group-care
33 facility as defined in RCW 74.15.020(1)(f);

34 (iii) Within seventy-two hours of placing the child in inpatient
35 treatment as defined in RCW 71.34.020(9);

36 (iv) Within fourteen days after the child has been prescribed
37 psychotropic medications;

1 (v) Within seventy-two hours after the child is placed in his or
2 her fourth or subsequent placement;

3 (vi) Within seventy-two hours after the child has run away from a
4 placement;

5 (vii) Within seventy-two hours of the child receiving a suspension
6 or expulsion from school;

7 (viii) Within seventy-two hours of the child being charged with a
8 criminal offense. The child's criminal defense attorney may also serve
9 as the dependency attorney, provided that he or she is qualified to do
10 so and is appointed by the dependency court as the child's dependency
11 attorney;

12 (ix) Within seventy-two hours of the child being referred for a
13 sexually aggressive youth evaluation under RCW 74.13.075.

14 (b) The department must promptly provide ex parte notice to the
15 court of the occurrence of any of the conditions in (a)(ii) through
16 (ix) of this subsection. Upon receiving such notice, the court must,
17 sua sponte, appoint an attorney for the child.

18 (9)(a) The court may appoint an attorney to represent the child's
19 position in any dependency action on its own initiative, or upon the
20 request of a parent, the child, a guardian ad litem, a caregiver, or
21 the department.

22 (b) The child's caregiver may refer the child to an attorney for
23 the purposes of filing a motion to request appointment of an attorney
24 at public expense.

25 (c) The child or another individual may retain an attorney for the
26 child for the purposes of filing a motion to request appointment of an
27 attorney at public expense.

28 (d) Pursuant to this subsection (9), the department or supervising
29 agency and the child's guardian ad litem shall each notify a child of
30 his or her right to request (~~counsel~~) an attorney and shall ask the
31 child whether he or she wishes to have (~~counsel~~) an attorney. The
32 department or supervising agency and the child's guardian ad litem
33 shall notify the child and make this inquiry immediately after:

34 (i) The date of the child's (~~twelfth~~) seventh birthday;

35 (ii) Assignment of a case involving a child age (~~twelve~~) seven or
36 older; or

37 (iii) July 1, (~~2010~~) 2013, for a child who turned (~~twelve~~)
38 seven years old before July 1, (~~2010~~) 2013.

1 ~~((b))~~ (e) The department or supervising agency and the child's
2 guardian ad litem shall repeat the notification and inquiry at least
3 annually and upon the filing of any motion or petition affecting the
4 child's placement, services, or familial relationships.

5 ~~((c))~~ (f) The notification and inquiry is not required if the
6 child has already been appointed ~~((counsel))~~ an attorney.

7 ~~((d))~~ (g) The department or supervising agency shall note in the
8 child's individual service and safety plan, and the guardian ad litem
9 shall note in his or her report to the court, that the child was
10 notified of the right to request ~~((counsel))~~ an attorney and indicate
11 the child's position regarding appointment of ~~((counsel))~~ an attorney.

12 ~~((e))~~ (h) At the first regularly scheduled hearing after:

13 (i) The date of the child's ~~((twelfth))~~ seventh birthday;

14 (ii) The date that a dependency petition is filed pursuant to this
15 chapter on a child age ~~((twelve))~~ seven or older; or

16 (iii) July 1, ~~((2010))~~ 2013, for a child who turned ~~((twelve))~~
17 seven years old before July 1, ~~((2010))~~ 2013;

18 the court shall inquire whether the child has received notice of his or
19 her right to request ~~((legal counsel))~~ an attorney from the department
20 or supervising agency and the child's guardian ad litem. The court
21 shall make an additional inquiry at the first regularly scheduled
22 hearing after the child's ~~((fifteenth))~~ ninth birthday. No inquiry is
23 necessary if the child has already been appointed ~~((counsel))~~ an
24 attorney.

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

29 ~~(7))~~ (10) For the purposes of child abuse prevention and treatment
30 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-
31 247, or any related state or federal legislation, a person appointed
32 pursuant to this section shall be deemed a guardian ad litem ~~((to~~
33 ~~represent the best interests of the minor in proceedings before the~~
34 ~~court))~~.

35 ~~((8) When a court appointed special advocate or volunteer guardian~~
36 ~~ad litem is requested on a case, the program shall give the court the~~
37 ~~name of the person it recommends. The program shall attempt to match~~

1 a child with special needs with a guardian ad litem who has specific
2 training or education related to the child's individual needs. The
3 court shall immediately appoint the person recommended by the program.

4 (9) If a party in a case reasonably believes the court appointed
5 special advocate or volunteer guardian ad litem is inappropriate or
6 unqualified, the party may request a review of the appointment by the
7 program. The program must complete the review within five judicial
8 days and remove any appointee for good cause. If the party seeking the
9 review is not satisfied with the outcome of the review, the party may
10 file a motion with the court for the removal of the court appointed
11 special advocate or volunteer guardian ad litem on the grounds the
12 advocate or volunteer is inappropriate or unqualified.))

13 **Sec. 3.** RCW 13.34.105 and 2011 c 309 s 26 are each amended to read
14 as follows:

15 (1) Unless otherwise directed by the court, the duties of the
16 guardian ad litem for a child subject to a proceeding under this
17 chapter, including an attorney specifically appointed by the court to
18 serve as a guardian ad litem, include but are not limited to the
19 following:

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

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

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

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

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

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

1 (g) To inform the child, if the child is (~~twelve~~) seven years old
2 or older, of his or her right to request (~~counsel~~) an attorney and to
3 ask the child whether he or she wishes to have (~~counsel~~) an attorney,
4 pursuant to RCW 13.34.100(6). The guardian ad litem shall report to
5 the court that the child was notified of this right and indicate the
6 child's position regarding appointment of (~~counsel~~) an attorney. The
7 guardian ad litem shall report to the court his or her independent
8 recommendation as to whether appointment of (~~counsel~~) an attorney is
9 in the best interest of the child; and

10 (h) In the case of an Indian child as defined in RCW 13.38.040,
11 know, understand, and advocate the best interests of the Indian child.

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

14 (3) Except for information or records specified in RCW
15 13.50.100(7), the guardian ad litem shall have access to all
16 information available to the state or agency on the case. Upon
17 presentation of the order of appointment by the guardian ad litem, any
18 agency, hospital, school organization, division or department of the
19 state, doctor, nurse, or other health care provider, psychologist,
20 psychiatrist, police department, or mental health clinic shall permit
21 the guardian ad litem to inspect and copy any records relating to the
22 child or children involved in the case, without the consent of the
23 parent or guardian of the child, or of the child if the child is under
24 the age of thirteen years, unless such access is otherwise specifically
25 prohibited by law.

26 (4) A guardian ad litem may release confidential information,
27 records, and reports to the office of the family and children's
28 ombudsman for the purposes of carrying out its duties under chapter
29 43.06A RCW.

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

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