

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1165

Chapter 241, Laws of 1993

53rd Legislature
1993 Regular Session

FAMILY COURT--COURT-AUTHORIZED GUARDIAN AD LITEM PROGRAMS

EFFECTIVE DATE: 7/25/93

Passed by the House April 19, 1993
Yeas 95 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1993
Yeas 46 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 7, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1165** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 7, 1993 - 11:25 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 1165

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Riley, Cooke, Leonard, Appelwick and Johanson

Read first time 01/20/93. Referred to Committee on Human Services.

1 AN ACT Relating to guardians ad litem; amending RCW 13.34.030 and
2 13.34.100; reenacting and amending RCW 26.44.053; adding a new section
3 to chapter 13.34 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 13.34.030 and 1988 c 176 s 901 are each amended to
6 read as follows:

7 For purposes of this chapter:

8 (1) "Child" and "juvenile" means any individual under the age of
9 eighteen years;

10 (2) "Dependent child" means any child:

11 (a) Who has been abandoned; that is, where the child's parent,
12 guardian, or other custodian has evidenced either by statement or
13 conduct, a settled intent to forego, for an extended period, all
14 parental rights or all parental responsibilities despite an ability to
15 do so;

16 (b) Who is abused or neglected as defined in chapter 26.44 RCW by
17 a person legally responsible for the care of the child;

18 (c) Who has no parent, guardian, or custodian capable of adequately
19 caring for the child, such that the child is in circumstances which

1 constitute a danger of substantial damage to the child's psychological
2 or physical development; or

3 (d) Who has a developmental disability, as defined in RCW
4 71A.10.020 and whose parent, guardian, or legal custodian together with
5 the department determines that services appropriate to the child's
6 needs can not be provided in the home. However, (a), (b), and (c) of
7 this subsection may still be applied if other reasons for removal of
8 the child from the home exist;

9 (3) "Guardian ad litem" means a person, appointed by the court to
10 represent the best interest of a child in a proceeding under this
11 chapter, or in any matter which may be consolidated with a proceeding
12 under this chapter. A "court-appointed special advocate" appointed by
13 the court to be the guardian ad litem for the child, or to perform
14 substantially the same duties and functions as a guardian ad litem,
15 shall be deemed to be guardian ad litem for all purposes and uses of
16 this chapter;

17 (4) "Guardian ad litem program" means a court-authorized volunteer
18 program, which is or may be established by the superior court of the
19 county in which such proceeding is filed, to manage all aspects of
20 volunteer guardian ad litem representation for children alleged or
21 found to be dependent. Such management shall include but is not
22 limited to: Recruitment, screening, training, supervision, assignment,
23 and discharge of volunteers.

24 **Sec. 2.** RCW 13.34.100 and 1988 c 232 s 1 are each amended to read
25 as follows:

26 (1) The court shall in all contested cases appoint ((an attorney
27 and/or)) a guardian ad litem for a child who is ((a party to the
28 proceedings in all contested proceedings)) the subject of an action
29 under this chapter, unless a court((7)) for good cause((7)) finds the
30 appointment unnecessary. ((An attorney and/or)) A guardian ad litem
31 may be appointed at the discretion of the court in uncontested
32 proceedings((:—PROVIDED, That)). The requirement of a guardian ad
33 litem shall be deemed satisfied if the child is represented by
34 independent counsel in the proceedings. ((A))

35 (2) If the court does not have available to it a guardian ad litem
36 program with a sufficient number of volunteers, the court may appoint
37 a suitable person to act as guardian ad litem for the child under this

1 chapter. Another party to the proceeding or the party's employee or
2 representative shall not be so appointed. ((Such attorney and/or))

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

7 (a) Level of formal education;

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

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

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

11 (e) Criminal history, as defined in RCW 9.94A.030.

12 The background information report shall be updated annually. As a
13 condition of appointment, the guardian ad litem's background
14 information record shall be made available to the court. If the
15 appointed guardian ad litem is not a member of a guardian ad litem
16 program the person shall provide the background information to the
17 court.

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

22 (5) A guardian ad litem through counsel, or as otherwise authorized
23 by the court, shall have the right to present evidence, examine and
24 cross-examine witnesses, and to be present at all hearings. A guardian
25 ad litem shall receive copies of all pleadings and other documents
26 filed or submitted to the court, and notice of all hearings according
27 to court rules. The guardian ad litem shall receive all notice
28 contemplated for a parent or other party in all proceedings under this
29 chapter. ((A report by the guardian ad litem to the court shall
30 contain, where relevant, information on the legal status of a child's
31 membership in any Indian tribe or band.))

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

36 (7) For the purposes of child abuse prevention and treatment act
37 (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247,
38 or any related state or federal legislation, a person appointed
39 pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to

1 represent the best interests of the minor in proceedings before the
2 court.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 13.34 RCW
4 to read as follows:

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

7 (a) To represent and be an advocate for the best interests of the
8 child;

9 (b) To collect relevant information about the child's situation;

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

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

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

17 (3) Except for information or records specified in RCW
18 13.50.100(4), the guardian ad litem shall have access to all
19 information available to the state or agency on the case. Upon
20 presentation of the order of appointment by the guardian ad litem, any
21 agency, hospital, school organization, division or department of the
22 state, doctor, nurse, or other health care provider, psychologist,
23 psychiatrist, police department, or mental health clinic shall permit
24 the guardian ad litem to inspect and copy any records relating to the
25 child or children involved in the case, without the consent of the
26 parent or guardian of the child, or of the child if the child is under
27 the age of thirteen years, unless such access is otherwise specifically
28 prohibited by law.

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

31 **Sec. 4.** RCW 26.44.053 and 1987 c 524 s 11 and 1987 c 206 s 7 are
32 each reenacted and amended to read as follows:

33 (1) In any contested judicial proceeding in which it is alleged
34 that a child has been subjected to child abuse or neglect, the court
35 shall appoint a guardian ad litem for the child: PROVIDED, That the
36 requirement of a guardian ad litem (~~shall~~) may be deemed satisfied if
37 the child is represented by counsel in the proceedings.

1 (2) At any time prior to or during a hearing in such a case, the
2 court may, on its own motion, or the motion of the guardian ad litem,
3 or other parties, order the examination by a physician, psychologist,
4 or psychiatrist, of any parent or child or other person having custody
5 of the child at the time of the alleged child abuse or neglect, if the
6 court finds such an examination is necessary to the proper
7 determination of the case. The hearing may be continued pending the
8 completion of such examination. The physician, psychologist, or
9 psychiatrist conducting such an examination may be required to testify
10 concerning the results of such examination and may be asked to give his
11 or her opinion as to whether the protection of the child requires that
12 he or she not be returned to the custody of his or her parents or other
13 persons having custody of him or her at the time of the alleged child
14 abuse or neglect. Persons so testifying shall be subject to cross-
15 examination as are other witnesses. No information given at any such
16 examination of the parent or any other person having custody of the
17 child may be used against such person in any subsequent criminal
18 proceedings against such person or custodian concerning the abuse or
19 neglect of the child.

20 (3) A parent or other person having legal custody of a child
21 alleged to be ~~((a child subjected to abuse or neglect))~~ abused or
22 neglected shall be a party to any proceeding that may ~~((as a practical~~
23 ~~matter))~~ impair or impede such person's interest in and custody or
24 control of ~~((his or her))~~ the child.

25 NEW SECTION. **Sec. 5.** If any part of this act is found to be in
26 conflict with federal requirements that are a prescribed condition to
27 the allocation of federal funds to the state, the conflicting part of
28 this act is inoperative solely to the extent of the conflict and with
29 respect to the agencies directly affected, and this finding does not
30 affect the operation of the remainder of this act in its application to
31 the agencies concerned. The rules under this act shall meet federal
32 requirements that are a necessary condition to the receipt of federal
33 funds by the state.

Passed the House April 19, 1993.

Passed the Senate April 12, 1993.

Approved by the Governor May 7, 1993.

Filed in Office of Secretary of State May 7, 1993.