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**2SSB 6126** - S AMD **515**

By Senators O'Ban, Hargrove, Darneille

**ADOPTED 02/17/2014**

 Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.** (1) The legislature recognizes that many children languish in foster care following the termination of the parent and child relationship. These children have legal rights but no longer have a parent or advocate to represent their unique interests to the court. The legislature finds that providing attorneys for children following the termination of the parent and child relationship is fundamental to protecting the child's legal rights and to accelerate permanency.

 (2) Although the legislature recognizes that many jurisdictions provide attorneys to children prior to termination of the parent and child relationship, nothing in this act may be construed against the parent's fundamental liberty interest in parenting the child prior to termination of the parent and child relationship as stated in *In re Dependency of K.N.J.*, 171 Wn.2d 568, 574 (2011) and *In re Welfare of Luscier*, 84 Wn.2d 135, 136-37 (1974), unless such a position would jeopardize the child's right to conditions of basic nurture, health, or safety.

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

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

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

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

 (a) Level of formal education;

 (b) General training related to the guardian ad litem's duties;

 (c) Specific training related to issues potentially faced by children in the dependency system;

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

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

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

 (g) The names 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;

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

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

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

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

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

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

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

 (6)(a) The court must appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights.
 The court must appoint an attorney for a child when there is no remaining parent with parental rights for six months or longer prior to the effective date of this section if the child is not already represented.
 The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.
 (b) Legal services provided by an attorney appointed pursuant to (a) of this subsection do not include representation of the child in any appellate proceedings relative to the termination of the parent and child relationship.
 (c)(i) Subject to the availability of amounts appropriated for this specific purpose, the state may pay the costs of legal services provided by an attorney appointed pursuant to (a) of this subsection, if the legal services are provided in accordance with the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must be calculated pursuant to (c)(ii) of this subsection.
 (ii) Counties are encouraged to set caseloads as low as possible and to account for the individual needs of the children in care. Notwithstanding the caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010, when one attorney represents a sibling group, the first child is counted as one case, and each child thereafter is counted as one-half case to determine compliance with the caseload standards pursuant to (c)(i) of this subsection and section 3 of this act.
 (iii) The office of civil legal aid is responsible for implementation of (c)(i) and (ii) of this subsection as provided in section 3 of this act.
 (7)(a) The court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.
 (b) If the court has not already appointed an attorney for a child, or the child is not represented by a privately retained attorney:
 (i) The child's caregiver, or any individual, may refer the child to an attorney for the purposes of filing a motion to request appointment of an attorney at public expense; or
 (ii) The child or any individual may retain an attorney for the child for the purposes of filing a motion to request appointment of an attorney at public expense.
 (c) Pursuant to this subsection, the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request ((~~counsel~~)) an attorney and shall ask the child whether he or she wishes to have ((~~counsel~~)) an attorney. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

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

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

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

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

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

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

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

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

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

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

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

 ((~~(f) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.~~
 ~~(7)~~)) (8) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to this section shall be deemed a guardian ad litem ((~~to represent the best interests of the minor in proceedings before the court~~)).

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

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

NEW SECTION. **Sec.** A new section is added to chapter 2.53 RCW to read as follows:

 (1) Money appropriated by the legislature for legal services provided by an attorney appointed pursuant to RCW 13.34.100 must be administered by the office of civil legal aid established under RCW 2.53.020.

 (2) The office of civil legal aid may enter into contracts with the counties to disburse state funds for an attorney appointed pursuant to RCW 13.34.100. The office of civil legal aid may also require a county to use attorneys under contract with the office for the provision of legal services under RCW 13.34.100 to remain within appropriated amounts.

 (3) Prior to distributing state funds under subsection (2) of this section, the office of civil legal aid must verify that attorneys providing legal representation to children under RCW 13.34.100 meet the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits described in this subsection must be determined as provided in RCW 13.34.100(6)(c)(ii).

NEW SECTION. **Sec.** This act takes effect July 1, 2014."

**2SSB 6126** - S AMD

By Senator O'Ban

On page 1, line 2 of the title, after "matters;" strike the remainder of the title and insert "amending RCW 13.34.100; adding a new section to chapter 2.53 RCW; creating a new section; and providing an effective date."

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|  |  EFFECT: (1) Clarifies that both parents' rights have to be terminated prior to the appointment of an attorney; (2) clarifies that a child whose parents' rights were previously terminated must have an attorney appointed after the effective date of the act; (3) appointment of an attorney to a legally free child occurs at 6 months after TPR; (4) eliminates requirement for the county to pay half the cost; (5) allows office of civil legal aid to require the provision of legal services through its office to remain within appropriated amounts. |

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