
SECOND SUBSTITUTE HOUSE BILL 1285

State of Washington

63rd Legislature

2014 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Freeman, Pettigrew, Jenkins, Walsh, Kirby, Orwall, Roberts, Appleton, Seaquist, Ryu, Stanford, Clibborn, Maxwell, Tarleton, Morrell, Pollet, and Ormsby)

READ FIRST TIME 02/03/14.

1 AN ACT Relating to representation of children in dependency
2 matters; amending RCW 13.34.100; adding a new section to chapter 2.53
3 RCW; creating a new section; and providing an effective date.

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

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

13 (2) Although the legislature recognizes that many jurisdictions
14 provide attorneys to children prior to termination of the parent and
15 child relationship, nothing in this act may be construed against the
16 parent's fundamental liberty interest in parenting the child prior to
17 termination of the parent and child relationship as stated in *In re*
18 *Dependency of K.N.J.*, 171 Wn.2d 568, 574 (2011) and *In re Welfare of*

1 *Luscier*, 84 Wn.2d 135, 136-37 (1974), unless such a position would
2 jeopardize the child's right to conditions of basic nurture, health, or
3 safety.

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

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

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

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

23 (a) Level of formal education;

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

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

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

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

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

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

36 (h) Founded allegations of abuse or neglect as defined in RCW
37 26.44.020;

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

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

12 The background information record 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 a suitable person appointed by the court to act as guardian ad
17 litem shall provide the background information record to the court.

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

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

32 (5) A guardian ad litem through (~~counsel~~) an attorney, or as
33 otherwise authorized by the court, shall have the right to present
34 evidence, examine and cross-examine witnesses, and to be present at all
35 hearings. A guardian ad litem shall receive copies of all pleadings
36 and other documents filed or submitted to the court, and notice of all
37 hearings according to court rules. The guardian ad litem shall receive

1 all notice contemplated for a parent or other party in all proceedings
2 under this chapter.

3 (6)(a) The court must appoint an attorney for a child in a
4 dependency proceeding within seventy-two hours of granting a petition
5 to terminate the parent and child relationship pursuant to RCW
6 13.34.180. The court may appoint one attorney to a group of siblings,
7 unless there is a conflict of interest, or such representation is
8 otherwise inconsistent with the rules of professional conduct.

9 (b) Legal services provided by an attorney appointed pursuant to
10 (a) of this subsection do not include representation of the child in
11 any appellate proceedings relative to the termination of the parent and
12 child relationship.

13 (c)(i) Except as provided in (c)(ii) and (iii) of this subsection,
14 all costs of legal services provided by an attorney appointed pursuant
15 to (a) of this subsection must be paid by the county.

16 (ii) The state must pay one-half of the costs of legal services
17 provided by an attorney appointed pursuant to (a) of this subsection,
18 if the legal services are provided in accordance with the standards of
19 practice, voluntary training, and caseload limits developed and
20 recommended by the statewide children's representation work group
21 pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must
22 be calculated pursuant to (c)(iii) of this subsection.

23 (iii) Counties are encouraged to set caseloads as low as possible
24 and to account for the individual needs of the children in care.
25 Notwithstanding the caseload limits developed and recommended by the
26 statewide children's representation work group pursuant to section 5,
27 chapter 180, Laws of 2010, when one attorney represents a sibling
28 group, the first child is counted as one case, and each child
29 thereafter is counted as one-half case for the following purposes only:

30 (A) To determine compliance with the caseload standards pursuant to
31 (c)(ii) of this subsection and section 3 of this act; and

32 (B) To determine reimbursement to the county from the state
33 pursuant to (c)(ii) of this subsection and section 3 of this act.

34 (iv) The office of civil legal aid is responsible for
35 implementation of (c)(ii) and (iii) of this subsection as provided in
36 section 3 of this act.

37 (7)(a) The court may appoint an attorney to represent the child's

1 position in any dependency action on its own initiative, or upon the
2 request of a parent, the child, a guardian ad litem, a caregiver, or
3 the department.

4 (b) If the court has not already appointed an attorney for a child,
5 or the child is not represented by a privately retained attorney:

6 (i) The child's caregiver, or any individual, may refer the child
7 to an attorney for the purposes of filing a motion to request
8 appointment of an attorney at public expense; or

9 (ii) The child or any individual may retain an attorney for the
10 child for the purposes of filing a motion to request appointment of an
11 attorney at public expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~(7))~~ (8) For the purposes of child abuse prevention and treatment
12 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-
13 247, or any related state or federal legislation, a person appointed
14 pursuant to this section shall be deemed a guardian ad litem (~~(to
15 represent the best interests of the minor in proceedings before the
16 court)~~)).

17 ~~((8))~~ (9) When a court-appointed special advocate or volunteer
18 guardian ad litem is requested on a case, the program shall give the
19 court the name of the person it recommends. The program shall attempt
20 to 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 The court shall immediately appoint the person recommended by the
23 program.

24 ~~((9))~~ (10) If a party in a case reasonably believes the court-
25 appointed special advocate or volunteer guardian ad litem is
26 inappropriate or unqualified, the party may request a review of the
27 appointment by the program. The program must complete the review
28 within five judicial days and remove any appointee for good cause. If
29 the party seeking the review is not satisfied with the outcome of the
30 review, the party may file a motion with the court for the removal of
31 the court-appointed special advocate or volunteer guardian ad litem on
32 the grounds the advocate or volunteer is inappropriate or unqualified.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 2.53 RCW
34 to read as follows:

35 (1) Money appropriated by the legislature for legal services
36 provided by an attorney appointed pursuant to RCW 13.34.100 must be

1 administered by the office of civil legal aid established under RCW
2 2.53.020.

3 (2) The office of civil legal aid may enter into contracts with the
4 counties to disburse state funds for an attorney appointed pursuant to
5 RCW 13.34.100.

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

14 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2014.

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