

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6126

63rd Legislature
2014 Regular Session

Passed by the Senate March 10, 2014
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 7, 2014
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6126** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6126

AS AMENDED BY THE HOUSE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senate Ways & Means (originally sponsored by Senators O'Ban, Darneille, Becker, Tom, Fraser, Pedersen, Kline, Pearson, Kohl-Welles, Braun, and Frockt)

READ FIRST TIME 02/11/14.

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 new sections; 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 some
6 children may remain in foster care following the termination of the
7 parent and child relationship. These children have legal rights and no
8 longer have a parent to advocate on their behalf, and no other party
9 represents their legal interests. The legislature finds that providing
10 attorneys for children following the termination of the parent and
11 child relationship is fundamental to protecting the child's legal
12 rights and to accelerate 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 six months after granting a petition to terminate
5 the parent and child relationship pursuant to RCW 13.34.180 and when
6 there is no remaining parent with parental rights.

7 The court must appoint an attorney for a child when there is no
8 remaining parent with parental rights for six months or longer prior to
9 the effective date of this section if the child is not already
10 represented.

11 The court may appoint one attorney to a group of siblings, unless
12 there is a conflict of interest, or such representation is otherwise
13 inconsistent with the rules of professional conduct.

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

18 (c)(i) Subject to the availability of amounts appropriated for this
19 specific purpose, the state shall pay the costs of legal services
20 provided by an attorney appointed pursuant to (a) of this subsection,
21 if the legal services are provided in accordance with the standards of
22 practice, voluntary training, and caseload limits developed and
23 recommended by the statewide children's representation work group
24 pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must
25 be calculated pursuant to (c)(ii) of this subsection.

26 (ii) Counties are encouraged to set caseloads as low as possible
27 and to account for the individual needs of the children in care.
28 Notwithstanding the caseload limits developed and recommended by the
29 statewide children's representation work group pursuant to section 5,
30 chapter 180, Laws of 2010, when one attorney represents a sibling
31 group, the first child is counted as one case, and each child
32 thereafter is counted as one-half case to determine compliance with the
33 caseload standards pursuant to (c)(i) of this subsection and section 3
34 of this act.

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

1 (7)(a) The court may appoint an attorney to represent the child's
2 position in any dependency action on its own initiative, or upon the
3 request of a parent, the child, a guardian ad litem, a caregiver, or
4 the department.

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

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

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

14 (ii) Nothing in this subsection (7)(b) shall be construed to change
15 or alter the confidentiality provisions of RCW 13.50.100.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~(7))~~ (8) For the purposes of child abuse prevention and treatment
16 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-
17 247, or any related state or federal legislation, a person appointed
18 pursuant to this section shall be deemed a guardian ad litem (~~to
19 represent the best interests of the minor in proceedings before the
20 court~~)).

21 ~~((8))~~ (9) When a court-appointed special advocate or volunteer
22 guardian ad litem is requested on a case, the program shall give the
23 court the name of the person it recommends. The program shall attempt
24 to match a child with special needs with a guardian ad litem who has
25 specific training or education related to the child's individual needs.
26 The court shall immediately appoint the person recommended by the
27 program.

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

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

3 (1) Money appropriated by the legislature for legal services
4 provided by an attorney appointed pursuant to RCW 13.34.100 must be
5 administered by the office of civil legal aid established under RCW
6 2.53.020.

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

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

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

22 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this
23 act, referencing this act by bill or chapter number, is not provided by
24 June 30, 2014, in the omnibus appropriations act, this act is null and
25 void.

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