
SUBSTITUTE HOUSE BILL 1251

State of Washington

65th Legislature

2017 Regular Session

By House Judiciary (originally sponsored by Representatives Frame, Rodne, Goodman, Stokesbary, Jinkins, Haler, Kagi, Muri, Reeves, Tarleton, Kilduff, Appleton, Ormsby, Senn, Blake, McBride, Fey, Doglio, Ryu, Pollet, Dolan, Gregerson, and Bergquist)

READ FIRST TIME 02/13/17.

1 AN ACT Relating to the appointment of counsel for youth in
2 dependency court proceedings; amending RCW 13.34.090, 13.34.092, and
3 13.34.100; and adding a new section to chapter 13.34 RCW.

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

5 **Sec. 1.** RCW 13.34.090 and 2000 c 122 s 10 are each amended to
6 read as follows:

7 (1) Any party has a right to be represented by an attorney in all
8 proceedings under this chapter, to introduce evidence, to be heard in
9 his or her own behalf, to examine witnesses, to receive a decision
10 based solely on the evidence adduced at the hearing, and to an
11 unbiased fact finder.

12 (2) At all stages of a proceeding in which a child is alleged to
13 be dependent, the child's parent, guardian, or legal custodian has
14 the right to be represented by counsel, and if indigent, to have
15 counsel appointed for him or her by the court. Unless waived in
16 court, counsel shall be provided to the child's parent, guardian, or
17 legal custodian, if such person (a) has appeared in the proceeding or
18 requested the court to appoint counsel and (b) is financially unable
19 to obtain counsel because of indigency.

1 (3) At all stages of a proceeding in which a child is alleged to
2 be dependent, the child has the right to be represented by counsel as
3 provided in this chapter.

4 (4) If a party to an action under this chapter is represented by
5 counsel, no order shall be provided to that party for his or her
6 signature without prior notice and provision of the order to counsel.

7 ~~((4))~~ (5) Copies of department of social and health services or
8 supervising agency records to which the child and the child's parents
9 have legal access pursuant to chapter 13.50 RCW shall be given to the
10 ~~((child's))~~ child or the child's counsel, and the parents, guardian,
11 legal custodian, or his or her legal counsel, prior to any shelter
12 care hearing and within fifteen days after the department or
13 supervising agency receives a written request for such records from
14 the child, child's counsel, and the parents, guardian, legal
15 custodian, or his or her legal counsel. These records shall be
16 provided to the ~~((child's))~~ child, child's counsel, and the parents,
17 guardian, legal custodian, or legal counsel a reasonable period of
18 time prior to the shelter care hearing in order to allow an
19 opportunity to review the records prior to the hearing. These records
20 shall be legible and shall be provided at no expense to the child,
21 child's counsel, and the parents, guardian, legal custodian, or his
22 or her counsel. When the records are served on legal counsel, legal
23 counsel shall have the opportunity to review the records with ~~((the~~
24 ~~parents))~~ his or her client and shall review the records with ~~((the~~
25 ~~parents))~~ his or her client prior to the shelter care hearing.

26 **Sec. 2.** RCW 13.34.092 and 2000 c 122 s 6 are each amended to
27 read as follows:

28 At the commencement of the shelter care hearing the court shall
29 advise the parties of basic rights as provided in RCW 13.34.090 and
30 appoint counsel to the child's parent, guardian, or legal custodian
31 pursuant to RCW 13.34.090 if the parent ~~((or)),~~ guardian, or legal
32 custodian is indigent unless counsel has been retained by the parent
33 ~~((or)),~~ guardian, or legal custodian or the court finds that the
34 right to counsel has been expressly and voluntarily waived in court.

35 **Sec. 3.** RCW 13.34.100 and 2014 c 108 s 2 are each amended to
36 read as follows:

37 (1) The court shall appoint a guardian ad litem for a child who
38 is the subject of an action under this chapter, unless a court for

1 good cause finds the appointment unnecessary. (~~The requirement of a~~
2 ~~guardian ad litem may be deemed satisfied if the child is represented~~
3 ~~by an independent attorney in the proceedings.~~) The court shall
4 attempt to match a child with special needs with a guardian ad litem
5 who has specific training or education related to the child's
6 individual needs.

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

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

16 (a) Level of formal education;

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

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

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

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

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

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

29 (h) Founded allegations of abuse or neglect as defined in RCW
30 26.44.020;

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

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

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

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

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

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

32 ~~(6)((a) The court must appoint an attorney for a child in a~~
33 ~~dependency proceeding six months after granting a petition to~~
34 ~~terminate the parent and child relationship pursuant to RCW 13.34.180~~
35 ~~and when there is no remaining parent with parental rights.~~

36 ~~The court must appoint an attorney for a child when there is no~~
37 ~~remaining parent with parental rights for six months or longer prior~~
38 ~~to July 1, 2014, if the child is not already represented.~~

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

4 ~~(b) Legal services provided by an attorney appointed pursuant to~~
5 ~~(a) of this subsection do not include representation of the child in~~
6 ~~any appellate proceedings relative to the termination of the parent~~
7 ~~and child relationship.~~

8 ~~(c)(i) Subject to the availability of amounts appropriated for~~
9 ~~this specific purpose, the state shall pay the costs of legal~~
10 ~~services provided by an attorney appointed pursuant to (a) of this~~
11 ~~subsection, if the legal services are provided in accordance with the~~
12 ~~standards of practice, voluntary training, and caseload limits~~
13 ~~developed and recommended by the statewide children's representation~~
14 ~~work group pursuant to section 5, chapter 180, Laws of 2010. Caseload~~
15 ~~limits must be calculated pursuant to (c)(ii) of this subsection.~~

16 ~~(ii) Counties are encouraged to set caseloads as low as possible~~
17 ~~and to account for the individual needs of the children in care.~~
18 ~~Notwithstanding the caseload limits developed and recommended by the~~
19 ~~statewide children's representation work group pursuant to section 5,~~
20 ~~chapter 180, Laws of 2010, when one attorney represents a sibling~~
21 ~~group, the first child is counted as one case, and each child~~
22 ~~thereafter is counted as one half case to determine compliance with~~
23 ~~the caseload standards pursuant to (c)(i) of this subsection and RCW~~
24 ~~2.53.045.~~

25 ~~(iii) The office of civil legal aid is responsible for~~
26 ~~implementation of (c)(i) and (ii) of this subsection as provided in~~
27 ~~RCW 2.53.045.~~

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

32 ~~(b)(i) If the court has not already appointed an attorney for a~~
33 ~~child, or the child is not represented by a privately retained~~
34 ~~attorney:~~

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

38 ~~(B) The child or any individual may retain an attorney for the~~
39 ~~child for the purposes of filing a motion to request appointment of~~
40 ~~an attorney at public expense.~~

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

3 ~~(c) Pursuant to this subsection, the department or supervising~~
4 ~~agency and the child's guardian ad litem shall each notify a child of~~
5 ~~his or her right to request an attorney and shall ask the child~~
6 ~~whether he or she wishes to have an attorney. The department or~~
7 ~~supervising agency and the child's guardian ad litem shall notify the~~
8 ~~child and make this inquiry immediately after:~~

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

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

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

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

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

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

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

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

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

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

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

37 ~~(8)) For the purposes of child abuse prevention and treatment~~
38 ~~act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L.~~
39 ~~93-247, or any related state or federal legislation, a person~~

1 appointed pursuant to this section shall be deemed a guardian ad
2 litem.

3 ~~((9))~~ (7) When a court-appointed special advocate or volunteer
4 guardian ad litem is requested on a case, the program shall give the
5 court the name of the person it recommends. The program shall attempt
6 to match a child with special needs with a guardian ad litem who has
7 specific training or education related to the child's individual
8 needs. The court shall immediately appoint the person recommended by
9 the program.

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

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

22 (1)(a) The court shall appoint an attorney for a child in a
23 dependency proceeding six months after granting a petition to
24 terminate the parent and child relationship pursuant to RCW 13.34.180
25 and when there is no remaining parent with parental rights.

26 (b) The court may appoint one attorney to a group of siblings,
27 unless there is a conflict of interest, or such representation is
28 otherwise inconsistent with the rules of professional conduct.

29 (c) Subject to availability of amounts appropriated for this
30 specific purpose, the state shall pay the costs of legal services
31 provided by an attorney appointed pursuant to (a) of this subsection.

32 (d) The office of civil legal aid is responsible for
33 implementation of (a) through (c) of this subsection as provided in
34 RCW 2.53.045.

35 (e) Legal services provided by an attorney pursuant to (a) of
36 this subsection do not include representation of the child in any
37 appellate proceedings relative to the termination of the parent and
38 child relationship.

1 (2)(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
13 an attorney at public expense.

14 (ii) Nothing in this subsection changes or alters the
15 confidentiality provisions of RCW 13.50.100.

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

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

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

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

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

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

35 (g) At the first regularly scheduled hearing after:

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

37 (ii) The date that a dependency petition is filed pursuant to
38 this chapter on a child age twelve or older;
39 the court shall inquire whether the child has received notice of his
40 or her right to request an attorney from the department or

1 supervising agency and the child's guardian ad litem. The court shall
2 make an additional inquiry at the first regularly scheduled hearing
3 after the child's fifteenth birthday. No inquiry is necessary if the
4 child has already been appointed an attorney.

5 (3) Subject to the availability of amounts appropriated for this
6 specific purpose:

7 (a) Pursuant to the phase-in schedule set forth in (b) of this
8 subsection (3), the court must appoint an attorney for every child
9 over the age of two in a dependency proceeding. Appointment must be
10 made at the same time that counsel is appointed for the child's
11 parent, guardian, or legal custodian. If no appointment of counsel is
12 made for the child's parent, guardian, or legal custodian, then
13 appointment must be made at the commencement of the shelter care
14 hearing.

15 (b) The schedule for phase in of court appointment of an attorney
16 for every child over the age of two in a dependency proceeding is as
17 follows:

- 18 (i) Beginning January 1, 2018, children ten years old and older;
- 19 (ii) Beginning July 1, 2018, children seven years old and older;
- 20 (iii) Beginning July 1, 2019, children five years old and older;
- 21 and
- 22 (iv) Beginning July 1, 2020, children two years old and older.

23 (c) An attorney may represent siblings of children eligible for
24 representation pursuant to this subsection, including siblings not
25 yet eligible under the phase-in schedule, unless there is a conflict
26 of interest or such representation is otherwise inconsistent with the
27 rules of professional conduct.

28 (d) The office of civil legal aid is responsible for
29 implementation of (a) and (b) of this subsection as provided in RCW
30 2.53.045.

31 (e) The office of civil legal aid must contract with an
32 independent research organization to evaluate:

33 (i) The compensation rate for children's attorneys using local
34 and national data, the feasibility of sibling group representation,
35 and the hours necessary for attorneys to represent children and youth
36 in compliance with state standards; and

37 (ii) The impact of legal representation on case timelines and
38 permanency outcomes for children and youth represented by attorneys.
39 The evaluation must include a review of data disaggregated by race,
40 ethnicity, and age, and qualitative interviews with children, youth,

1 and parents regarding their experiences in the dependency process. A
2 report must be submitted to the appropriate committees of the
3 legislature and the governor by December 1, 2021, with data collected
4 over five years.

5 (4) Attorneys representing children pursuant to this section must
6 provide legal services in accordance with the standards of practice,
7 voluntary training, and caseload limits developed and recommended by
8 the statewide children's representation work group pursuant to
9 section 5, chapter 180, Laws of 2010, except that one attorney will
10 be allowed to represent a sibling group unless there is a conflict of
11 interest or such representation is otherwise inconsistent with the
12 rules of professional conduct. Whenever one attorney represents a
13 sibling group, the first child is counted as one case, and each child
14 thereafter is counted as one-half case to determine compliance with
15 the caseload limits developed and recommended by the statewide
16 children's representation work group.

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