
SENATE BILL 5363

State of Washington

65th Legislature

2017 Regular Session

By Senators Walsh, Frockt, Rivers, Fain, Carlyle, Darneille,
Miloscia, and Warnick

1 AN ACT Relating to the appointment of counsel for youth in
2 dependency court proceedings; and amending RCW 13.34.090, 13.34.092,
3 13.34.100, and 13.34.105.

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
3 and have counsel appointed for him or her by the court.

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

37 (~~(The court must appoint an attorney for a child when there is no
38 remaining parent with parental rights for six months or longer prior
39 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
5 to (a) of this subsection do not include representation of the child
6 in any appellate proceedings relative to the termination of the
7 parent and child relationship.~~

8 ~~(e))~~(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 ~~((e))~~ (b)(ii) of this
16 subsection.

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

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

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

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

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

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

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

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

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

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

14 ~~or~~

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

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

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

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

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

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

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

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

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

1 ~~(8)~~) For the purposes of child abuse prevention and treatment
2 act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L.
3 93-247, or any related state or federal legislation, a person
4 appointed pursuant to this section shall be deemed a guardian ad
5 litem.

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

13 ~~((10))~~ (9) If a party in a case reasonably believes the court-
14 appointed special advocate or volunteer guardian ad litem is
15 inappropriate or unqualified, the party may request a review of the
16 appointment by the program. The program must complete the review
17 within five judicial days and remove any appointee for good cause. If
18 the party seeking the review is not satisfied with the outcome of the
19 review, the party may file a motion with the court for the removal of
20 the court-appointed special advocate or volunteer guardian ad litem
21 on the grounds the advocate or volunteer is inappropriate or
22 unqualified.

23 **Sec. 4.** RCW 13.34.105 and 2013 c 23 s 5 are each amended to read
24 as follows:

25 (1) Unless otherwise directed by the court, the duties of the
26 guardian ad litem for a child subject to a proceeding under this
27 chapter, including an attorney specifically appointed by the court to
28 serve as a guardian ad litem, include but are not limited to the
29 following:

30 (a) To investigate, collect relevant information about the
31 child's situation, and report to the court factual information
32 regarding the best interests of the child;

33 (b) To meet with, interview, or observe the child, depending on
34 the child's age and developmental status, and report to the court any
35 views or positions expressed by the child on issues pending before
36 the court;

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

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

3 (e) Court-appointed special advocates and guardians ad litem may
4 make recommendations based upon an independent investigation
5 regarding the best interests of the child, which the court may
6 consider and weigh in conjunction with the recommendations of all of
7 the parties;

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

10 ~~(g) ((To inform the child, if the child is twelve years old or
11 older, of his or her right to request counsel and to ask the child
12 whether he or she wishes to have counsel, pursuant to RCW
13 13.34.100(6). The guardian ad litem shall report to the court that
14 the child was notified of this right and indicate the child's
15 position regarding appointment of counsel. The guardian ad litem
16 shall report to the court his or her independent recommendation as to
17 whether appointment of counsel is in the best interest of the child;
18 and~~

19 ~~(h))~~ In the case of an Indian child as defined in RCW 13.38.040,
20 know, understand, and advocate the best interests of the Indian
21 child.

22 (2) A guardian ad litem shall be deemed an officer of the court
23 for the purpose of immunity from civil liability.

24 (3) Except for information or records specified in RCW
25 13.50.100(7), the guardian ad litem shall have access to all
26 information available to the state or agency on the case. Upon
27 presentation of the order of appointment by the guardian ad litem,
28 any agency, hospital, school organization, division or department of
29 the state, doctor, nurse, or other health care provider,
30 psychologist, psychiatrist, police department, or mental health
31 clinic shall permit the guardian ad litem to inspect and copy any
32 records relating to the child or children involved in the case,
33 without the consent of the parent or guardian of the child, or of the
34 child if the child is under the age of thirteen years, unless such
35 access is otherwise specifically prohibited by law.

36 (4) A guardian ad litem may release confidential information,
37 records, and reports to the office of the family and children's
38 ombuds for the purposes of carrying out its duties under chapter
39 43.06A RCW.

1 (5) The guardian ad litem shall release case information in
2 accordance with the provisions of RCW 13.50.100.

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