

Selected Statutes Relating to Child Welfare Records

CASA's APPOINTMENT & ROLE

RCW 13.34.100 – Appointment of GAL. (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 independent counsel 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, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-

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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) 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) 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 RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) 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) 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.

RCW 13.34.105. Guardian ad litem--Duties--Immunity--Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

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

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

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

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

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

(f) To represent and be an advocate for the best interests of the child.

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

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to

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the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

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

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

RCW 13.34.107. Guardian ad litem--Ex parte communications—Removal. A guardian ad litem or court-appointed special advocate shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem or court-appointed special advocate who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case.

RELEASE OF RECORDS

RCW 13.50.010. Definitions--Conditions when filing petition or information--Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombudsman, the department of social and health services and its contracting agencies,

schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to

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those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050 (12). The court shall release to the sentencing guidelines commission records needed for its research and data-gathering functions under RCW 9.94A.850 and other statutes. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of

juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the sentencing guidelines commission under RCW 9.94A.850 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

RCW 13.50.100. Records not relating to commission of juvenile offenses--Maintenance and access. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be

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confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of social and health services may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or

the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombudsman information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the

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juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(1) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider.

court files confidential--Limited disclosure of information. Department, agency, and court files regarding an adoption shall be confidential except that reasonably available nonidentifying information may be disclosed upon the written request for the information from the adoptive parent, the adoptee, or the birth parent. If the adoption facilitator refuses to disclose nonidentifying information, the individual may petition the superior court. Identifying information may also be disclosed through the procedure described in RCW 26.33.343.

GALR 4 (Part)

(a) Access to party. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the child or alleged incapacitated person and all relevant information shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney, the guardian ad litem shall notify the attorney in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney, unless otherwise ordered by the court.

(b) Timely receipt of case documents. Until discharged by court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them. . . .

(f) Access to records. Except as limited by law or unless good cause is shown to the court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency, including but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency, shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed.

ADOPTION RECORDS

RCW 26.33.340. Department, agency, and

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(g) Access to court files. Within the scope of appointment, a guardian ad litem shall have access to all superior court and all juvenile court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the court and parties if the report contains information from sealed or confidential files. The clerk of court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.