

SECOND REGULAR SESSION

HOUSE BILL NO. 2726

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOLL.

4850H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.160 and 452.423, RSMo, and to enact in lieu thereof two new sections relating to guardians ad litem.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.160 and 452.423, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 210.160 and 452.423, to read as follows:

210.160. 1. In every case involving an abused or neglected child which results in a
2 judicial proceeding, the judge shall appoint a guardian ad litem **for the pending of the**
3 **proceeding** to appear for and represent:

4 (1) A child who is the subject of proceedings pursuant to sections 210.110 to 210.165
5 except proceedings under subsection 6 of section 210.152, sections 210.700 to 210.760,
6 sections 211.442 to 211.487, or sections 453.005 to 453.170, or proceedings to determine
7 custody or visitation rights under sections 452.375 to 452.410; or

8 (2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent,
9 and whose child is the subject of proceedings under sections 210.110 to 210.165, sections
10 210.700 to 210.760, sections 211.442 to 211.487, or sections 453.005 to 453.170.

11 2. The judge, either sua sponte or upon motion of a party, may appoint a guardian ad
12 litem to appear for and represent an abused or neglected child involved in proceedings arising
13 under subsection 6 of section 210.152.

14 3. **All agencies, law enforcement, or any other person with legal custody of a**
15 **minor child shall provide** the guardian ad litem [~~shall be provided~~] **with the location of the**
16 **minor child and** all reports relevant to the case made to or by any agency, **law enforcement,**
17 **or any other person[;]. The guardian ad litem shall be provided with contact information**

EXPLANATION — Matter enclosed in bold-faced brackets [~~thus~~] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **for all relevant parties**, shall have access to all records of such agencies, **law enforcement**,
19 or persons relating to the child or such child's family members or placements of the child, and
20 upon appointment by the court to a case, shall be informed of and have the right to attend any
21 and all family support team meetings involving the child. **Any person, law enforcement, or**
22 **agency with legal custody of the minor child shall execute all releases for information**
23 **required by the guardian ad litem. The legal custodian or custodians of the minor child,**
24 employees of the division, officers of the court, and employees of any agency involved shall
25 fully inform the guardian ad litem of all aspects of the case of which they have knowledge or
26 belief. **The department of social services and law enforcement shall provide to the**
27 **guardian ad litem all reasonable information requested by the guardian ad litem within**
28 **thirty days of the request.**

29 4. The appointing judge shall require the guardian ad litem to faithfully discharge
30 such guardian ad litem's duties **as provided in the Missouri supreme court standards with**
31 **comments for guardians ad litem**, and upon failure to do so shall discharge such guardian
32 ad litem and appoint another. The appointing judge shall have the authority to examine the
33 general and criminal background of persons appointed as guardians ad litem, including
34 utilization of the family care safety registry and access line pursuant to sections 210.900 to
35 ~~[210.937]~~ **210.936**, to ensure the safety and welfare of the children such persons are
36 appointed to represent. The judge in making appointments pursuant to this section shall give
37 preference to persons who served as guardian ad litem for the child in the earlier proceeding,
38 unless there is a reason on the record for not giving such preference. **The court shall provide**
39 **a parent or parents with a copy of the standards with comments for guardians ad litem.**

40 5. The guardian ad litem may be awarded a reasonable fee for such services to be set
41 by the court. The court, in its discretion, may award such fees as a judgment to be paid by
42 any party to the proceedings or from public funds. However, no fees as a judgment shall be
43 taxed against a party or parties who have not been found to have abused or neglected a child
44 or children **except as provided under sections 452.375 to 452.410**. Such an award of
45 guardian fees shall constitute a final judgment in favor of the guardian ad litem. Such final
46 judgment shall be enforceable against the parties in accordance with chapter 513.

47 6. The court may designate volunteer advocates, who may or may not be attorneys
48 licensed to practice law, to assist in the performance of the guardian ad litem duties for the
49 court. Nonattorney volunteer advocates **may assist in the performance of the guardian ad**
50 **litem duties but shall not serve as guardian ad litem or** provide legal representation. The
51 court shall have the authority to examine the general and criminal background of persons
52 designated as volunteer advocates, including utilization of the family care safety registry and
53 access line pursuant to sections 210.900 to ~~[210.937]~~ **210.936**, to ensure the safety and
54 welfare of the children such persons are designated to represent. The volunteer advocate shall

55 be provided with all reports relevant to the case made to or by any agency or person, shall
56 have access to all records of such agencies or persons relating to the child or such child's
57 family members or placements of the child, and upon designation by the court to a case, shall
58 be informed of and have the right to attend any and all family support team meetings
59 involving the child. Any such designated person shall receive no compensation from public
60 funds. This shall not preclude reimbursement for reasonable expenses.

61 7. Any person appointed to perform guardian ad litem duties shall have completed a
62 training program in permanency planning and shall advocate for timely court hearings
63 whenever possible to attain permanency for a child as expeditiously as possible to reduce the
64 effects that prolonged foster care may have on a child. A nonattorney volunteer advocate
65 shall have access to a court appointed attorney guardian ad litem should the circumstances of
66 the particular case so require.

67 **8. In any proceeding under sections 210.110 to 210.165 except proceedings under**
68 **subsection 6 of section 210.152; sections 210.700 to 210.760; sections 211.442 to 211.487;**
69 **or sections 453.005 to 453.170, the guardian ad litem shall perform all duties required by**
70 **the Missouri supreme court standards with comments for guardians ad litem including,**
71 **but not limited to, the following:**

72 **(1) Within a reasonable time frame following the appointment of the guardian**
73 **ad litem and considering the age and emotional, physical, and psychological situation of**
74 **the minor child, establishing contact with the minor child. Any meeting with the minor**
75 **child shall occur in a private setting at a time and place that allows the guardian ad**
76 **litem to observe the child and ascertain the child's wishes, safety, and needs, to the**
77 **extent practicable, and the need for further meetings and investigation;**

78 **(2) Being the legal representative of the best interests of the child at the hearing.**
79 **The guardian ad litem may examine, cross-examine, and subpoena witnesses; may offer**
80 **testimony and evidence; and shall submit a proposed parenting plan, if required or**
81 **requested by the court or as deemed necessary as part of the guardian ad litem's**
82 **recommendation, on behalf of the best interests of the minor child before the case is**
83 **submitted to the court;**

84 **(3) Prior to a hearing, conducting all reasonably necessary interviews, as soon as**
85 **practicable, with persons having contact with or knowledge of the child in order to**
86 **ascertain the child's wishes, feelings, attachments, and attitudes, including the parents**
87 **or guardians of the child;**

88 **(4) If the guardian ad litem's current caseload does not permit timely execution**
89 **of duties, declining an appointment by the court; and**

90 **(5) Responding to all requests for communication in a timely manner.**

91 **9. A court-appointed guardian ad litem may request permission from the court**
92 **to withdraw in any proceeding for cause shown.**

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal
2 separation where custody, visitation, or support of a child is a contested issue **or any**
3 **proceeding under section 210.830**, the court may appoint a guardian ad litem.
4 Disqualification of a guardian ad litem shall be ordered in any legal proceeding only
5 pursuant to this chapter, upon the filing of a written application by any party within ten days
6 of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to
7 August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem
8 appointed under this subsection in each proceeding, **including any subsequent proceeding**,
9 except a party may be entitled to additional disqualifications of a guardian ad litem for good
10 cause shown.

11 2. The court shall appoint a guardian ad litem in any proceeding in which child abuse
12 or neglect is alleged.

13 3. The guardian ad litem shall **perform all duties required by the Missouri**
14 **supreme court standards with comments for guardians ad litem including, but not**
15 **limited to:**

16 (1) ~~[Be]~~ **Within a reasonable time following the appointment of the guardian ad**
17 **litem and considering the age and emotional, physical, and psychological situation of the**
18 **minor child, establishing contact with the minor child. Any meeting with the minor**
19 **child shall occur in a private setting at a time and place that allows the guardian ad**
20 **litem to observe the child and ascertain the child's wishes, safety, and needs, to the**
21 **extent practicable, and the need for further meetings and investigation;**

22 (2) **Being the legal representative of the best interests of the child at the hearing**~~;~~
23 ~~and].~~ **The guardian ad litem may examine, cross-examine, and subpoena witnesses** ~~[and];~~
24 **may offer testimony; and shall submit a proposed parenting plan, if required or**
25 **requested by the court or as deemed necessary as part of the guardian ad litem's**
26 **recommendation, on behalf of the best interest of the minor child before the case is**
27 **submitted to the court;**

28 ~~[(2)]~~ (3) Prior to ~~[the]~~ a hearing, ~~[conduct]~~ **conducting all reasonably necessary**
29 **interviews, as soon as practicable**, with persons having contact with or knowledge of the
30 child in order to ascertain the child's wishes, feelings, attachments, and attitudes~~[-]~~, **including**
31 **the parents or guardians of the child, and, if appropriate, the child** ~~[should be interviewed];~~

32 (4) **If the guardian ad litem's current caseload does not permit timely execution**
33 **of duties, declining an appointment by the court;**

34 (5) **Responding to all reasonable requests for communication in a timely**
35 **manner; and**

36 ~~[(3) Request]~~ **(6) Requesting** the juvenile officer to cause a petition to be filed in the
37 juvenile division of the circuit court if the guardian ad litem believes the child alleged to be
38 abused or neglected is in danger.

39 4. The appointing judge shall require the guardian ad litem to faithfully discharge
40 such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad
41 litem and appoint another. The judge in making appointments pursuant to this section shall
42 give preference to persons who served as guardian ad litem for the child in the earlier
43 proceeding, unless there is a reason on the record for not giving such preference.

44 5. The guardian ad litem shall be awarded a reasonable fee for such services to be set
45 by the court. **Every ninety days during the appointment and prior to each hearing, the**
46 **guardian ad litem shall provide the parties to the proceeding with a statement reflecting**
47 **each date services were rendered, a generalized description of services, the hourly rate**
48 **charged, and the time spent on the date services were rendered.** The court, in its
49 discretion, may:

50 (1) ~~[Issue a direct payment order to the parties.]~~ If a party fails to comply with the
51 court's direct payment order, ~~[the court may]~~ find such party to be in contempt of court or
52 **sanction such party;**

53 (2) **Allocate reasonable costs and fees for services provided by the guardian ad**
54 **litem to the parties to the proceeding. Upon motion of the court or the guardian ad**
55 **litem, the court may order one or both parties to pay the guardian ad litem a deposit to**
56 **be applied to such fees and costs; or**

57 ~~[(2)]~~ (3) Award such fees as a judgment to be paid by any party to the proceedings or
58 from public funds. Such an award of guardian fees shall constitute a final judgment in favor
59 of the guardian ad litem. Such final judgment shall be enforceable against the parties in
60 accordance with chapter 513.

61 6. **In any proceeding where the court has appointed a guardian ad litem, the**
62 **legal custodian or party to the proceeding shall, upon the request of the guardian ad**
63 **litem, provide to the guardian ad litem:**

64 (1) **The location of and all relevant information concerning the minor child;**

65 (2) **Reasonable access to the minor child upon request of the guardian ad litem;**
66 **and**

67 (3) **Any release required by the guardian ad litem to obtain reasonable**
68 **information and records concerning the minor child.**

69 7. The department of social services and law enforcement shall provide to the
70 **guardian ad litem all reasonable information requested by the guardian ad litem within**
71 **thirty days of the request.**

72 **8. Any party aggrieved by a guardian ad litem's failure to satisfy the duties**
73 **enumerated under this section or under section 484.350 may apply by motion for**
74 **appointment of a substitute guardian ad litem for good cause shown.**

75 **9. A court-appointed guardian ad litem may request permission from the court**
76 **to withdraw in any proceeding for good cause shown.**

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