

ENROLLED ACT NO. 40, SENATE

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2012 BUDGET SESSION

AN ACT relating to children; providing for continuation of a guardian ad litem program administered by the state public defender's office; statutorily establishing and making modifications to the program; requiring appointment of the program for guardian ad litem cases as specified; providing for county participation and reimbursement; providing for liability of nonparticipating counties for guardian ad litem costs as specified; providing for coverage of attorneys providing guardian ad litem program services under the Wyoming Governmental Claims Act and state self-insurance program; authorizing payments for guardian ad litem services as specified; authorizing rulemaking; specifying standards for the program and participants; making conforming amendments; providing for funding; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. The guardian ad litem program initially authorized by 2005 Wyoming Session Laws, Chapter 237 and transferred to the state public defender's office pursuant to 2008 Wyoming Session Laws, Chapter 48, Section 316 is authorized and continued by this act and shall be administered as provided in this act.

Section 2. W.S. 14-12-101 through 14-12-104 are created to read:

CHAPTER 12
GUARDIAN AD LITEM PROGRAM

ARTICLE 1
GUARDIAN AD LITEM PROGRAM

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14-12-101. Guardian ad litem program; administration by the public defender's office; standards; rulemaking.

(a) The office of the state public defender shall administer a guardian ad litem program. The program shall employ or contract with, supervise and manage attorneys providing legal representation as guardians ad litem in the following cases and actions:

(i) Child protection cases under W.S. 14-3-101 through 14-3-440;

(ii) Children in need of supervision cases under W.S. 14-6-401 through 14-6-440, to the extent an attorney has been appointed to serve only as a guardian ad litem;

(iii) Delinquency cases under W.S. 14-6-201 through 14-6-252, to the extent an attorney has been appointed to serve only as a guardian ad litem;

(iv) Termination of parental rights actions under W.S. 14-2-308 through 14-2-319, brought as a result of a child protection, child in need of supervision or delinquency action;

(v) Appeals to the Wyoming supreme court in the cases or actions specified in this subsection.

(b) The program shall be administered by an administrator appointed by the state public defender. The administrator shall be an attorney in good standing with the Wyoming state bar with experience in guardian ad litem representation, child welfare and juvenile justice.

(c) The office shall adopt policies and rules and regulations governing standards for the legal

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representation by attorneys acting as guardians ad litem in cases under the program and for the training of those attorneys. The policies and rules shall ensure that the program will be separate and distinct from the office's performance of duties involving criminal defense and representation of a juvenile other than as a guardian ad litem in delinquency proceedings. To the maximum extent possible, the policies and rules shall ensure all fiscal and information technology duties for the program are kept separate from the fiscal and information technology duties for the office of the public defender. Any attorney providing services to the program as a guardian ad litem shall meet the standards established by the office for the program.

14-12-102. Appointment of program to provide guardian ad litem services.

(a) In cases specified in W.S. 14-12-101(a), if the county in which the court is located participates in the program:

(i) The court shall appoint the program to provide services when appointing a guardian ad litem;

(ii) The administrator or designee shall assign an attorney to act as guardian ad litem in accordance with the court's order.

(b) The program shall cooperate with juvenile courts in developing a case appointment system in each participating county for all applicable cases requiring the appointment of a guardian ad litem.

(c) An attorney accepting a guardian ad litem assignment under the program shall be employed by or

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contract with the program to provide services in accordance with program requirements. The contract shall specify the fees to be paid for the assignment, which may be a defined hourly or per case rate or a defined sum. Fees paid by the program may vary based upon the type and difficulty of the case, location, work required and experience.

14-12-103. County participation; reimbursement; offices and equipment.

(a) The office of the state public defender shall enter into agreements with each county participating in the program. Agreements shall require counties to comply with all program rules and policies. The agreement shall establish the compensation rate within the county for attorneys providing legal representation as guardians ad litem in program cases and the reimbursement requirements. A county may agree with an attorney providing services under the program to pay a rate in excess of the rate set for payment by the program. If a county agrees to do so, it shall enter into a separate contract with the attorney providing services and shall be responsible and obligated to reimburse the program for one hundred percent (100%) of the excess amount. The county shall enter into a separate agreement with the office setting out the agreement, the excess rate and the responsibilities and obligations of all parties.

(b) The program shall pay from the guardian ad litem account one hundred percent (100%) of the fees for the legal representation of children by attorneys as guardians ad litem in program cases. Participating counties shall reimburse the program an amount equal to not less than twenty-five percent (25%) of the agreed program fees, not less than twenty-five percent (25%) of the program's administrative cost prorated by program funds expended in

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each county and one hundred percent (100%) of excess rate fees. The program shall invoice the county for its proportionate share. In the event a county does not make payments within ninety (90) days, the state treasurer may deduct the amount from sales tax revenues due to the county from the state and shall credit the amount to the program account.

(c) There is created a guardian ad litem account. All reimbursements received under the program shall be deposited to the account. Funds within the account are continuously appropriated to the public defender's office for expenditure for the sole purpose of the guardian ad litem program.

(d) Agreements entered into under this section shall include provision for each county, in which guardians ad litem employed by or under contract with the program are located, to provide separate from any public defender field office, adequate space and utility services, other than telephone service, for the use of the program's guardians ad litem. If suitable office space for all guardians ad litem cannot be provided, the county shall provide, based upon a proportional share, a monthly stipend to all program guardians ad litem housed in private facilities. The proportional share shall be determined by the program, based upon the counties served by each guardian ad litem not provided suitable office space. The stipend shall be paid directly by the county to the program guardian ad litem.

(e) A county which does not participate in the program, shall be responsible for the full cost of guardians ad litem legal fees as provided by W.S. 14-2-318(b)(i), 14-3-434(b)(vi), 14-6-235(b)(vi) and 14-6-434(b)(vi).

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(f) The office shall enter into a memorandum of understanding with the department of family services under which a guardian ad litem will be provided for cases in which the department is required by law or court order to provide guardian ad litem services in any of the cases or actions specified in W.S. 14-12-101(a). The department shall reimburse the program an amount equal to not less than twenty-five percent (25%) of the agreed program fees paid to guardians ad litem in actions under this subsection.

14-12-104. Applicability of the Wyoming Governmental Claims Act and state self-insurance program.

Notwithstanding any other provision of law to the contrary, any attorney providing services for the office pursuant to the guardian ad litem program shall, for matters arising out of such services, be considered a state employee for purposes of coverage and representation under the Wyoming Governmental Claims Act, W.S. 1-39-101 through 1-39-121, and the state self-insurance program, W.S. 1-41-101 through 1-41-111.

Section 3. W.S. 1-39-103(a)(iv)(B) and by creating a new subparagraph (F), 1-41-102(a)(v)(B)(I) and by creating a new subparagraph (D), 7-6-103(c)(vi) and by creating a new paragraph (viii), 7-6-106(d)(i) and by creating a new paragraph (iii), 7-6-112(a)(iii) and by creating a new paragraph (v) and 7-6-113 by creating a new subsection (d), 14-2-318(b)(i) and (d)(iii), 14-3-434(b)(vi) and (c), 14-6-235(b)(vi) and (c) and 14-6-434(b)(vi) and (c) are amended to read:

1-39-103. Definitions.

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(a) As used in this act:

(iv) "Public employee":

(B) Does not include an independent contractor, except as provided in ~~subparagraph~~ subparagraphs (C) and (F) of this paragraph, or a judicial officer exercising the authority vested in him;

(F) Includes contract attorneys in the course of providing contract services for the state public defenders office as provided in W.S. 7-6-103(k) or 14-12-104.

1-41-102. Definitions.

(a) As used in this act:

(v) "Public employee" means any officer, employee or servant of the state, provided the term:

(B) Does not include:

(I) An independent contractor except as provided in ~~subparagraph~~ subparagraphs (C) and (D) of this paragraph;

(D) Includes contract attorneys in the course of providing contract services for the state public defenders office as provided in W.S. 7-6-103(k) or 14-12-104.

7-6-103. Creation of office of state public defender; appointment of state public defender and assistants; duties; removal.

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(c) The state public defender shall:

(vi) Promulgate rules and regulations establishing a standard fee schedule for services provided by attorneys appointed pursuant to W.S. 7-6-109; ~~and~~

(viii) Administer the guardian ad litem program as provided in W.S. 14-12-101 through 14-12-104.

7-6-106. Determination of need; reimbursement for services.

(d) The state public defender shall report in the agency's annual report concerning:

(i) The number of cases by court in which an attorney was appointed to represent a person at public expense under this act during the preceding calendar quarter; ~~and~~

(iii) For the guardian ad litem program, the number of cases, the amount of monies expended and the amounts of reimbursements from participating counties.

7-6-112. Applicability of provisions.

(a) This act does not apply to:

(iii) Representation of a person charged in municipal court with violation of a municipal ordinance; ~~or~~

(v) Administration of the guardian ad litem program under W.S. 14-12-101 through 14-12-104, except as provided in W.S. 7-6-103(c)(viii) and 7-6-106(d)(iii).

7-6-113. Funding.

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(d) The provisions of this section shall not be applicable to the guardian ad litem program administered by the office of the public defender and the budget for that program shall be as provided in W.S. 14-12-101 through 14-12-104.

14-2-318. Costs of proceedings; appointment of counsel.

(b) Where petitioner is an authorized agency as defined by W.S. 14-2-308(a)(ii)(B), it shall pay for the costs of the action. Costs shall include:

(i) Fee for the guardian ad litem. If the agency had entered into an agreement with the guardian ad litem program pursuant to W.S. 14-12-101 through 14-12-104 and the program was appointed to provide the guardian ad litem, the program shall pay the fee for the guardian ad litem in accordance with that agreement;

(d) Where petitioner is an authorized agency as defined by W.S. 14-2-308(a)(ii)(A):

(iii) The authorized agency shall pay the guardian ad litem reasonable fees and expenses approved by the court unless the agency had entered into an agreement with the guardian ad litem program pursuant to W.S. 14-12-101 through 14-12-104 and the program was appointed to provide the guardian ad litem. If so, the program shall pay the fee for the guardian ad litem in accordance with that agreement.

14-3-434. Fees, costs and expenses.

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(b) The following costs and expenses, when approved and certified by the court to the county treasurer, shall be a charge upon the funds of the county where the proceedings are held and shall be paid by the board of county commissioners of that county:

(vi) Reasonable compensation for services and costs of a guardian ad litem appointed by the court, unless the county participates in the guardian ad litem program pursuant to W.S. 14-12-101 through 14-12-104 and the program was appointed to provide the guardian ad litem; and

(c) In every case in which a guardian ad litem has been appointed to represent the child under this act or in which counsel has been appointed under this act to represent the child's parents, guardian or custodian, the court shall determine whether the child's parents, guardian, custodian or other person responsible for the child's support is able to pay part or all of the costs of representation and shall enter specific findings on the record. If the court determines that any of the parties is able to pay any amount as reimbursement for costs of representation, the court shall order reimbursement or shall state on the record the reasons why reimbursement was not ordered. The court may also in any case order that all or any part of the costs and expenses enumerated in paragraphs (b)(i), (iii), (iv) and (vii) of this section, be reimbursed to the county by the child's parents or any person legally obligated for his support, or any of them jointly and severally, upon terms the court may direct. An order for reimbursement of costs made pursuant to this subsection may be enforced as provided in W.S. 14-3-435. Any reimbursement ordered for guardian ad litem services provided pursuant to W.S. 14-12-101 through 14-12-104 shall be apportioned between the county and the guardian ad litem

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program in accordance with payments made for those services.

14-6-235. Fees, costs and expenses.

(b) The following costs and expenses, when approved and certified by the court to the county treasurer, shall be a charge upon the funds of the county where the proceedings are held and shall be paid by the board of county commissioners of that county:

(vi) Reasonable compensation for services and costs of a guardian ad litem appointed by the court, unless the county participates in the guardian ad litem program pursuant to W.S. 14-12-101 through 14-12-104 and the program was appointed to provide the guardian ad litem; and

(c) Legal services rendered to a child for his benefit and protection are necessities which the child's parents or any person obligated by law for the child's support may be held responsible. In every case in which a guardian ad litem has been appointed to represent the child under W.S. 14-6-216 or in which counsel has been appointed under W.S. 14-6-222 to represent the child, the child's parents, guardian or other person responsible for the child's support, the court shall determine whether the child, the child's parents, guardian or other person responsible for the child's support is able to pay part or all of the costs of representation and shall enter specific findings on the record. If the court determines that any of the parties is able to pay any amount as reimbursement for costs of representation, the court shall order reimbursement or shall state on the record the reasons why reimbursement was not ordered. The court may also in any case order that all or any part of the costs and expenses enumerated in paragraphs (b)(i), (iii), (iv) and (vii) of

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this section, be reimbursed to the county by the child, his parents or any person legally obligated for his support, or any of them jointly and severally, upon terms the court may direct. An order for reimbursement of costs made pursuant to this subsection may be enforced as provided in W.S. 14-6-236. Any reimbursement ordered for guardian ad litem services provided pursuant to W.S. 14-12-101 through 14-12-104 shall be apportioned between the county and the guardian ad litem program in accordance with payments made for those services.

14-6-434. Fees, costs and expenses.

(b) The following costs and expenses, when approved and certified by the court to the county treasurer, shall be a charge upon the funds of the county where the proceedings are held and shall be paid by the board of county commissioners of that county:

(vi) Reasonable compensation for services and costs of a guardian ad litem appointed by the court, unless the county participates in the guardian ad litem program pursuant to W.S. 14-12-101 through 14-12-104 and the program was appointed to provide the guardian ad litem; and

(c) In every case in which a guardian ad litem has been appointed to represent the child under this act or in which counsel has been appointed under this act to represent a child or the child's parents, guardian or custodian, the court shall determine whether the child, the child's parents, guardian, custodian or other person responsible for the child's support is able to pay part or all of the costs of representation and shall enter specific findings on the record. If the court determines that any of the parties is able to pay any amount as reimbursement for costs of representation, the court shall order

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reimbursement or shall state on the record the reasons why reimbursement was not ordered. The court may also in any case order that all or any part of the costs and expenses enumerated in paragraphs (b)(i), (iii), (iv) and (vii) of this section, be reimbursed to the county by the child, the child's parents or any person legally obligated for his support, or any of them jointly and severally, upon terms the court may direct. An order for reimbursement of costs made pursuant to this subsection may be enforced as provided in W.S. 14-6-435. Any reimbursement ordered for guardian ad litem services provided pursuant to W.S. 14-12-101 through 14-12-104 shall be apportioned between the county and the guardian ad litem program in accordance with payments made for those services.

Section 4. All funds previously appropriated to the state public defender's office for the guardian ad litem program or appropriated to that office for the program under 2012 Senate File 1 shall be deposited to the guardian ad litem account created by this act and may be expended as provided by this act.

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Section 5. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk