

FIRST REGULAR SESSION

HOUSE BILL NO. 717

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEELY.

1509H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 210.160 and 452.423, RSMo, and to enact in lieu thereof two new sections relating to the appointment of a guardian ad litem in child abuse and neglect cases.

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Section A. Sections 210.160 and 452.423, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 210.160 and 452.423, to read as follows: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 judicial proceeding, the judge shall **petition the public administrator to** appoint a guardian ad litem to appear for and represent:

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

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

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

3. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person, shall have access to all records of such agencies or persons relating to the child or such child's family members or placements of the child, and upon appointment by the court to a case, shall be informed of and have the right to attend any and all family support

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 team meetings involving the child. Employees of the division, officers of the court, and
19 employees of any agency involved shall fully inform the guardian ad litem of all aspects of the
20 case of which they have knowledge or belief.

21 4. The [appointing] **petitioning** judge shall require the guardian ad litem to faithfully
22 discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian
23 ad litem and appoint another. The [appointing] **petitioning** judge shall have the authority to
24 examine the general and criminal background of persons appointed as guardians ad litem,
25 including utilization of the family care safety registry and access line pursuant to sections
26 210.900 to 210.937, to ensure the safety and welfare of the children such persons are appointed
27 to represent. The judge in making appointments pursuant to this section shall give preference
28 to persons who served as guardian ad litem for the child in the earlier proceeding, unless there
29 is a reason on the record for not giving such preference.

30 5. The guardian ad litem may be awarded a reasonable fee for such services to be set by
31 the court. The court, in its discretion, may award such fees as a judgment to be paid by any party
32 to the proceedings or from public funds. However, no fees as a judgment shall be taxed against
33 a party or parties who have not been found to have abused or neglected a child or children. Such
34 an award of guardian fees shall constitute a final judgment in favor of the guardian ad litem.
35 Such final judgment shall be enforceable against the parties in accordance with chapter 513.

36 6. The court may designate volunteer advocates, who may or may not be attorneys
37 licensed to practice law, to assist in the performance of the guardian ad litem duties for the court.
38 Nonattorney volunteer advocates shall not provide legal representation. The court shall have the
39 authority to examine the general and criminal background of persons designated as volunteer
40 advocates, including utilization of the family care safety registry and access line pursuant to
41 sections 210.900 to 210.937, to ensure the safety and welfare of the children such persons are
42 designated to represent. The volunteer advocate shall be provided with all reports relevant to the
43 case made to or by any agency or person, shall have access to all records of such agencies or
44 persons relating to the child or such child's family members or placements of the child, and upon
45 designation by the court to a case, shall be informed of and have the right to attend any and all
46 family support team meetings involving the child. Any such designated person shall receive no
47 compensation from public funds. This shall not preclude reimbursement for reasonable
48 expenses.

49 7. Any person appointed to perform guardian ad litem duties shall have completed a
50 training program in permanency planning and shall advocate for timely court hearings whenever
51 possible to attain permanency for a child as expeditiously as possible to reduce the effects that
52 prolonged foster care may have on a child. A nonattorney volunteer advocate shall have access

53 to a court appointed attorney guardian ad litem should the circumstances of the particular case
54 so require.

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, the court may
3 appoint a guardian ad litem. Disqualification of a guardian ad litem shall be ordered in any legal
4 proceeding only pursuant to this chapter, upon the filing of a written application by any party
5 within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs
6 prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad
7 litem appointed under this subsection in each proceeding, except a party may be entitled to
8 additional disqualifications of a guardian ad litem for good cause shown.

9 2. The court shall **petition the public administrator to** appoint a guardian ad litem in
10 any proceeding in which child abuse or neglect is alleged.

11 3. The guardian ad litem shall:

12 (1) Be the legal representative of the child at the hearing, and may examine,
13 cross-examine, subpoena witnesses and offer testimony;

14 (2) Prior to the hearing, conduct all necessary interviews with persons having contact
15 with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and
16 attitudes. If appropriate, the child should be interviewed;

17 (3) Request the juvenile officer to cause a petition to be filed in the juvenile division of
18 the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is
19 in danger.

20 4. The [appointing] **petitioning** judge shall require the guardian ad litem to faithfully
21 discharge such guardian ad litem's duties, and upon failure to do so shall discharge such guardian
22 ad litem and appoint another. The [judge] **public administrator** in making appointments
23 pursuant to this section shall give preference to persons who served as guardian ad litem for the
24 child in the earlier proceeding, unless there is a reason on the record for not giving such
25 preference.

26 5. The guardian ad litem shall be awarded a reasonable fee for such services to be set by
27 the court. The court, in its discretion, may:

28 (1) Issue a direct payment order to the parties. If a party fails to comply with the court's
29 direct payment order, the court may find such party to be in contempt of court; or

30 (2) Award such fees as a judgment to be paid by any party to the proceedings or from
31 public funds. Such an award of guardian fees shall constitute a final judgment in favor of the
32 guardian ad litem. Such final judgment shall be enforceable against the parties in accordance
33 with chapter 513.

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