

SENATE BILL NO. 1236

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

3593S.01H

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 210.160, 210.830, 211.211, and 211.462, RSMo, and to enact in lieu thereof four new sections relating to legal representation in certain court proceedings involving children.

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

Section A. Sections 210.160, 210.830, 211.211, and
2 211.462, RSMo, are repealed and four new sections enacted in
3 lieu thereof, to be known as sections 210.160, 210.830, 211.211,
4 and 211.462, to read as follows:

210.160. 1. **All children subject to court proceedings
2 involving allegations of child abuse or neglect shall be
3 appointed counsel for as long as the court has jurisdiction.**

4 2. In every case involving an abused or neglected
5 child which results in a judicial proceeding, the judge
6 **[shall] may** appoint a guardian ad litem to appear for and
7 represent:

8 (1) A child who is the subject of proceedings pursuant
9 to sections 210.110 to 210.165 except proceedings under
10 subsection 6 of section 210.152, sections 210.700 to
11 210.760, sections 211.442 to 211.487, or sections 453.005 to
12 453.170, or proceedings to determine custody or visitation
13 rights under sections 452.375 to 452.410; or

14 (2) A parent who is a minor, or who is a mentally ill
15 person or otherwise incompetent, and whose child is the
16 subject of proceedings under sections 210.110 to 210.165,

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 sections 210.700 to 210.760, sections 211.442 to 211.487, or
18 sections 453.005 to 453.170.

19 [2.] 3. The judge, either sua sponte or upon motion of
20 a party, may appoint a guardian ad litem to appear for and
21 represent an abused or neglected child involved in
22 proceedings arising under subsection 6 of section 210.152.

23 [3.] 4. The guardian ad litem shall be provided with
24 all reports relevant to the case made to or by any agency or
25 person, shall have access to all records of such agencies or
26 persons relating to the child or such child's family members
27 or placements of the child, and upon appointment by the
28 court to a case, shall be informed of and have the right to
29 attend any and all family support team meetings involving
30 the child. Employees of the division, officers of the
31 court, and employees of any agency involved shall fully
32 inform the guardian ad litem of all aspects of the case of
33 which they have knowledge or belief.

34 [4.] 5. The appointing judge shall require the
35 guardian ad litem to faithfully discharge such guardian ad
36 litem's duties, and upon failure to do so shall discharge
37 such guardian ad litem and appoint another. The appointing
38 judge shall have the authority to examine the general and
39 criminal background of persons appointed as guardians ad
40 litem, including utilization of the family care safety
41 registry and access line pursuant to sections 210.900 to
42 210.937, to ensure the safety and welfare of the children
43 such persons are appointed to represent. The judge in
44 making appointments pursuant to this section shall give
45 preference to persons who served as guardian ad litem for
46 the child in the earlier proceeding, unless there is a
47 reason on the record for not giving such preference.

48 [5.] 6. The guardian ad litem may be awarded a
49 reasonable fee for such services to be set by the court.
50 The court, in its discretion, may award such fees as a
51 judgment to be paid by any party to the proceedings or from
52 public funds. However, no fees as a judgment shall be taxed
53 against a party or parties who have not been found to have
54 abused or neglected a child or children. Such an award of
55 guardian fees shall constitute a final judgment in favor of
56 the guardian ad litem. Such final judgment shall be
57 enforceable against the parties in accordance with chapter
58 513.

59 [6.] 7. The court may designate volunteer advocates,
60 who may or may not be attorneys licensed to practice law, to
61 assist in the performance of the guardian ad litem duties
62 for the court. Nonattorney volunteer advocates shall not
63 provide legal representation. The court shall have the
64 authority to examine the general and criminal background of
65 persons designated as volunteer advocates, including
66 utilization of the family care safety registry and access
67 line pursuant to sections 210.900 to 210.937, to ensure the
68 safety and welfare of the children such persons are
69 designated to represent. The volunteer advocate shall be
70 provided with all reports relevant to the case made to or by
71 any agency or person, shall have access to all records of
72 such agencies or persons relating to the child or such
73 child's family members or placements of the child, and upon
74 designation by the court to a case, shall be informed of and
75 have the right to attend any and all family support team
76 meetings involving the child. Any such designated person
77 shall receive no compensation from public funds. This shall
78 not preclude reimbursement for reasonable expenses.

79 [7.] 8. Any person appointed to perform guardian ad
80 litem duties shall have completed a training program in
81 permanency planning and shall advocate for timely court
82 hearings whenever possible to attain permanency for a child
83 as expeditiously as possible to reduce the effects that
84 prolonged foster care may have on a child. A nonattorney
85 volunteer advocate shall have access to a court appointed
86 attorney guardian ad litem should the circumstances of the
87 particular case so require.

210.830. The child shall be made a party to any action
2 commenced under sections 210.817 to 210.852. If he or she
3 is a minor, he or she may be represented by a next friend
4 appointed for him or her for any such action. The child's
5 mother or father or the family support division or any
6 person having physical or legal custody of the child may
7 represent him or her as his or her next friend. **Counsel**
8 **shall be appointed and** a guardian ad litem [shall] **may** be
9 appointed for the child only if child abuse or neglect is
10 alleged, or if the child is named as a defendant, or if the
11 court determines that the interests of the child and his or
12 her next friend are in conflict. The natural mother, each
13 man presumed to be the father under section 210.822, and
14 each man alleged to be the natural father, shall be made
15 parties or, if not subject to the jurisdiction of the court,
16 shall be given notice of the action in a manner prescribed
17 by the court and an opportunity to be heard. The court may
18 align the parties.

211.211. 1. [A child is entitled to be represented by
2 counsel in all proceedings under subdivision (2) or (3) of
3 subsection 1 of section 211.031 and by a guardian ad litem
4 in all proceedings under subdivision (1) of subsection 1 of
5 section 211.031.]

6 **2.] (1)** The court shall appoint counsel for a child
7 [prior to the filing of a petition if a request is made
8 therefor to the court and the court finds that the child is
9 the subject of a juvenile court proceeding and that the
10 child making the request is indigent] **in a delinquency,**
11 **child abuse or neglect, or termination of parental rights**
12 **proceeding that is conducted under this chapter. Counsel**
13 **shall be appointed before the first hearing and shall**
14 **represent the child at all stages of the proceeding and, in**
15 **a protective custody proceeding, through permanency,**
16 **including appeal. The child and the child's parent or**
17 **guardian shall not be represented by the same counsel.**

18 **[3. (1)** When a petition has been filed under
19 subdivision (2) or (3) of subsection 1 of section 211.031,
20 the court may appoint counsel for the child except if
21 private counsel has entered his or her appearance on behalf
22 of the child or if counsel has been waived in accordance
23 with law; except that, counsel shall not be waived for any
24 proceeding specified under subsection 10 of this section
25 unless the child has had the opportunity to meaningfully
26 consult with counsel and the court has conducted a hearing
27 on the record.]

28 **(2)** If a parent or guardian is found to be indigent
29 and entitled to counsel, the juvenile court shall appoint
30 counsel unless counsel is knowingly, intelligently, and
31 voluntarily waived.

32 **(3)** If [a child waives his or her right to] counsel is
33 waived, such waiver shall be made in open court and be
34 recorded and in writing and shall be made knowingly,
35 intelligently, and voluntarily. In determining whether [a
36 child has] **counsel is** knowingly, intelligently, and
37 voluntarily waived [his or her right to counsel], the court

38 shall look to the totality of the circumstances [including,
39 but not limited to, the child's age, intelligence,
40 background, and experience generally and in the court system
41 specifically; the child's emotional stability; and the
42 complexity of the proceedings].

43 [4.] 2. When a petition has been filed and the child's
44 custodian appears before the court without counsel, the
45 court shall appoint counsel for the custodian if it finds:

46 (1) That the custodian is indigent; and

47 (2) That the custodian desires the appointment of
48 counsel; and

49 (3) That a full and fair hearing requires appointment
50 of counsel for the custodian.

51 [5.] 3. Counsel shall be allowed a reasonable time in
52 which to prepare to represent his client.

53 [6.] 4. Counsel shall serve for all stages of the
54 proceedings, including appeal, unless relieved by the court
55 for good cause shown. If no appeal is taken, services of
56 counsel are terminated following the entry of an order of
57 disposition.

58 [7. The child and his custodian may be represented by
59 the same counsel except where a conflict of interest
60 exists. Where it appears to the court that a conflict
61 exists, it shall order that the child and his custodian be
62 represented by separate counsel, and it shall appoint
63 counsel if required by subsection 3 or 4 of this section.

64 8. When a petition has been filed, a child may waive
65 his or her right to counsel only with the approval of the
66 court and if such waiver is not prohibited under subsection
67 10 of this section. If a child waives his or her right to
68 counsel for any proceeding except proceedings under
69 subsection 10 of this section, the waiver shall only apply

70 to that proceeding. In any subsequent proceeding, the child
71 shall be informed of his or her right to counsel.

72 **9.] 5.** Waiver of counsel **[by a child]** may be withdrawn
73 at any stage of the proceeding, in which event the court
74 shall appoint counsel **[for the child if]** **as** required by
75 **[subsection 3 of]** this section.

76 **[10.] 6.** A child's right to be represented by counsel
77 shall not be waived in any of the following proceedings:

78 (1) At any contested detention hearing under Missouri
79 supreme court rule 127.08 where the petitioner alleges that
80 the child violated any law that, if committed by an adult,
81 would be a felony unless an agreement is otherwise reached;

82 (2) At a certification hearing under section 211.071
83 or a dismissal hearing under Missouri supreme court rule
84 129.04;

85 (3) At an adjudication hearing under Missouri supreme
86 court rule 128.02 for any felony offense or at any detention
87 hearing arising from a misdemeanor or felony motion to
88 modify or revoke, including the acceptance of an admission;

89 (4) At a dispositional hearing under Missouri supreme
90 court rule 128.03; **[or]**

91 (5) At a hearing on a motion to modify or revoke
92 supervision under subdivision (2) or (3) of subsection 1 of
93 section 211.031; **or**

94 **(6) At a hearing that the court has appointed counsel**
95 **for a child under subdivision (1) of subsection 1 of this**
96 **section.**

97 **7. In all juvenile proceedings in which the protective**
98 **custody petition includes an allegation that the child is**
99 **abused or neglected, the court may appoint a guardian ad**
100 **litem to protect the child's best interest. The guardian ad**
101 **litem shall not be the child's counsel.**

102 8. The Missouri supreme court shall establish
103 standards of practice for counsel and guardians ad litem who
104 are appointed under this section within six months of August
105 28, 2024.

106 9. Annually, the Missouri office of state courts
107 administrator shall make available aggregate data on the
108 number of children who have been appointed counsel under
109 this section.

211.462. 1. In all actions to terminate parental
2 rights, [if not previously appointed pursuant to section
3 210.160,] **counsel shall be appointed, as provided in section**
4 **211.211, and** a guardian ad litem [shall] **may** be appointed,
5 for the child as soon as practicable after the filing of the
6 petition.

7 2. The parent or guardian of the person of the child
8 shall be notified of the right to have counsel, and if they
9 request counsel and are financially unable to employ
10 counsel, counsel shall be appointed by the court. Notice of
11 this provision shall be contained in the summons. When the
12 parent is a minor or incompetent the court shall appoint a
13 guardian ad litem to represent such parent.

14 3. The guardian ad litem shall, during all stages of
15 the proceedings:

16 (1) Be the legal representative [of the child] **for the**
17 **child's best interests**, and may examine, cross-examine,
18 subpoena witnesses and offer testimony. The guardian ad
19 litem may also initiate an appeal of any disposition that he
20 **or she** determines to be adverse to the best interests of the
21 child;

22 (2) Be an advocate for the [child] **child's best**
23 **interests** during the dispositional hearing and aid in
24 securing a permanent placement plan for the child. To

25 ascertain the child's wishes, feelings, attachments, and
26 attitudes, he **or she** shall conduct all necessary interviews
27 with persons, other than the parent, having contact with or
28 knowledge of the child and, if appropriate, with the child;

29 (3) Protect the rights, interest and welfare of a
30 minor or incompetent parent by exercising the powers and
31 duties enumerated in subdivisions (1) and (2) of this
32 subsection.

33 4. Court costs shall be paid by the county in which
34 the proceeding is instituted, except that the court may
35 require the agency or person having or receiving legal or
36 actual custody to pay the costs.

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