

FIRST REGULAR SESSION

SENATE BILL NO. 88

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0665S.011

AN ACT

To repeal section 210.160, 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Section A. Section 210.160, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 210.160 and 484.355, to read as
3 follows:

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

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

9 (2) A parent who is a minor, or who is a mentally ill person or otherwise
10 incompetent, and whose child is the subject of proceedings under sections 210.110
11 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, or sections
12 453.005 to 453.170.

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

16 3. **The guardian ad litem shall establish a relationship with the**
17 **child and shall meet face-to-face with the child in a private setting at**
18 **a time and place that allows the guardian ad litem to observe the child**

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

19 and ascertain the child's wishes, safety and placement needs, and the
20 need for further meetings and investigation. Such initial interview
21 shall take place prior to any initial court appearance and shall occur
22 away from the courthouse. The guardian ad litem shall continue to
23 maintain contact with the child for the duration of the
24 appointment. This duty shall not be designated to any volunteer
25 advocate or other person; however, nothing in this subsection shall be
26 construed to prohibit a volunteer advocate from meeting with the child.

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

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

46 [5.] 6. The guardian ad litem may be awarded a reasonable fee for such
47 services to be set by the court. The court, in its discretion, may award such fees
48 as a judgment to be paid by any party to the proceedings or from public
49 funds. However, no fees as a judgment shall be taxed against a party or parties
50 who have not been found to have abused or neglected a child or children. Such
51 an award of guardian fees shall constitute a final judgment in favor of the
52 guardian ad litem. Such final judgment shall be enforceable against the parties
53 in accordance with chapter 513.

54 [6.] 7. The court may designate volunteer advocates, who may or may not

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

69 [7.] 8. Any person appointed to perform guardian ad litem duties shall
70 have completed a training program in permanency planning and shall advocate
71 for timely court hearings whenever possible to attain permanency for a child as
72 expeditiously as possible to reduce the effects that prolonged foster care may have
73 on a child. A nonattorney volunteer advocate shall have access to a court
74 appointed attorney guardian ad litem should the circumstances of the particular
75 case so require.

**484.355. All family and juvenile courts and guardians ad litem
2 appointed by those courts shall adhere to the following standards, in
3 addition to those developed by Missouri supreme court rule under
4 section 484.350:**

5 **(1) The guardian ad litem shall have a duty to notify the court
6 if his or her case load reaches a level bearing upon his or her ability to
7 meet these standards or to comply with the ethical standards of the
8 rules of professional conduct developed by Missouri supreme court
9 rule;**

10 **(2) The guardian ad litem shall be guided by the best interests
11 of the child and shall exercise judgment on behalf of the child in all
12 matters;**

13 **(3) The guardian ad litem shall provide not only factual
14 information to the court, but shall also diligently advocate a position
15 in the best interests of the child. He or she shall be prepared to**

16 participate fully in any proceedings and not merely defer to the other
17 parties. He or she may examine, cross-examine, subpoena witnesses,
18 and offer testimony. He or she, when appropriate to represent the best
19 interests of the child, shall file petitions, motions, parenting plans,
20 responses, or objections. The court shall assure a guardian ad litem
21 maintains independent representation of the best interests of the
22 child. The court shall require a guardian ad litem to perform his or her
23 duties faithfully and, upon failure to do so, shall discharge the
24 guardian ad litem and appoint another;

25 (4) The guardian ad litem and the child shall have access to each
26 other at reasonable times and places, and this access shall not be
27 restricted or limited by any agency or person without good cause. To
28 ensure proper access, the guardian ad litem shall have the obligation
29 to ascertain the location of the child, to initiate communication with
30 the child, and to provide the child with contact information for the
31 guardian ad litem promptly. The child's legal custodian shall provide
32 the guardian ad litem with timely information regarding the current
33 residence of the child and shall notify the guardian ad litem promptly
34 of any change in placement of the child;

35 (5) The guardian ad litem shall be entitled to all reports relevant
36 to the case and shall have access to all relevant records relating to the
37 child, the placement of the child, or the child's family members;

38 (6) The guardian ad litem shall comply with all statutes, rules,
39 and regulations relating to the receipt of confidential or privileged
40 information received as guardian ad litem. He or she shall not disclose
41 any confidential or privileged information without a valid court order
42 or as required by law or Missouri supreme court rule;

43 (7) The guardian ad litem shall review the progress of a child's
44 case through the court process and advocate for timely hearings,
45 provision of necessary services, and compliance with court orders;

46 (8) The guardian ad litem shall explain, when appropriate, the
47 court process and the role of the guardian ad litem to the child. The
48 guardian ad litem shall ensure that the child is informed of the purpose
49 of each court proceeding;

50 (9) The guardian ad litem shall participate, when appropriate,
51 in the development and negotiation of any service plans, parenting
52 plans, proposed orders, and staffings that affect the best interests of

53 the child as they relate to the case at hand. He or she shall monitor
54 implementation of service plans and court orders while the case is
55 pending to determine whether services ordered by the court are being
56 provided in a timely manner;

57 (10) The guardian ad litem shall appear at all court proceedings
58 in which he or she is appointed. He or she shall not waive the presence
59 of the child at court proceedings without good cause;

60 (11) The guardian ad litem in a pending case shall protect the
61 interests of the child who is a witness in any judicial proceeding in
62 which he or she has been appointed. In matters for which he or she has
63 been appointed, the guardian ad litem shall be present during any
64 conferences between the counsel for a party and the child. He or she
65 shall be notified of all proceedings or meetings involving the child; and

66 (12) The guardian ad litem shall present a recommendation to
67 the court when authorized by law or requested by the court on the
68 basis of evidence presented and consistent with the best interests of the
69 child. During the proceedings, the guardian ad litem shall inform the
70 court of the child's wishes and preferences even though different from
71 the guardian ad litem's recommendation.

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