

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 623

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:

1 Section A. Section 210.160, RSMo, is repealed and two new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

4 210.160. 1. In every case involving an abused or neglected
5 child which results in a judicial proceeding, the judge shall
6 appoint a guardian ad litem to appear for and represent:

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

13 (2) A parent who is a minor, or who is a mentally ill
14 person or otherwise incompetent, and whose child is the subject
15 of proceedings under sections 210.110 to 210.165, sections
16 210.700 to 210.760, sections 211.442 to 211.487, or sections
17 453.005 to 453.170.

18 2. The judge, either sua sponte or upon motion of a party,
19 may appoint a guardian ad litem to appear for and represent an

1 abused or neglected child involved in proceedings arising under
2 subsection 6 of section 210.152.

3 3. The guardian ad litem shall establish a relationship
4 with the child and shall meet face-to-face with the child in a
5 private setting at a time and place that allows the guardian ad
6 litem to observe the child and ascertain the child's wishes,
7 safety and placement needs, and the need for further meetings and
8 investigation. Such initial interview shall take place within
9 three business days following the appointment of the guardian ad
10 litem. The child's current placement or legal custodian shall
11 cooperate with the guardian ad litem to schedule the initial
12 meeting and take all steps necessary to effectuate the meeting.
13 The guardian ad litem shall continue to maintain contact with the
14 child for the duration of the appointment. This duty shall not
15 be designated to any volunteer advocate or other person; however,
16 nothing in this subsection shall be construed to prohibit a
17 volunteer advocate from meeting with the child.

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

1 [4.] 5. The appointing judge shall require the guardian ad
2 litem to faithfully discharge such guardian ad litem's duties,
3 and upon failure to do so shall discharge such guardian ad litem
4 and appoint another. The appointing judge shall have the
5 authority to examine the general and criminal background of
6 persons appointed as guardians ad litem, including utilization of
7 the family care safety registry and access line pursuant to
8 sections 210.900 to 210.937, to ensure the safety and welfare of
9 the children such persons are appointed to represent. The judge
10 in making appointments pursuant to this section shall give
11 preference to persons who served as guardian ad litem for the
12 child in the earlier proceeding, unless there is a reason on the
13 record for not giving such preference.

14 [5.] 6. The guardian ad litem may be awarded a reasonable
15 fee for such services to be set by the court. The court, in its
16 discretion, may award such fees as a judgment to be paid by any
17 party to the proceedings or from public funds. However, no fees
18 as a judgment shall be taxed against a party or parties who have
19 not been found to have abused or neglected a child or children.
20 Such an award of guardian fees shall constitute a final judgment
21 in favor of the guardian ad litem. Such final judgment shall be
22 enforceable against the parties in accordance with chapter 513.

23 [6.] 7. The court may designate volunteer advocates, who
24 may or may not be attorneys licensed to practice law, to assist
25 in the performance of the guardian ad litem duties for the court.
26 Nonattorney volunteer advocates shall not provide legal
27 representation. The court shall have the authority to examine
28 the general and criminal background of persons designated as

1 volunteer advocates, including utilization of the family care
2 safety registry and access line pursuant to sections 210.900 to
3 210.937, to ensure the safety and welfare of the children such
4 persons are designated to represent. The volunteer advocate
5 shall be provided with all reports relevant to the case made to
6 or by any agency or person, shall have access to all records of
7 such agencies or persons relating to the child or such child's
8 family members or placements of the child, and upon designation
9 by the court to a case, shall be informed of and have the right
10 to attend any and all family support team meetings involving the
11 child. Any such designated person shall receive no compensation
12 from public funds. This shall not preclude reimbursement for
13 reasonable expenses.

14 [7.] 8. Any person appointed to perform guardian ad litem
15 duties shall have completed a training program in permanency
16 planning and shall advocate for timely court hearings whenever
17 possible to attain permanency for a child as expeditiously as
18 possible to reduce the effects that prolonged foster care may
19 have on a child. A nonattorney volunteer advocate shall have
20 access to a court appointed attorney guardian ad litem should the
21 circumstances of the particular case so require.

22 484.355. All family and juvenile courts and guardians ad
23 litem appointed by those courts shall adhere to the following
24 standards, in addition to those developed by Missouri supreme
25 court rule under section 484.350, effective September 1, 2011, or
26 successor standards promulgated by the supreme court:

27 (1) The guardian ad litem shall have a duty to notify the
28 court if his or her case load reaches a level bearing upon his or

1 her ability to meet these standards or to comply with the ethical
2 standards of the rules of professional conduct developed by
3 Missouri supreme court rule;

4 (2) The guardian ad litem shall be guided by the best
5 interests of the child and shall exercise judgment on behalf of
6 the child in all matters;

7 (3) The guardian ad litem shall provide not only factual
8 information to the court, but shall also diligently advocate a
9 position in the best interests of the child. He or she shall be
10 prepared to participate fully in any proceedings and not merely
11 defer to the other parties. He or she may examine, cross-
12 examine, subpoena witnesses, and offer testimony. He or she,
13 when appropriate to represent the best interests of the child,
14 shall file petitions, motions, parenting plans, responses, or
15 objections. The court shall assure a guardian ad litem maintains
16 independent representation of the best interests of the child.
17 The court shall require a guardian ad litem to perform his or her
18 duties faithfully and, upon failure to do so, shall discharge the
19 guardian ad litem and appoint another;

20 (4) The guardian ad litem and the child shall have access
21 to each other at reasonable times and places, and this access
22 shall not be restricted or limited by any agency or person
23 without good cause. To ensure proper access, the guardian ad
24 litem shall have the obligation to ascertain the location of the
25 child, to initiate communication with the child, and to provide
26 the child with contact information for the guardian ad litem
27 promptly. The child's legal custodian shall provide the guardian
28 ad litem with timely information regarding the current residence

1 of the child and shall notify the guardian ad litem promptly of
2 any change in placement of the child;

3 (5) The guardian ad litem shall be entitled to all reports
4 relevant to the case and shall have access to all relevant
5 records relating to the child, the placement of the child, or the
6 child's family member;

7 (6) The guardian ad litem shall comply with all statutes,
8 rules, and regulations relating to the receipt of confidential or
9 privileged information received as guardian ad litem. He or she
10 shall not redisclose any confidential or privileged information
11 without a valid court order or as required by law or Missouri
12 supreme court rule;

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

17 (8) The guardian ad litem shall explain, when appropriate,
18 the court process and the role of the guardian ad litem to the
19 child. The guardian ad litem shall ensure that the child is
20 informed of the purpose of each court proceeding;

21 (9) The guardian ad litem shall participate, when
22 appropriate, in the development and negotiation of any service
23 plans, parenting plans, proposed orders, and staffings that
24 affect the best interests of the child as they relate to the case
25 at hand. He or she shall monitor implementation of service plans
26 and court orders while the case is pending to determine whether
27 services ordered by the court are being provided in a timely
28 manner;

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

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

12 (12) The guardian ad litem shall present a recommendation
13 to the court when authorized by law or requested by the court on
14 the basis of evidence presented and consistent with the best
15 interests of the child. During the proceedings, the guardian ad
16 litem shall inform the court of the child's wishes and
17 preferences even though different from the guardian ad litem's
18 recommendation.