

SECOND REGULAR SESSION

# SENATE BILL NO. 623

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

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ADRIANE D. CROUSE, Secretary.

3325S.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Section A. Section 210.160, RSMo, is repealed and two new sections  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 within three business days following the appointment  
22 of the guardian ad litem and shall occur away from the  
23 courthouse. The child's current placement or legal custodian shall  
24 cooperate with the guardian ad litem to schedule the initial meeting  
25 and take all steps necessary to effectuate the meeting. The guardian ad  
26 litem shall continue to maintain contact with the child for the duration  
27 of the appointment. This duty shall not be designated to any volunteer  
28 advocate or other person; however, nothing in this subsection shall be  
29 construed to prohibit a volunteer advocate from meeting with the child.

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

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

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

55 guardian ad litem. Such final judgment shall be enforceable against the parties  
56 in accordance with chapter 513.

57 [6.] 7. The court may designate volunteer advocates, who may or may not  
58 be attorneys licensed to practice law, to assist in the performance of the guardian  
59 ad litem duties for the court. Nonattorney volunteer advocates shall not provide  
60 legal representation. The court shall have the authority to examine the general  
61 and criminal background of persons designated as volunteer advocates, including  
62 utilization of the family care safety registry and access line pursuant to sections  
63 210.900 to 210.937, to ensure the safety and welfare of the children such persons  
64 are designated to represent. The volunteer advocate shall be provided with all  
65 reports relevant to the case made to or by any agency or person, shall have access  
66 to all records of such agencies or persons relating to the child or such child's  
67 family members or placements of the child, and upon designation by the court to  
68 a case, shall be informed of and have the right to attend any and all family  
69 support team meetings involving the child. Any such designated person shall  
70 receive no compensation from public funds. This shall not preclude  
71 reimbursement for reasonable expenses.

72 [7.] 8. Any person appointed to perform guardian ad litem duties shall  
73 have completed a training program in permanency planning and shall advocate  
74 for timely court hearings whenever possible to attain permanency for a child as  
75 expeditiously as possible to reduce the effects that prolonged foster care may have  
76 on a child. A nonattorney volunteer advocate shall have access to a court  
77 appointed attorney guardian ad litem should the circumstances of the particular  
78 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, effective September 1, 2011, or successor standards  
5 promulgated by the supreme court:**

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

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

13 matters;

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

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

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

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

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

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

50 of each court proceeding;

51 (9) The guardian ad litem shall participate, when appropriate,  
52 in the development and negotiation of any service plans, parenting  
53 plans, proposed orders, and staffings that affect the best interests of  
54 the child as they relate to the case at hand. He or she shall monitor  
55 implementation of service plans and court orders while the case is  
56 pending to determine whether services ordered by the court are being  
57 provided in a timely manner;

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

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

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

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