

# SENATE BILL NO. 1040

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROBERTS.

2913S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 210.160 and 211.211, RSMo, and to enact in lieu thereof two 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 and 211.211, RSMo, are  
2 repealed and two new sections enacted in lieu thereof, to be  
3 known as sections 210.160 and 211.211, to read as follows:

210.160. 1. **All children subject to court proceedings**  
2 **involving allegations of child abuse or neglect shall have**  
3 **legal representation as long as the court jurisdiction**  
4 **continues.**

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

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

15 (2) A parent who is a minor, or who is a mentally ill  
16 person or otherwise incompetent, and whose child is the  
17 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.**

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

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

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

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

49           [5.] 6. The guardian ad litem may be awarded a  
50 reasonable fee for such services to be set by the court.  
51 The court, in its discretion, may award such fees as a  
52 judgment to be paid by any party to the proceedings or from  
53 public funds. However, no fees as a judgment shall be taxed  
54 against a party or parties who have not been found to have  
55 abused or neglected a child or children. Such an award of  
56 guardian fees shall constitute a final judgment in favor of  
57 the guardian ad litem. Such final judgment shall be  
58 enforceable against the parties in accordance with chapter  
59 513.

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

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

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, and 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 a  
15 dependency proceeding, through permanency, including  
16 appeal. The child and the child's custodian shall not be  
17 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 child, parent, or guardian is found to be**  
29 **indigent and entitled to counsel, the 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. 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. Counsel shall be allowed a reasonable time in which  
52 to prepare to represent his client.

53 6. 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.] (4) Waiver of counsel [by a child] may be  
73 withdrawn at any stage of the proceeding, in which event the  
74 court shall appoint counsel [for the child if] as required  
75 by [subsection 3 of] this section.

76 [10. 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.]

94 2. In all juvenile proceedings in which the dependency  
95 petition includes an allegation that the child is abused or  
96 neglected, the court may appoint a guardian ad litem to  
97 protect the child's best interest. The guardian ad litem  
98 shall not be the child's counsel.

99 3. The supreme court shall establish standards of  
100 practice for counsel and guardians ad litem pursuant to this  
101 section.

102 4. The office of state courts administrator shall  
103 annually make public available aggregate data of children  
104 appointed counsel pursuant to this section.

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