

# SENATE BILL NO. 477

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRATTIN.

1361S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 452.423, 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Section A. Section 452.423, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.423 and 484.355, to read as follows:

452.423. 1. In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem.

[Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem appointed under this subsection in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.]

2. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged. **Such allegation shall be made by a custodial parent or guardian under oath and with specificity. Such appointment shall be**

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

19 a limited purpose appointment only, for the purpose of  
20 investigating and substantiating the existence of any abuse  
21 or neglect. The guardian ad litem shall complete the  
22 investigation as soon as practicable and, upon completion,  
23 shall file a written report with the court that shall be  
24 made available to all parties. If the guardian ad litem,  
25 following the investigation, determines the allegations of  
26 abuse or neglect are not substantiated, the guardian ad  
27 litem shall be discharged by the court forthwith and any  
28 guardian ad litem fees shall be paid by the party who made  
29 the unsubstantiated allegations of abuse or neglect and all  
30 other fees shall be allocated at the court's discretion.

31 3. (1) An appointment under this section may be for a  
32 limited purpose when made on the court's own motion, the  
33 motion of a party, by agreement of the parties, or in  
34 accordance with the provisions of subsection 2 of this  
35 section. Such limited purpose shall be specified in the  
36 court's appointment order, and the guardian ad litem shall  
37 not have authority to address matters outside that limited  
38 purpose.

39 (2) For any guardian ad litem appointed under this  
40 section for reasons other than a limited purpose, the court  
41 shall make a written order when making the appointment that  
42 names the specific attorney to be appointed as the guardian  
43 ad litem and state the grounds upon which the guardian ad  
44 litem is appointed.

45 (3) The appointment shall be accomplished as soon as  
46 practical and, once complete, the guardian ad litem shall  
47 file with the court a written report stating his or her  
48 recommendations for disposition of the case, which shall be  
49 made available to all parties. Thereafter, the guardian ad  
50 litem shall be discharged from the case.

51           4. Within twenty-one days of appointment, the guardian  
52 ad litem shall meet in-person with the custodial parents or  
53 guardians and the child and provide a copy of the Missouri  
54 supreme court standards governing guardians ad litem. The  
55 meeting with the child shall occur in a private setting at a  
56 time and place that allows the guardian ad litem to observe  
57 the child and gather the unobstructed input of the child,  
58 free of coercion and manipulation, as to the child's  
59 custodial arrangement, safety, and needs, to the extent  
60 reasonably possible, and the need for further meetings and  
61 investigation. Such initial meeting shall take place away  
62 from the courthouse. The guardian ad litem shall continue  
63 to maintain regular contact with the child for the duration  
64 of and pursuant to the confines of the appointment. This  
65 duty shall not be designated to any volunteer advocate or  
66 other person; however, nothing in this subdivision shall be  
67 construed to prohibit a volunteer advocate from meeting with  
68 the child.

69           5. The appointing judge shall require the guardian ad  
70 litem to faithfully discharge such guardian ad litem's  
71 duties, and upon failure to do so shall discharge such  
72 guardian ad litem and appoint another. All parties shall be  
73 notified by the court of the parties' rights to request,  
74 without cause, one disqualification of a guardian ad litem  
75 within thirty days of appointment. Outside of the thirty-  
76 day period or after one disqualification has been made by a  
77 party, a party may make a written in camera motion to the  
78 court alleging the reason for disqualifying a guardian ad  
79 litem. Causes for which a guardian ad litem may be  
80 disqualified include, but are not limited to, the following:

- 81           (1) Failure to communicate with the court, other  
82 attorneys, or custodial parents or guardians in the same  
83 manner as an attorney for a party;
- 84           (2) Failure to present information on relevant issues  
85 through the presentation of evidence or in other appropriate  
86 ways;
- 87           (3) Failure to follow up on or investigate reasonable  
88 issues of child abuse or neglect of which the guardian ad  
89 litem has been informed or to gather nonrepetitive  
90 information that the guardian ad litem does not already  
91 possess from a witness, health care provider, child care  
92 provider, or any other person who may hold information of  
93 which the guardian ad litem has been made aware relating to  
94 allegations of abuse or neglect;
- 95           (4) Failure to meet with the custodial parents or  
96 guardians and child within the required twenty-one days of  
97 appointment under subsection 4 of this section;
- 98           (5) Failure to provide a copy of the Missouri supreme  
99 court standards governing guardians ad litem to custodial  
100 parents or guardians within twenty-one days of the  
101 appointment;
- 102           (6) Failure to respond to requests for communications  
103 within seven calendar days, unless given timely and prior  
104 notice of an event such as a vacation, holiday, family time,  
105 or other event;
- 106           (7) Failure to provide, every thirty days, a statement  
107 reflecting each date services were rendered, a generalized  
108 description of services, the hourly rate charged, and the  
109 time spent on the date services were rendered;
- 110           (8) Failure to accomplish the appointment as soon as  
111 practicable;

112 (9) Failure to provide the court with a written report  
113 stating his or her recommendations for disposition of the  
114 appointment; and

115 (10) Any coercion or manipulation of the child or  
116 parties.

117 6. A guardian ad litem appointed under this section  
118 shall be awarded a reasonable fee for services, as set by  
119 the court. Every thirty days throughout the appointment and  
120 prior to each hearing, the guardian ad litem shall provide  
121 the parties to the proceeding with a statement reflecting  
122 each date services were rendered, a generalized description  
123 of services, the hourly rate charged, and the time spent on  
124 the date services were rendered. The court, in its  
125 discretion and subject to the provisions of subsection 2 of  
126 this section, may:

127 (1) Issue a direct payment order to the parties;

128 (2) Allocate reasonable costs and fees for services  
129 provided by the guardian ad litem to the parties to the  
130 proceeding. Upon motion of the court or the guardian ad  
131 litem, the court may order one or both parties to pay the  
132 guardian ad litem a deposit to be applied to such fees and  
133 costs; or

134 (3) Award such fees as a judgment to be paid by any  
135 party to the proceedings or from public funds. Such an  
136 award of guardian ad litem fees shall constitute a final  
137 judgment in favor of the guardian ad litem. Such final  
138 judgment shall be enforceable against the parties in  
139 accordance with chapter 513.

140 In the event a guardian ad litem is disqualified pursuant to  
141 this section, any outstanding guardian ad litem fees shall  
142 be paid by the county in which the action is pending. Local

143 **courts shall be responsible for utilizing lists of**  
144 **available, reputable, and qualified guardians ad litem.**

145 **7. The guardian ad litem [shall]:**

146 (1) **Shall** be the legal representative of the child at  
147 the hearing, and may examine, cross-examine, subpoena  
148 witnesses, and offer testimony **in the context of the**  
149 **guardian ad litem's appointment;**

150 (2) **Shall**, prior to the hearing, conduct all necessary  
151 interviews with persons having contact with or knowledge of  
152 the child in order to **[ascertain the child's wishes]** **gather**  
153 **the unobstructed input of the child, free of coercion and**  
154 **manipulation, as to the child's custodial arrangement,**  
155 feelings, attachments, and attitudes. If appropriate, the  
156 child should be interviewed;

157 (3) **Shall** request the juvenile officer to cause a  
158 petition to be filed in the juvenile division of the circuit  
159 court if the guardian ad litem believes the child alleged to  
160 be abused or neglected is in danger;

161 (4) **Shall respond to all requests for communications**  
162 **within seven calendar days, unless given timely and prior**  
163 **notice of an event such as a vacation, holiday, family time,**  
164 **or other event; and**

165 (5) **May make informal recommendations during the**  
166 **pendency of a matter pursuant to this section that shall be**  
167 **presented in a written notice to the court, signed by the**  
168 **guardian ad litem, and noticed for hearing. The**  
169 **recommendation shall not become effective until and unless**  
170 **ruled upon by the court.**

171 **[4. The appointing judge shall require the guardian ad**  
172 **litem to faithfully discharge such guardian ad litem's**  
173 **duties, and upon failure to do so shall discharge such**  
174 **guardian ad litem and appoint another. The judge in making**

175 appointments pursuant to this section shall give preference  
176 to persons who served as guardian ad litem for the child in  
177 the earlier proceeding, unless there is a reason on the  
178 record for not giving such preference.

179 5. The guardian ad litem shall be awarded a reasonable  
180 fee for such services to be set by the court. The court, in  
181 its discretion, may:

182 (1) Issue a direct payment order to the parties. If a  
183 party fails to comply with the court's direct payment order,  
184 the court may find such party to be in contempt of court; or

185 (2) Award such fees as a judgment to be paid by any  
186 party to the proceedings or from public funds. Such an  
187 award of guardian fees shall constitute a final judgment in  
188 favor of the guardian ad litem. Such final judgment shall  
189 be enforceable against the parties in accordance with  
190 chapter 513]

191 8. A guardian ad litem shall provide, within thirty  
192 days of a written request by a party, an itemized accounting  
193 of all time expended in the case by the guardian ad litem up  
194 to the date of the request. The guardian ad litem may  
195 redact personally identifying information contained in such  
196 accounting provided to the requesting party.

197 9. Any party aggrieved by a guardian ad litem's  
198 failure to satisfy the duties and standards enumerated in  
199 this section or section 484.355 may apply by in camera  
200 motion for appointment of a substitute guardian ad litem for  
201 cause shown.

202 10. On or before January 1, 2024, the office of chief  
203 disciplinary counsel within the Missouri supreme court shall  
204 establish and maintain a complaint procedure for parties  
205 dissatisfied with the services of a guardian ad litem,  
206 including allegations that the guardian ad litem did not

207 properly behave under the rules of professional conduct or  
208 the standards governing guardians ad litem, including, but  
209 not limited to, timely communication, as set forth by the  
210 Missouri supreme court. The complaint procedure shall be in  
211 writing and made available to the public.

484.355. All family and juvenile courts and guardians  
2 ad litem appointed by those courts shall adhere to the  
3 following standards in accordance with section 452.375 and  
4 those developed by Missouri supreme court rule under section  
5 484.350:

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

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

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



27 her duties faithfully and, upon failure to do so, shall  
28 discharge the guardian ad litem and appoint another;

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

41 (5) The guardian ad litem shall be entitled to all  
42 relevant reports and shall have access to all relevant  
43 records relating to the child, the placement of the child,  
44 or the child's family members;

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

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

55 (8) The guardian ad litem shall explain, when  
56 appropriate, the court process and the role of the guardian  
57 ad litem to the child. The guardian ad litem shall ensure

58 that the child is informed of the purpose of each court  
59 proceeding;

60 (9) The guardian ad litem shall participate, when  
61 appropriate, in the development and negotiation of any  
62 service plans, parenting plans, proposed orders, and  
63 staffings that affect the best interests of the child as  
64 they relate to the case at hand. He or she shall monitor  
65 implementation of service plans and court orders during his  
66 or her appointment to determine whether services ordered by  
67 the court are being provided in a timely manner;

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

72 (11) The guardian ad litem shall protect the interests  
73 of the child who is a witness in any judicial proceeding in  
74 which he or she has been appointed. In matters for which he  
75 or she has been appointed, the guardian ad litem shall be  
76 present during any conferences between the counsel for a  
77 party and the child. He or she shall be notified of all  
78 proceedings or meetings involving the child; and

79 (12) The guardian ad litem shall present a  
80 recommendation to the court when authorized by law or  
81 requested by the court on the basis of evidence presented  
82 and consistent with the best interests of the child.

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