

SENATE BILL NO. 576

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1960S.01I

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Section A. Section 452.423, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.423 and 484.355, to read as follows: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. **(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. **Such appointment may be for a limited purpose if made on the court's own motion, the motion of a party, or by agreement of the parties. Such limited purpose shall be specified in the court's appointment order, and the guardian ad litem does not have authority to address matters outside that limited purpose. If a guardian ad litem is not appointed for a limited purpose, the court shall make a written order when making the appointment that names the specific attorney to be appointed as guardian ad litem and state the grounds upon which the guardian ad litem is appointed. The appointment shall be accomplished as soon as practicable, and once complete, the guardian ad litem shall file with the court a written report stating his or her recommendations for disposition of the case, which shall be made available**

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

19 to all parties. The guardian ad litem shall be discharged
20 from the case after the written report has been filed with
21 the court.

22 (2) Within twenty-one days of appointment, the
23 guardian ad litem shall meet face-to-face with the custodial
24 guardians and the child and provide the custodial guardians
25 a copy of the Missouri supreme court standards governing
26 guardians ad litem. The meeting with the child shall occur
27 in a private setting at a time and place that allows the
28 guardian ad litem to observe the child and gather the
29 unobstructed input of the child, free of coercion and
30 manipulation, as to the child's custodial arrangement,
31 safety, and needs, to the extent reasonably possible, and
32 the need for further meetings and investigation. Such
33 initial meeting shall take place away from the courthouse.
34 The guardian ad litem shall continue to maintain regular
35 contact with the child for the duration of and under the
36 confines of the appointment. Such duty shall not be
37 designated to any volunteer advocate or other person;
38 however, nothing in this subdivision shall be construed to
39 prohibit a volunteer advocate from meeting with the child.

40 (3) All parties shall be notified by the court of the
41 parties' rights to request without cause one
42 disqualification of a guardian ad litem [shall be ordered in
43 any legal proceeding only pursuant to this chapter, upon the
44 filing of a written application by any party within ten days
45 of appointment, or within ten days of August 28, 1998, if
46 the appointment occurs prior to August 28, 1998. Each party
47 shall be entitled to one disqualification of a guardian ad
48 litem appointed under this subsection in each proceeding,
49 except a party may be entitled to additional
50 disqualifications of a guardian ad litem for good cause

51 shown] within thirty days of appointment. Outside of the
52 thirty-day period or after one disqualification has been
53 made by a party, a party may make a written, in camera
54 motion to the court alleging the reason for disqualifying a
55 guardian ad litem. Causes for which a guardian ad litem may
56 be disqualified include, but are not limited to:

57 (a) Failure to communicate with the court, other
58 attorneys, or custodial guardians in the same manner as an
59 attorney for a party;

60 (b) Failure to present information on relevant issues
61 through the presentation of evidence or in other appropriate
62 ways;

63 (c) Failure to follow up on or investigate reasonable
64 issues of child abuse or neglect that the guardian ad litem
65 has been informed of or to gather nonrepetitive information
66 that the guardian ad litem does not already possess from a
67 witness, medical professional, child care provider, or any
68 other person who may hold information of which the guardian
69 ad litem has been made aware about allegations of abuse or
70 neglect;

71 (d) Failure to meet with the custodial guardians and
72 child within the required twenty-one days of appointment;

73 (e) Failure to provide the custodial guardians within
74 twenty-one days of appointment a copy of the Missouri
75 supreme court standards governing guardians ad litem;

76 (f) Failure to respond to requests for communications
77 within seven calendar days unless given timely and prior
78 notice of an event, including, but not limited to, vacation,
79 holiday, family time, or other event;

80 (g) Failure to provide every thirty days a statement
81 reflecting each date services were rendered, a generalized

82 description of services, the hourly rate charged, and the
83 time spent on the date services were rendered;

84 (h) Failure to accomplish the appointment as soon as
85 practicable;

86 (i) Failure to provide the court with a written report
87 stating his or her recommendations for disposition of the
88 appointment; and

89 (j) Any coercion or manipulation of the child or
90 parties.

91 2. The court shall appoint a guardian ad litem in any
92 proceeding in which child abuse or neglect is alleged. Such
93 allegation shall be made by a custodial guardian under oath
94 with specificity. Such appointment shall be a limited
95 purpose appointment and shall be limited to the purpose of
96 investigating and substantiating or not substantiating the
97 existence of abuse or neglect subject to subsection 2 of
98 section 452.375. The guardian ad litem shall complete the
99 investigation as soon as practicable and, upon completion,
100 file a written report with the court that shall be made
101 available to all parties. If the guardian ad litem's
102 investigation determines the allegations of abuse or neglect
103 are not substantiated, the guardian ad litem shall be
104 discharged by the court immediately. Any guardian ad litem
105 fees shall be paid by the party that made the
106 unsubstantiated allegations of abuse or neglect. All other
107 fees shall be allocated at the court's discretion. The
108 provisions of subsection 1 of this section shall apply to
109 this subsection.

110 3. The guardian ad litem shall be awarded a reasonable
111 fee for his or her such services. Such fee shall be set by
112 the court. Every thirty days during the appointment, the
113 guardian ad litem shall provide the parties to the

114 proceeding with a statement reflecting each date services
115 were rendered, a generalized description of services, the
116 hourly rate charged, and the time spent on the date services
117 were rendered. In its discretion and subject to subsection
118 2 of this section, the court may:

- 119 (1) Issue a direct payment order to the parties;
- 120 (2) Allocate reasonable costs and fees for services
121 provided by the guardian ad litem to the parties to the
122 proceeding. Upon motion of the court or the guardian ad
123 litem, the court may order one or both parties to pay the
124 guardian ad litem a deposit to be applied to such fees and
125 costs; or
- 126 (3) Award such fees as a judgment to be paid by any
127 party to the proceedings or from public funds.

128 The award of guardian ad litem fees shall constitute a final
129 judgment in favor of the guardian ad litem. The final
130 judgment shall be enforceable against the parties in
131 accordance with chapter 513. In the event a guardian ad
132 litem is disqualified under subdivision (3) of subsection 1
133 of this section, any outstanding guardian ad litem fees
134 shall be paid by the county in which the action is pending.
135 Local courts are responsible for utilizing lists of
136 available, reputable, and qualified guardians ad litem.

137 4. The guardian ad litem [shall]:

- 138 (1) **Shall** be the legal representative of the child at
139 the hearing, and may examine, cross-examine, subpoena
140 witnesses and offer testimony **as it pertains to his or her**
141 **appointment;**
- 142 (2) **Shall**, prior to the hearing, conduct all necessary
143 interviews with persons having contact with or knowledge of
144 the child in order to [ascertain the child's wishes,

145 feelings] gather the unobstructed input of the child, free
146 of coercion and manipulation, as to the child's custodial
147 arrangement, attachments, and attitudes. If of appropriate
148 age, the child should be interviewed;

149 (3) Shall request the juvenile officer to cause a
150 petition to be filed in the juvenile division of the circuit
151 court if the guardian ad litem believes the child alleged to
152 be abused or neglected is in danger;

153 (4) Shall respond to all requests for communication
154 within seven calendar days in accordance with subdivision
155 (3) of subsection 1 of this section; and

156 (5) May make informal recommendations during the
157 pendency of a matter under this section, which shall be
158 presented in a written report to the court, and signed by
159 the guardian ad litem. The recommendations shall not take
160 effect until and unless ordered by the court upon motion and
161 notice by a party or the guardian ad litem.

162 5. Upon written request by a party, a guardian ad
163 litem shall provide within thirty days of such written
164 request an itemized accounting of all time expended in the
165 case by the guardian ad litem up to the date of the
166 request. The guardian ad litem may redact certain
167 personally identifying information contained in such
168 accounting provided to the requesting party.

169 6. Any party aggrieved by a guardian ad litem's
170 failure to satisfy the duties enumerated under this section
171 or section 484.355 may apply by in camera motion for
172 appointment of a substitute guardian ad litem for cause
173 shown.

174 7. On or before January 1, 2026, the office of chief
175 disciplinary counsel (OCDC) shall establish and maintain a
176 complaint procedure for parties dissatisfied with the

177 services of a guardian ad litem, including allegations that
178 the guardian ad litem did not properly behave under the
179 rules of professional conduct or guidelines for guardians ad
180 litem as set forth by the Missouri supreme court. The
181 complaint procedure shall be in writing and made available
182 to the public.

183 [4.] 8. The appointing judge shall require the
184 guardian ad litem to faithfully discharge such guardian ad
185 litem's duties, and upon failure to do so shall discharge
186 such guardian ad litem and appoint another. The judge in
187 making appointments pursuant to this section shall give
188 preference to persons who served as guardian ad litem for
189 the child in the earlier proceeding, unless there is a
190 reason on the record for not giving such preference.

191 [5. The guardian ad litem shall be awarded a
192 reasonable fee for such services to be set by the court.
193 The court, in its discretion, may:

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

197 (2) Award such fees as a judgment to be paid by any
198 party to the proceedings or from public funds. Such an
199 award of guardian fees shall constitute a final judgment in
200 favor of the guardian ad litem. Such final judgment shall
201 be enforceable against the parties in accordance with
202 chapter 513.]

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

6 (1) The guardian ad litem shall have a duty to notify
7 the court if his or her caseload 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 factual
15 information to the court and diligently advocate a position
16 in the best interests of the child. He or she shall be
17 prepared to participate fully in any proceedings and not
18 merely defer to the other parties. He or she may examine,
19 cross-examine, subpoena witnesses, and offer testimony as it
20 relates to the appointment. He or she, when appropriate to
21 represent the best interests of the child, shall file
22 petitions, motions, parenting plans, responses, or
23 objections. The court shall ensure a guardian ad litem
24 maintains independent representation of the best interests
25 of the child. The court shall require a guardian ad litem
26 to perform his or her duties faithfully and, upon failure to
27 do so, shall discharge the guardian ad litem and appoint
28 another;

29 (4) The guardian ad litem and the child shall have
30 access to each other at reasonable times and places, and
31 such 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 reports relevant to the case and shall have access to all
43 relevant records relating to the child, the placement of the
44 child, 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 his or her appointment through the court process and
53 advocate for timely hearings, provision of necessary
54 services, and 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 such service plans, parenting plans, proposed orders, and
65 staffings relate to the appointment. He or she shall
66 monitor implementation of service plans and court orders
67 during his or her appointment to determine whether services
68 ordered by the court are being provided in a timely manner;

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

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

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

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