

## HOUSE BILL NO. 281

INTRODUCED BY B. HANDS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTES RELATING TO GUARDIANS AD LITEM IN CHILD CUSTODY, PARENTING, AND PARENTAL CONTACT CASES; ESTABLISHING TRAINING GUIDELINES; PROVIDING FOR THE ESTABLISHMENT OF A GRIEVANCE PROCESS REGARDING THE CONDUCT OF A GUARDIAN AD LITEM; SETTING GUIDELINES FOR FEES; AMENDING SECTION 40-4-205, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 40-4-205, MCA, is amended to read:

**"40-4-205. Guardian ad litem.** (1) (a) The court may appoint a guardian ad litem to represent the best interests of a minor dependent child, in accordance with 40-4-212, with respect to the child's support, parenting, and parental contact. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(b) The guardian ad litem must be qualified through experience and training based on standards as provided in subsection (2) and any additional standards adopted by each judicial district. The areas of experience must include but are not limited to child development, domestic violence, mental health, and chemical dependency.

(2) Prior to initial appointment, a guardian ad litem shall obtain 16 hours of training. Each year, a guardian ad litem shall obtain 8 hours of continuing education. Initial training and continuing education must be obtained in relevant fields, including but not limited to child development, domestic violence, mental health, and chemical dependency. Initial training and continuing education may be obtained through sources throughout the state, including but not limited to:

(a) in-person training;

(b) web-based training; and

(c) any other training that the judicial district considers appropriate.

(3) Guardians ad litem appointed to cases prior to [the effective date of this act] are not required to obtain

1 the 16 hours of initial training, but must obtain 8 hours of continuing education each year.

2 (4) A guardian ad litem shall file an affidavit evidencing the completion of the required continuing  
3 education hours with the appointing court on or before July 31 of each year.

4 (5) Prior to appointing a guardian ad litem, the district judge shall ensure that the guardian ad litem has  
5 completed the training required by this section.

6 ~~(2)~~(6) The guardian ad litem is charged with the representation of the child's best interests and has the  
7 following general duties:

8 (a) ~~to~~ conduct unbiased investigations that the guardian ad litem considers necessary to ascertain the  
9 facts related to the child's support, parenting, and parental contact;

10 (b) ~~to~~ interview or observe the child who is the subject of the proceeding;

11 (c) ~~to~~ make written reports to the court concerning the child's support, parenting, and parental contact;

12 (d) ~~to~~ appear and participate in all proceedings to the degree necessary to adequately represent the child  
13 and make recommendations to the court concerning the child's support, parenting, and parental contact; and

14 (e) ~~to~~ perform other duties as directed by the court.

15 ~~(3)~~(7) The guardian ad litem has access to court, medical, psychological, law enforcement, social  
16 services, and school records pertaining to the child and the child's siblings and parents or caretakers and shall  
17 take those records into consideration while writing a report.

18 (8) If a party has a grievance regarding the guardian ad litem, the party shall provide the court and the  
19 guardian ad litem with a written and signed notice and description of the alleged misconduct. The court shall allow  
20 the guardian ad litem to respond to the allegation of misconduct in writing within 10 days after the day on which  
21 the grievance is received. The court shall refer the grievance and response to the guardian ad litem review  
22 committee provided for in subsection (9) to provide recommendations to the court regarding whether the  
23 allegations in the grievance have merit. If the court determines that the allegations have merit, the court shall  
24 determine whether the guardian ad litem must be removed and replaced.

25 (9) Each judicial district shall appoint a local guardian ad litem review committee. The members of the  
26 committee serve without compensation. The committee must be composed of not less than three or more than  
27 seven members. To the extent practicable, the members of the committee must be representatives of the  
28 socioeconomic, racial, and ethnic groups of the area served. The members may include but are not limited to:

29 (a) a representative of the youth court;

30 (b) a representative of a local school district;

1 (c) a public health nurse;

2 (d) an at-large community member with knowledge of child development issues;

3 (e) a representative of the local legal community with family law experience;

4 (f) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who  
5 is knowledgeable about Indian cultural and family matters and who is appointed only for and during that review;

6 or

7 (g) a parent with experience in the family law system, but who is not involved in an active family law  
8 case.

9 (10) The review committee shall recommend whether removal and replacement of the guardian ad litem  
10 is appropriate based upon the following factors:

11 (a) the guardian ad litem's failure to carry out the responsibilities provided for in subsection (6);

12 (b) the guardian ad litem's misrepresentation of qualifications provided for in subsection (1);

13 (c) the guardian ad litem's violation of state or local laws or court rules; or

14 (d) the guardian ad litem's taking or failing to take any action that would reasonably place in question  
15 the suitability of the person to serve as a guardian ad litem.

16 (11) (a) Any fee charged by the guardian ad litem must be reasonable and based upon experience and  
17 ability.

18 (b) At the time of appointment, the court may set the maximum number of hours the guardian ad litem  
19 may spend on the case.

20 (c) The guardian ad litem shall inform the parties of any fees in advance of providing services.

21 (d) The guardian ad litem shall provide all parties with an itemized accounting for time on each case.

22 ~~(4)~~(e) The court shall enter an order for setting allowable costs and fees in favor of the child's guardian  
23 ad litem. The order must be made against either or both parents, except that if the a responsible party is indigent,  
24 the costs must be waived.

25 (12) Once a final parenting plan is ordered by the court, the guardian ad litem's appointment to the case  
26 must be terminated unless the court makes a specific finding that continued appointment is in the best interests  
27 of the child or children involved. If a modification to a parenting plan is sought at a later date, the guardian ad litem  
28 may be reappointed to the case when the guardian ad litem and both parents agree to the reappointment and  
29 time and resources permit."

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