

1 SENATE BILL NO. 180
2 INTRODUCED BY D. LENZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO COURT-
5 APPOINTED SPECIAL ADVOCATES AND GUARDIANS AD LITEM IN CHILD ABUSE AND NEGLECT
6 CASES; SEPARATING THE ROLES OF THE COURT-APPOINTED SPECIAL ADVOCATE AND THE
7 GUARDIAN AD LITEM; AND AMENDING SECTIONS 41-3-112 AND 41-3-1010, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 Section 1. Section 41-3-112, MCA, is amended to read:

12 "41-3-112. ~~Appointment of court-appointed special advocate -- guardian ad litem.~~ (1) ~~In every~~
13 ~~judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any~~
14 ~~child alleged to be abused or neglected. If a court-appointed special advocate is not available for appointment,~~
15 ~~the~~ The court may appoint an attorney or other qualified person to serve as the guardian ad litem for any child
16 alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of
17 interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary,
18 the guardian ad litem may serve at public expense.

19 ~~(2) — The guardian ad litem must have received appropriate training that is specifically related to~~
20 ~~servicing as a child's court-appointed representative.~~

21 ~~(3)(2)~~ (2) The guardian ad litem is charged with the representation of the child's best interests, ~~and shall~~
22 ~~perform the following general duties:~~

23 (a) ~~to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;~~

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

25 (c) ~~to have access to court, medical, psychological, law enforcement, social services, and school~~
26 ~~records pertaining to the child and the child's siblings and parents or custodians;~~

27 (d) ~~to make written reports to the court concerning the child's welfare;~~

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1 ~~(e) — to appear and participate in all proceedings to the degree necessary to adequately represent~~
2 ~~the child and make recommendations to the court concerning the child's welfare;~~

3 ~~(f) — to perform other duties as directed by the court; and~~

4 ~~(g) — if an attorney, to file motions, including but not limited to filing to expedite proceedings or~~
5 ~~otherwise assert the child's rights.~~

6 ~~(4) — Information contained in a report filed by the guardian ad litem or testimony regarding a report~~
7 ~~filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion~~
8 ~~as to the best interests of the child.~~

9 ~~(5) — Any party may petition the court for the removal and replacement of the guardian ad litem if the~~
10 ~~guardian ad litem fails to perform the duties of the appointment."~~

11
12 **NEW SECTION. Section 2. Appointment of court-appointed special advocate.** (1) The court may
13 appoint a court-appointed special advocate for any child alleged to be abused or neglected. The department or
14 any member of its staff who has a direct conflict of interest may not be appointed as the court-appointed special
15 advocate in a judicial proceeding under this title.

16 ~~(2) — The court-appointed special advocate must have received appropriate training.~~

17 ~~(3)(2)~~ The court-appointed special advocate serves as an independent factfinder and reports to the
18 court regarding the welfare of the child.

19 ~~(4) — The court-appointed special advocate may:~~

20 ~~(a) — conduct investigations to ascertain the facts constituting the alleged abuse or neglect;~~

21 ~~(b) — interview or observe the child who is the subject of the proceeding;~~

22 ~~(c) — have access to court, medical, psychological, law enforcement, social services, and school~~
23 ~~records pertaining to the child and the child's siblings and parents or custodians;~~

24 ~~(d) — make written reports to the court concerning the child's welfare; and~~

25 ~~(e) — appear and participate in all proceedings to the degree necessary to provide information to the~~
26 ~~court concerning the child's welfare.~~

27 ~~(5) — Any party may petition the court for the removal and replacement of the court-appointed special~~

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1 ~~advocate if the court-appointed special advocate fails to perform the duties of the appointment.~~

2

3 **Section 3.** Section 41-3-1010, MCA, is amended to read:

4 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of
5 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing
6 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of
7 services, the board may consider:

8 (i) the safety of the child;

9 (ii) whether an involved agency has selected services specifically relevant to the problems and
10 needs of the child and family;

11 (iii) whether caseworkers have diligently provided services;

12 (iv) whether appropriate services have been available to the child and family on a timely basis; and

13 (v) the results of intervention.

14 (b) The board may review the case of a child who remains in or returns to the child's home and for
15 whom the department retains legal custody.

16 (2) The review must be conducted within the time limit established under the Adoption and Safe
17 Families Act of 1997, 42 U.S.C. 675(5).

18 (3) The district court, by rule of the court or on an individual case basis, may relieve the board of its
19 responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next
20 scheduled board review.

21 (4) Notice of each review must be sent to the department, any agency directly responsible for the
22 care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child,
23 the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or
24 older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special
25 advocate of the child, the county attorney or deputy attorney general actively involved in the case, the Indian
26 child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive
27 notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice

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1 may participate in the hearing and be accompanied by a representative.

2 (5) After reviewing each case, the board shall prepare written findings and recommendations with
3 respect to:

4 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the
5 need for removal of the child from the home and to make it possible for the child to be returned home;

6 (b) the continuing need for the placement and the appropriateness and safety of the placement;

7 (c) compliance with the case plan;

8 (d) the progress that has been made toward alleviating the need for placement;

9 (e) a likely date by which the child may be returned home or by which a permanent placement will
10 be finalized;

11 (f) other problems, solutions, or alternatives that the board determines should be explored; and

12 (g) whether the district court should appoint an attorney or other person as ~~special advocate~~
13 guardian ad litem to represent or appear on behalf of the child pursuant to 41-3-112.

14 (6) Whenever a member of a board has a potential conflict of interest in a case being reviewed,
15 the member shall declare to the board the nature of the potential conflict prior to participating in the case
16 review. The following provisions apply:

17 (a) The declaration of the member must be recorded in the official records of the board.

18 (b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the
19 member from fairly and objectively reviewing the case, the board may remove the member from participation in
20 the review.

21 (7) The board shall keep accurate records and retain the records on file. The board shall send
22 copies of its written findings and recommendations to the district court, the department, and other participants in
23 the review unless prohibited by the confidentiality provisions of 41-3-205.

24 (8) The board may hold joint or separate reviews for groups of siblings, but the court shall issue
25 specific findings for each child.

26 (9) The board may disclose to parents and their attorneys, foster parents, children who are 12
27 years of age or older, ~~childrens'~~children's attorneys, and other persons authorized by the board to participate in

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1 the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case
2 review, each participant, other than parents and children, shall swear or affirm to the board that the participant
3 will keep confidential the information disclosed by the board in the case review and will disclose it only as
4 authorized by law.

5 (10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered
6 an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

7 (11) The board may, at the discretion of the court and absent an objection by a party to the
8 proceeding, conduct permanency hearings as provided in 41-3-445."

9
10 NEW SECTION. Section 4. Codification instruction. [Section 2] is intended to be codified as an
11 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 2].

12 - END -