

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, AND 41-3-1013, 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 court shall appoint a guardian ad litem if a court-appointed special  
17 advocate is not available for appointment as provided in [section 2]. The department or any member of its staff  
18 who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding  
19 under this title. When necessary, the guardian ad litem may serve at public expense.

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

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

- 24 (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- 25 (b) to interview or observe the child who is the subject of the proceeding;
- 26 (c) to have access to court, medical, psychological, law enforcement, social services, and school  
27 records pertaining to the child and the child's siblings and parents or custodians;
- 28 (d) to make written reports to the court concerning the child's welfare;

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 ~~shall~~ appoint a court-appointed special advocate, if one is available, for any child alleged to be abused or  
14 neglected. ~~The department or any member of its staff who has a direct conflict of interest may not be appointed~~  
15 ~~as the court-appointed special advocate in a judicial proceeding under this title.~~ THE ROLE OF THE COURT-  
16 APPOINTED SPECIAL ADVOCATE IS TO:

17 (A) SERVE AS THE CHILD'S VOICE IN THE COURT;

18 (B) SPEAK FOR THE NEEDS, CONCERNS, AND BEST INTERESTS OF THE CHILD; AND

19 (C) SUPPORT THE CHILD AS THE CASE MOVES THROUGH THE SYSTEM.

20 (2) The court-appointed special advocate must have received appropriate training.

21 (3) The court-appointed special advocate serves as an independent factfinder and reports to the  
22 court regarding the welfare of the child.

23 (4) The court-appointed special advocate may:

24 (a) conduct INDEPENDENT investigations to ascertain the facts constituting the alleged abuse or  
25 neglect;

26 (b) interview or observe the child who is the subject of the proceeding;

27 (C) HELP THE CHILD UNDERSTAND THE PROCESS;

28 (e)(D) have access to court, medical, psychological, law enforcement, social services, and school

1 records pertaining to the child and the child's siblings and parents or custodians AS DIRECTED BY THE COURT;

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

3 ~~(e)~~(F) appear and participate in all proceedings to the degree necessary to provide information to the

4 court concerning the child's welfare AND TO MAKE THE CHILD'S VOICE CLEAR.

5 (5) Any party may petition the court for the removal and replacement of the court-appointed special  
6 advocate if the court-appointed special advocate fails to perform the duties of the appointment.

7 (6) A COURT-APPOINTED SPECIAL ADVOCATE MAY NOT TAKE A POSITION CONCERNING THE ONGOING  
8 PROCEEDINGS. A COURT-APPOINTED SPECIAL ADVOCATE MAY NOT OFFER ADVICE TO A PARENT OR FOSTER PARENT  
9 CONCERNING THE ONGOING PROCEEDINGS OR THE FOSTER PARENT'S OR PARENT'S INTERACTIONS WITH THE  
10 DEPARTMENT.

11 (7) THE DEPARTMENT OR ANY MEMBER OF ITS STAFF WHO HAS A DIRECT CONFLICT OF INTEREST MAY NOT  
12 BE APPOINTED AS THE COURT-APPOINTED SPECIAL ADVOCATE IN A JUDICIAL PROCEEDING UNDER THIS TITLE.

13

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

15 **"41-3-1010. Review -- scope -- procedures -- immunity.** (1) (a) The board shall review the case of  
16 each child in foster care focusing on issues that are germane to the goals of permanency and to accessing  
17 appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of  
18 services, the board may consider:

19 (i) the safety of the child;

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

22 (iii) whether caseworkers have diligently provided services;

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

24 (v) the results of intervention.

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

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

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

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

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

- 14 (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the  
15 need for removal of the child from the home and to make it possible for the child to be returned home;  
16 (b) the continuing need for the placement and the appropriateness and safety of the placement;  
17 (c) compliance with the case plan;  
18 (d) the progress that has been made toward alleviating the need for placement;  
19 (e) a likely date by which the child may be returned home or by which a permanent placement will  
20 be finalized;  
21 (f) other problems, solutions, or alternatives that the board determines should be explored; and  
22 (g) whether the district court should appoint an attorney or other person as ~~special advocate~~  
23 guardian ad litem to represent or appear on behalf of the child pursuant to 41-3-112.

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

- 27 (a) The declaration of the member must be recorded in the official records of the board.  
28 (b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the

1 member from fairly and objectively reviewing the case, the board may remove the member from participation in  
2 the review.

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

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

8 (9) The board may disclose to parents and their attorneys, foster parents, children who are 12  
9 years of age or older, ~~childrens'~~ children's attorneys, and other persons authorized by the board to participate in  
10 the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case  
11 review, each participant, other than parents and children, shall swear or affirm to the board that the participant  
12 will keep confidential the information disclosed by the board in the case review and will disclose it only as  
13 authorized by law.

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

16 (11) The board may, at the discretion of the court and absent an objection by a party to the  
17 proceeding, conduct permanency hearings as provided in 41-3-445."  
18

19 **SECTION 4. SECTION 41-3-1013, MCA, IS AMENDED TO READ:**

20 **"41-3-1013. Court review of findings and recommendations of board.** (1) Upon receipt of findings  
21 and recommendations from the board, the district court shall:

22 (a) review the findings and recommendations of the board within 20 days. If the district court finds  
23 it appropriate, the district court may on its own motion schedule a review hearing.

24 (b) cause the findings and recommendations of the board to become part of the district court file;  
25 and

26 (c) give the board written notice if the district court modifies, alters, or takes action on a case as a  
27 result of the board's recommendations or refuses to take action on the board's recommendations in any case.

28 (2) Upon receipt of findings and recommendations from the board, the department shall:

1 (a) review the findings and recommendations of the board within 10 days. The recommendations  
2 must be implemented and the case plan must be modified as the department considers appropriate and as  
3 resources permit.

4 (b) give the board written notice as soon as practicable, but in no case later than 17 days after  
5 receipt of the findings and recommendations, of any reasons why the department objects to or is not able to  
6 implement the recommendations; and

7 (c) include the findings and recommendations of the board as part of the case file of the  
8 department.

9 (3) The court may schedule a hearing on any recommendations that the department objects to or  
10 contends that it is unable to implement.

11 (4) Upon its own motion or upon the request of the department, the board, or any interested party,  
12 the district court may appoint an attorney or other person as ~~special advocate~~ guardian ad litem to represent or  
13 appear on behalf of the child. Subject to the direction of the district court, the ~~court-appointed special advocate~~  
14 guardian ad litem shall:

15 (a) investigate all relevant information about the case;

16 (b) advocate for the child, ensuring that all relevant facts are brought before the court;

17 (c) facilitate and negotiate to ensure that the district court, the department, and the child's attorney  
18 fulfill their obligations to the child in a timely fashion; and

19 (d) monitor all district court orders to ensure compliance and to bring to the district court's attention  
20 any change in circumstance that may require modification of the district court's order."

21

22 NEW SECTION. Section 5. Codification instruction. [Section 2] is intended to be codified as an  
23 integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 2].

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