

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."

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

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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.

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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).