

SECOND REGULAR SESSION

HOUSE BILL NO. 1404

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BISHOP (Sponsor), DONNELLY, JOLLY, YATES, BIVINS,
LIPKE, STEVENSON, WITTE, YOUNG, WILLOUGHBY, BURNETT,
JOHNSON (90) AND CARNAHAN (Co-sponsors).

Read 1st time February 5, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4395L.011

AN ACT

To repeal section 452.423, RSMo, and to enact in lieu thereof one new section 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Section A. Section 452.423, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 452.423, to read as follows:

452.423. 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. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged. Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to chapter 210, RSMo, or this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.

2. The guardian ad litem shall:

(1) Be the legal representative of the child at the hearing, and may examine, cross-examine, subpoena witnesses and offer testimony;

(2) Prior to the hearing, conduct all necessary interviews with persons having contact with or knowledge of the child in order to ascertain the child's wishes, feelings, attachments and attitudes. If appropriate, the child should be interviewed;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

16 (3) Request the juvenile officer to cause a petition to be filed in the juvenile division of
17 the circuit court if the guardian ad litem believes the child alleged to be abused or neglected is
18 in danger.

19 3. The appointing judge shall require the guardian ad litem to faithfully discharge such
20 guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad litem and
21 appoint another. The judge in making appointments pursuant to this section shall give preference
22 to persons who served as guardian ad litem for the child in the earlier proceeding, unless there
23 is a reason on the record for not giving such preference.

24 4. The guardian ad litem shall be awarded a reasonable fee for such services to be set by
25 the court. The court, in its discretion, may:

26 **(1) Issue a direct payment order to the parties. If a party fails to comply with the**
27 **court's direct payment order, the court shall find such party to be in contempt of court; or**

28 **(2) Award such fees as a judgment to be paid by any party to the proceedings or from**
29 **public funds. Such an award of guardian fees shall constitute a final judgment in favor of the**
30 **guardian ad litem. [Such final judgment shall be enforceable against the parties in accordance**
31 **with chapter 513, RSMo.]**

32 5. The court may designate volunteer advocates, who may or may not be attorneys
33 licensed to practice law, to assist in the performance of the guardian ad litem duties for the court.
34 The volunteer advocate shall be provided with all reports relevant to the case made to or by any
35 agency or person and shall have access to all records of such agencies or persons relating to the
36 child or such child's family members. Any such designated person shall receive no compensation
37 from public funds. This shall not preclude reimbursement for reasonable expenses.