

HOUSE BILL NO. 2033

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MURPHY.

4793H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 210.160, 211.211, and 211.462, RSMo, and to enact in lieu thereof four new sections relating to the appointing of certain persons in court proceedings.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 210.160, 211.211, and 211.462, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 210.005, 210.160, 211.211, and
3 211.462, to read as follows:

**210.005. 1. A court shall appoint client-directed counsel to appear for and
2 represent a child in all judicial proceedings under sections 210.110 to 210.165, sections
3 210.700 to 210.760, subdivision (1) of subsection 1 of section 211.031, section 211.032,
4 sections 211.442 to 211.487, and sections 453.005 to 453.170.**

**5 2. Counsel shall be appointed prior to the first protective custody hearing under
6 section 211.032 and shall represent the child at all stages of the proceeding through
7 permanency, including appeal.**

8 3. Counsel shall:

**9 (1) Be provided with all reports relevant to a case that are made to or by any
10 agency or person;**

**11 (2) Have access to all records of such agencies or persons relating to the child or
12 such child's family members or placements of the child; and**

**13 (3) Upon appointment by the court to the case, be informed of and have the right
14 to attend any and all family support team meetings involving the child.**

15

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **Employees of the children's division, officers of the court, and employees of any agency**
17 **involved shall fully inform counsel of all aspects of the case for which they have**
18 **knowledge or belief.**

19 **4. A child and a child's parent shall not be represented by the same counsel. A**
20 **child and a child's sibling may be represented by the same counsel except if a conflict of**
21 **interest exists. If it appears to the court that a conflict exists, the court shall appoint**
22 **separate counsel.**

23 **5. Counsel appointed to represent a child in court proceedings involving abuse**
24 **or neglect shall meet standards of practice and participate in quality representation**
25 **training requirements established by the Missouri supreme court as provided under**
26 **subsection 12 of section 211.211.**

210.160. 1. ~~In every case involving an abused or neglected child which results in a~~
2 ~~judicial proceeding, the judge shall appoint a guardian ad litem to appear for and represent:~~

3 ~~(1) A child who is the subject of proceedings pursuant to sections 210.110 to 210.165~~
4 ~~except proceedings under subsection 6 of section 210.152, sections 210.700 to 210.760,~~
5 ~~sections 211.442 to 211.487, or sections 453.005 to 453.170, or proceedings to determine~~
6 ~~custody or visitation rights under sections 452.375 to 452.410; or~~

7 ~~(2) A parent who is a minor, or who is a mentally ill person or otherwise incompetent,~~
8 ~~and whose child is the subject of proceedings under sections 210.110 to 210.165, sections~~
9 ~~210.700 to 210.760, sections 211.442 to 211.487, or sections 453.005 to 453.170.~~

10 ~~2. The] A judge, either sua sponte or upon motion of a party, may appoint a guardian~~
11 ~~ad litem to [appear for and represent an abused or neglected child involved in proceedings~~
12 ~~arising under subsection 6 of section 210.152] **investigate a case involving child abuse or**~~
13 **neglect, make recommendations, and advocate for the best interests of a child in a**
14 **judicial proceeding under sections 210.110 to 210.165, sections 211.442 to 211.487, and**
15 **sections 453.005 to 453.170, and a judge shall appoint a guardian ad litem to investigate**
16 **a case, make recommendations, and advocate for the best interests of a child in**
17 **proceedings to determine custody or visitation rights under sections 452.375 to 452.410.**

18 ~~[3-] 2. The guardian ad litem shall be provided with all reports relevant to the case~~
19 ~~made to or by any agency or person, shall have access to all records of such agencies or~~
20 ~~persons relating to the child or such child's family members or placements of the child, and~~
21 ~~upon appointment by the court to a case, shall be informed of and have the right to attend any~~
22 ~~and all family support team meetings involving the child. Employees of the division, officers~~
23 ~~of the court, and employees of any agency involved shall fully inform the guardian ad litem of~~
24 ~~all aspects of the case of which they have knowledge or belief.~~

25 ~~[4-] 3. The appointing judge shall require the guardian ad litem to faithfully discharge~~
26 ~~such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad~~

27 litem and appoint another. The appointing judge shall have the authority to examine the
28 general and criminal background of persons appointed as guardians ad litem, including
29 utilization of the family care safety registry and access line pursuant to sections 210.900 to
30 210.937, to ensure the safety and welfare of the children **whose cases** such persons are
31 appointed to ~~represent~~ **investigate, make recommendations, and advocate for the**
32 **children's best interests.** The judge in making appointments pursuant to this section shall
33 give preference to persons who served as guardian ad litem for the child in the earlier
34 proceeding, unless there is a reason on the record for not giving such preference.

35 ~~[5-]~~ **4.** The guardian ad litem may be awarded a reasonable fee for such services to be
36 set by the court. The court, in its discretion, may award such fees as a judgment to be paid by
37 any party to the proceedings or from public funds. However, no fees as a judgment shall be
38 taxed against a party or parties who have not been found to have abused or neglected a child
39 or children. Such an award of guardian fees shall constitute a final judgment in favor of the
40 guardian ad litem. Such final judgment shall be enforceable against the parties in accordance
41 with chapter 513.

42 ~~[6-]~~ **5.** The court may designate volunteer advocates, who may or may not be
43 attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties
44 for the court. Nonattorney volunteer advocates shall not provide legal representation. The
45 court shall have the authority to examine the general and criminal background of persons
46 designated as volunteer advocates, including utilization of the family care safety registry and
47 access line pursuant to sections 210.900 to 210.937, to ensure the safety and welfare of the
48 children ~~[such persons are designated to represent]~~. The volunteer advocate shall be provided
49 with all reports relevant to the case made to or by any agency or person, shall have access to
50 all records of such agencies or persons relating to the child or such child's family members or
51 placements of the child, and upon designation by the court to a case, shall be informed of and
52 have the right to attend any and all family support team meetings involving the child. Any
53 such designated person shall receive no compensation from public funds. This shall not
54 preclude reimbursement for reasonable expenses.

55 ~~[7-]~~ **6.** Any person appointed to perform guardian ad litem duties shall have
56 completed a training program in permanency planning and shall advocate for timely court
57 hearings whenever possible to attain permanency for a child as expeditiously as possible to
58 reduce the effects that prolonged foster care may have on a child. A nonattorney volunteer
59 advocate shall have access to a court appointed attorney guardian ad litem should the
60 circumstances of the particular case so require.

211.211. 1. A child is entitled to be represented by counsel in all proceedings under
2 ~~[subdivision (2) or (3) of subsection 1 of section 211.031 and by a guardian ad litem in all~~
3 ~~proceedings under]~~ **sections 210.110 to 210.165, sections 210.700 to 210.760,** subdivision

4 (1) of subsection 1 of section 211.031, **section 211.032, sections 211.442 to 211.487, and**
5 **sections 453.005 to 453.170.**

6 2. **Prior to the first hearing**, the court shall appoint **client-directed** counsel for a
7 child ~~[prior to the filing of a petition if a request is made therefor to the court and the court~~
8 ~~finds that the child is the subject of a juvenile court proceeding and that the child making the~~
9 ~~request is indigent]~~ **in a delinquency, child abuse or neglect, or termination of parental**
10 **rights proceeding conducted under this chapter.**

11 3. (1) ~~[When a petition has been filed under subdivision (2) or (3) of subsection 1 of~~
12 ~~section 211.031,]~~ The court ~~[may]~~ **shall** appoint counsel for the child except if private counsel
13 has entered his or her appearance on behalf of the child or if counsel has been waived in
14 accordance with law~~[-except that,].~~ Counsel shall not be waived for any proceeding specified
15 under subsection 10 of this section unless the child has had the opportunity to meaningfully
16 consult with counsel and the court has conducted a hearing on the record.

17 (2) If a child waives his or her right to counsel, such waiver shall be made in open
18 court and be recorded and in writing and shall be made knowingly, intelligently, and
19 voluntarily. In determining whether a child has knowingly, intelligently, and voluntarily
20 waived his or her right to counsel, the court shall look to the totality of the circumstances
21 including, but not limited to, the child's age, intelligence, background, and experience
22 generally and in the court system specifically; the child's emotional stability; and the
23 complexity of the proceedings.

24 4. When a petition has been filed and the child's custodian appears before the court
25 without counsel, the court shall appoint counsel for the custodian if:

26 (1) It finds:

27 ~~[(1)]~~ (a) That the custodian is indigent; and

28 ~~[(2)]~~ (b) That the custodian desires the appointment of counsel; and

29 ~~[(3)]~~ (c) That a full and fair hearing requires appointment of counsel for the
30 custodian; or

31 (2) **The custodian of the child is a minor, or the custodian of the child is mentally**
32 **ill or otherwise incompetent, and the child is the subject of a proceeding under sections**
33 **210.110 to 210.165, sections 210.700 to 210.760, sections 211.442 to 211.487, or sections**
34 **453.005 to 453.170.**

35 5. Counsel shall be allowed a reasonable time in which to prepare to represent his
36 client.

37 6. Counsel shall serve for all stages of the proceedings, including appeal, unless
38 relieved by the court for good cause shown. If no appeal is taken, services of counsel are
39 terminated following the entry of an order of disposition.

40 7. ~~[The child and his custodian may be represented by the same counsel except where~~
41 ~~a conflict of interest exists.]~~ **An attorney appointed to represent a child in a proceeding**
42 **listed under subsection 1 of this section shall not represent the child's parent or**
43 **guardian. An attorney may represent the child's siblings, provided that** where [it appears
44 ~~to~~] the court [~~that~~] **finds** a conflict exists, it shall order that the child and [~~his custodian~~] **the**
45 **child's siblings** be represented by separate counsel, and it shall appoint counsel if required by
46 subsection 3 or 4 of this section.

47 8. When a petition has been filed, a child may waive his or her right to counsel only
48 with the approval of the court and if such waiver is not prohibited under subsection 10 of this
49 section. If a child waives his or her right to counsel for any proceeding except proceedings
50 under subsection 10 of this section, the waiver shall only apply to that proceeding. In any
51 subsequent proceeding, the child shall be informed of his or her right to counsel.

52 9. Waiver of counsel by a child may be withdrawn at any stage of the proceeding, in
53 which event the court shall appoint counsel for the child if required by subsection 3 of this
54 section.

55 10. A child's right to be represented by counsel shall not be waived in any of the
56 following proceedings:

57 (1) At any contested detention hearing under Missouri supreme court rule 127.08
58 where the petitioner alleges that the child violated any law that, if committed by an adult,
59 would be a felony unless an agreement is otherwise reached;

60 (2) At a certification hearing under section 211.071 or a dismissal hearing under
61 Missouri supreme court rule 129.04;

62 (3) At an adjudication hearing under Missouri supreme court rule 128.02 for any
63 felony offense or at any detention hearing arising from a misdemeanor or felony motion to
64 modify or revoke, including the acceptance of an admission;

65 (4) At a dispositional hearing under Missouri supreme court rule 128.03; or

66 (5) At a hearing on a motion to modify or revoke supervision under subdivision (2) or
67 (3) of subsection 1 of section 211.031.

68 **11. A guardian ad litem appointed by the court to investigate a case and make**
69 **recommendations as to the best interests of a child in proceedings alleging child abuse or**
70 **neglect shall not be the child's counsel.**

71 **12. The Missouri supreme court shall establish standards of practice and quality**
72 **representation training requirements for counsel appointed under this section and**
73 **section 210.005 within six months from August 28, 2024.**

74 **13. Annually, the Missouri office of state courts administrator shall report to the**
75 **general assembly and make available aggregate data on the number of children who**
76 **have been appointed counsel under this section.**

211.462. 1. In all actions to terminate parental rights, ~~[if not previously appointed pursuant to section 210.160, a guardian ad litem]~~ **counsel** shall be appointed ~~[for the child as soon as practicable after the filing of the petition]~~ **for a child as provided in section 211.211.**

2. The parent or guardian of the person of the child shall be notified of the right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court. Notice of this provision shall be contained in the summons. When the parent is a minor or incompetent the court shall appoint ~~[a guardian ad litem]~~ **counsel** to represent such parent.

3. **A guardian ad litem may be appointed to investigate a case and make recommendations as to the best interests of a child or a parent who is a minor or incompetent; however, the guardian ad litem shall not serve as counsel to the child or parent who is a minor or incompetent.**

4. **During all stages of the proceedings,** the guardian ad litem ~~[shall, during all stages of the proceedings]:~~

(1) ~~[Be the legal representative of the child, and]~~ **May investigate the case,** examine, cross-examine, subpoena witnesses and offer testimony. The guardian ad litem ~~[may also initiate an appeal of any disposition that he determines to be adverse to the best interests of the child]~~ **shall make a recommendation regarding the best interests of the child;**

(2) ~~[Be an advocate for the child during the dispositional hearing and]~~ **Shall make recommendations to** aid in securing a permanent placement plan for the child. To ascertain the child's wishes, feelings, attachments, and attitudes, he **or she** shall conduct all necessary interviews with persons, other than the parent, having contact with or knowledge of the child and, if appropriate, with the child;

(3) ~~[Protect the rights, interest]~~ **Shall advocate for the best interests** and welfare of a minor or incompetent parent by exercising the powers and duties enumerated in subdivisions (1) and (2) of this subsection.

~~[4.]~~ **5.** Court costs shall be paid by the county in which the proceeding is instituted, except that the court may require the agency or person having or receiving legal or actual custody to pay the costs.

✓