

SENATE BILL NO. 318

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR THE APPOINTMENT OF A GUARDIAN AD LITEM ~~WHEN NECESSARY AT THE APPOINTMENT OF THE PUBLIC DEFENDER;~~ REVISING LAWS FOR APPOINTMENT OF A GUARDIAN AD LITEM IN YOUTH IN NEED OF CARE CASES; REQUIRING A COURT-APPOINTED SPECIAL ADVOCATE TO BE APPOINTED AS THE GUARDIAN AD LITEM FOR ANY CHILD ALLEGED TO BE ABUSED OR NEGLECTED; CLARIFYING THE COURT-APPOINTED SPECIAL ADVOCATE SERVES AT THE EXPENSE OF THE COURT; AND AMENDING SECTION 41-3-112, MCA."

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

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

**"41-3-112. Appointment of court-appointed special advocate -- guardian ad litem.** (1) In every judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or neglected. ~~If a court-appointed special advocate is not available for appointment, the court may appoint an attorney or other qualified person to serve as the guardian ad litem.~~ The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. The court-appointed special advocate shall serve at the expense of the court pursuant to 3-5-901. ~~When necessary, the guardian ad litem may serve at public expense the appointment of the public defender.~~

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

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

- (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- (b) to interview or observe the child who is the subject of the proceeding;
- (c) to have access to court, medical, psychological, law enforcement, social services, and school

**Amendment - 1st Reading-white - Requested by: Ellie Boldman - (S) Judiciary**

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Drafter: Madelyn Krezowski, (406) 444-6857

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- 1 records pertaining to the child and the child's siblings and parents or custodians;
- 2 (d) to make written reports to the court concerning the child's welfare;
- 3 (e) to appear and participate in all proceedings to the degree necessary to adequately represent
- 4 the child and make recommendations to the court concerning the child's welfare;
- 5 (f) to perform other duties as directed by the court; and
- 6 (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or
- 7 otherwise assert the child's rights.

8 (4) Information contained in a report filed by the guardian ad litem or testimony regarding a report

9 filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion

10 as to the best interests of the child.

11 (5) Any party may petition the court for the removal and replacement of the guardian ad litem if the

12 guardian ad litem fails to perform the duties of the appointment."

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