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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3564

03/24/2016 Authored by Pierson, Kresha and Flanagan

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to civil law; amending the duties and responsibilities of guardian ad
1.3 litem in custody and dissolution proceedings; amending Minnesota Statutes
1.4 2014, section 518.165.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 518.165, is amended to read:

1.7 **518.165 GUARDIANS AD LITEM FOR MINOR CHILDREN.**

1.8 Subdivision 1. **Permissive appointment of guardian ad litem.** ~~In all proceedings~~
1.9 ~~for child custody or for dissolution or legal separation where custody or parenting time~~
1.10 ~~with a minor child is in issue, the court may appoint a guardian ad litem to represent the~~
1.11 ~~interests of the child. The guardian ad litem shall advise the court with respect to custody~~
1.12 ~~and parenting time.~~ (a) In proceedings for child custody or for the dissolution or legal
1.13 separation where a child or parent has a disability as defined in section 363A.03, the
1.14 court may appoint a guardian ad litem to collect and provide the court relevant written
1.15 information obtained directly from the provider.

1.16 (b) No appointment pursuant to this subdivision shall last longer than 180 days
1.17 unless the court makes a written finding determining that continuing the appointment is
1.18 necessary due to an ongoing disability concern. If an appointment is extended, it may only
1.19 be extended by 60-day increments, each supported by new specific findings.

1.20 (c) Courts shall use the guardian ad litem appointment order form or template
1.21 provided by the guardian ad litem program. It shall include the parties and participants
1.22 involved, the children's names and dates of birth, and the reporting deadlines for the
1.23 guardian at litem. The report shall be written and timely filed. The appointment order

2.1 shall include the date of the expiration of appointment and the specific area of concern for
2.2 which the court is ordering the guardian ad litem to gather information.

2.3 Subd. 2. **Required appointment of guardian ad litem.** In all proceedings for child
2.4 custody or for marriage dissolution or legal separation in which custody or parenting time
2.5 with a minor child is an issue, if the court ~~has reason to believe that~~ makes a prima facie
2.6 finding that the minor child is a victim of domestic child abuse, endangerment, or neglect,
2.7 as those terms are defined in sections 260C.007 and 626.556, respectively, the court shall
2.8 appoint a guardian ad litem. This family court guardian ad litem appointment does not
2.9 discharge the guardian ad litem's uninterrupted duty as a mandated reporter to child
2.10 protection services. The guardian ad litem shall represent the interests of the child and
2.11 advise the court with respect to custody and parenting time. If the child is represented by a
2.12 guardian ad litem in any other pending proceeding, the court may appoint that guardian to
2.13 represent the child in the custody or parenting time proceeding. No guardian ad litem need
2.14 will be appointed in family court if the alleged domestic child abuse or neglect is before
2.15 the court on a juvenile dependency and neglect petition. Nothing in this subdivision
2.16 requires allows the court to appoint a family court guardian ad litem in any proceeding for
2.17 child custody, marriage dissolution, or legal separation in which an allegation of domestic
2.18 child abuse or neglect has not been made.

2.19 No appointment pursuant to this subdivision shall last longer than 180 days unless the
2.20 court makes a written finding determining that continuing the appointment is necessary due
2.21 to ongoing incidents of domestic child abuse, endangerment, or neglect. If an appointment
2.22 is extended, it may only be extended by 60-day increments, each supported by new
2.23 specific findings of ongoing incidents of domestic child abuse, endangerment, or neglect.

2.24 Courts shall use the order form appointing the guardian ad litem provided by the
2.25 guardian ad litem program. It shall include the parties and participants involved, the
2.26 children's names and dates of birth, and the reporting deadlines for the guardian ad litem.
2.27 The report shall be written and timely filed. The court order must provide the date of the
2.28 expiration of appointment and the specific areas of concern which the court is ordering the
2.29 guardian ad litem to gather information on.

2.30 Subd. 2a. **Responsibilities of guardian ad litem.** A guardian ad litem shall carry
2.31 out the following responsibilities:

2.32 (1) conduct an independent investigation to determine the facts to gather information
2.33 and original documents or reports as allowed by the appointment order and relevant to the
2.34 situation of the child and the family child's safety and well-being, which must include,
2.35 unless specifically excluded by the court, reviewing obtaining relevant documents; meeting
2.36 with and observing the child in the home setting and considering the child's wishes, as the

3.1 court deems appropriate; and interviewing parents, caregivers, and others with knowledge
 3.2 relevant to the case; The guardian ad litem shall only investigate and report to the court
 3.3 regarding the specific issues or areas of concern identified by the court in the appointment
 3.4 order. The guardian ad litem shall not be required to investigate and report to the court
 3.5 regarding all the best interests of the child factors. If the guardian ad litem discovers areas
 3.6 of concern related to the child's best interests beyond the scope of the appointment order, the
 3.7 guardian ad litem may notify the parties and the court of the concern in writing. The parties
 3.8 may request a hearing on the issue of expanding the appointment of the guardian ad litem;

3.9 (2) advocate for the child's best interests by participating in appropriate aspects of
 3.10 collecting relevant and credible information and reports in the case and advocating for
 3.11 appropriate community services when necessary;

3.12 (3) submit supporting documents and records with their report. That evidence must
 3.13 become a part of the record and it must be available to the court, the parties or their
 3.14 attorneys, and any appellate court. Confidential reports and medical records shall be
 3.15 filed as confidential or sealed documents;

3.16 (4) maintain the confidentiality of information related to a case, with the exception
 3.17 of sharing information as permitted by law to promote cooperative solutions that are in
 3.18 the best interests of the child pursuant to the guardian ad litem confidentiality policy
 3.19 and as required by law;

3.20 (4) ~~monitor the child's best interests throughout the judicial proceeding; and~~

3.21 (5) relay professional reports to the court in their entirety without interpretation. A
 3.22 guardian ad litem should not contradict or interpret the opinions of a licensed professional
 3.23 unless the guardian ad litem is trained and licensed in the profession that generated the
 3.24 report; and

3.25 (6) present timely written reports on reflecting the child's best interests that include
 3.26 conclusions and both the recommendations and the facts direct information upon which
 3.27 they are based.

3.28 Subd. 3. **Fees.** (a) ~~If a guardian ad litem is appointed on a fee basis,~~ The court shall
 3.29 enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem
 3.30 for the services ordered. The order may be made against either or both parties, except
 3.31 that any part of the costs, fees, or disbursements which the court finds the parties are
 3.32 incapable of paying shall be borne by the State Guardian Ad Litem Board. In no event
 3.33 may the court order that costs, fees, or disbursements be paid by a party receiving public
 3.34 assistance or legal assistance or by a party whose annual income falls below the poverty
 3.35 line as established under United States Code, title 42, section 9902(2).

4.1 (b) In each fiscal year, the commissioner of management and budget shall deposit
4.2 guardian ad litem reimbursements in the special revenue fund and credit them to a
4.3 separate account with the State Guardian Ad Litem Board. The balance of this account is
4.4 appropriated to the State Guardian Ad Litem Board and does not cancel but is available
4.5 until expended. Revenue from this account must be spent in the judicial district in which
4.6 the reimbursement is collected.

4.7 Subd. 4. **Background study of guardian ad litem.** (a) The court shall initiate a
4.8 background study through the commissioner of human services under section 245C.32 on
4.9 every guardian ad litem appointed under this section if a background study has not been
4.10 completed on the guardian ad litem within the past three years. The background study must
4.11 be completed before the court appoints the guardian ad litem, unless the court determines
4.12 that it is in the best interest of the child to appoint a guardian ad litem before a background
4.13 study can be completed by the commissioner. The court shall initiate a subsequent
4.14 background study under this paragraph once every three years after the guardian has been
4.15 appointed as long as the individual continues to serve as a guardian ad litem.

4.16 (b) The background study must include criminal history data from the Bureau of
4.17 Criminal Apprehension, other criminal history data held by the commissioner of human
4.18 services, and data regarding whether the person has been a perpetrator of substantiated
4.19 maltreatment of a minor or a vulnerable adult. When the information from the Bureau
4.20 of Criminal Apprehension indicates that the subject of a study under paragraph (a) is a
4.21 multistate offender or that the subject's multistate offender status is undetermined, the
4.22 court shall require a search of the National Criminal Records Repository, and shall provide
4.23 the commissioner a set of classifiable fingerprints of the subject of the study.

4.24 (c) The Minnesota Supreme Court shall pay the commissioner a fee for conducting a
4.25 background study under section 245C.32.

4.26 (d) Nothing precludes the court from initiating background studies using court data
4.27 on criminal convictions.

4.28 Subd. 5. **Procedure, criminal history, and maltreatment records background**
4.29 **study.** (a) When the court requests a background study under subdivision 4, paragraph
4.30 (a), the request shall be submitted to the Department of Human Services through the
4.31 department's electronic online background study system.

4.32 (b) When the court requests a search of the National Criminal Records Repository,
4.33 the court must provide a set of classifiable fingerprints of the subject of the study on a
4.34 fingerprint card provided by the commissioner of human services.

4.35 (c) The commissioner of human services shall provide the court with criminal
4.36 history data as defined in section 13.87 from the Bureau of Criminal Apprehension in

5.1 the Department of Public Safety, other criminal history data held by the commissioner
5.2 of human services, and data regarding substantiated maltreatment of a minor under
5.3 section 626.556, and substantiated maltreatment of a vulnerable adult under section
5.4 626.557, within 15 working days of receipt of a request. If the subject of the study has
5.5 been determined by the Department of Human Services or the Department of Health
5.6 to be the perpetrator of substantiated maltreatment of a minor or vulnerable adult
5.7 in a licensed facility, the response must include a copy of the public portion of the
5.8 investigation memorandum under section 626.556, subdivision 10f, or the public portion
5.9 of the investigation memorandum under section 626.557, subdivision 12b. When the
5.10 background study shows that the subject has been determined by a county adult protection
5.11 or child protection agency to have been responsible for maltreatment, the court shall be
5.12 informed of the county, the date of the finding, and the nature of the maltreatment that
5.13 was substantiated. The commissioner shall provide the court with information from the
5.14 National Criminal Records Repository within three working days of the commissioner's
5.15 receipt of the data. When the commissioner finds no criminal history or substantiated
5.16 maltreatment on a background study subject, the commissioner shall make these results
5.17 available to the court electronically through the secure online background study system.

5.18 (d) Notwithstanding section 626.556, subdivision 10f, or 626.557, subdivision 12b,
5.19 if the commissioner or county lead agency or lead investigative agency has information
5.20 that a person on whom a background study was previously done under this section has
5.21 been determined to be a perpetrator of maltreatment of a minor or vulnerable adult, the
5.22 commissioner or the county may provide this information to the court that requested the
5.23 background study.

5.24 Subd. 6. **Rights.** The court shall notify the subject of a background study that the
5.25 subject has the following rights:

5.26 (1) the right to be informed that the court will request a background study on the
5.27 subject for the purpose of determining whether the person's appointment or continued
5.28 appointment is in the best interests of the child;

5.29 (2) the right to be informed of the results of the study and to obtain from the court a
5.30 copy of the results; and

5.31 (3) the right to challenge the accuracy and completeness of the information
5.32 contained in the results to the agency responsible for creation of the data except to the
5.33 extent precluded by section 256.045, subdivision 3.

5.34 Subd. 7. **Limitations of guardian ad litem roles.** Guardian ad litem shall not be
5.35 ordered to, and shall not perform, the following roles in a case in which the person serves
5.36 as a guardian ad litem:

- 6.1 (1) custody evaluator pursuant to section 518.167;
 6.2 (2) parenting time evaluator;
 6.3 (3) parenting time consultant;
 6.4 (4) family group decision-making facilitator;
 6.5 (5) early neutral evaluator;
 6.6 (6) mediator, as that role is prescribed in section 518.619, and Rule 310 of the
 6.7 General Rules of Practice for the District Courts;
 6.8 (7) arbitrator or individual authorized to decide disputes between parties;
 6.9 (8) parenting time expeditor, as that role is prescribed in section 518.1751;
 6.10 (9) substitute decision-maker under section 253B.092;
 6.11 (10) evaluator charged with conducting a home study under section 245A.035 or
 6.12 259.41;
 6.13 (11) case manager; or
 6.14 (12) attorney for the child.

6.15 Subd. 8. **Limitations of guardian ad litem duties.** (a) Guardian ad litem shall not
 6.16 be ordered to, and shall not perform, the following duties in a case in which the person
 6.17 serves as a guardian ad litem:

- 6.18 (1) make any decisions outside the purview of the court;
 6.19 (2) provide counseling or therapy to a child or parent;
 6.20 (3) provide mental health diagnosis, prognosis, or treatment planning;
 6.21 (4) provide psychological guidance to the court other than recommendations for
 6.22 evaluations;
 6.23 (5) render an expert opinion in opposition to a licensed professional without the
 6.24 appropriate licensure;
 6.25 (6) determine the effectiveness of a licensed professional without the appropriate
 6.26 licensure to evaluate and measure the professional's effectiveness;
 6.27 (7) provide formal recommendations for specific providers or businesses;
 6.28 (8) provide collateral information to professionals;
 6.29 (9) provide case background to child protective services other than a mandated report;
 6.30 (10) participate in child protective services investigation or screening;
 6.31 (11) provide courtroom recommendations that differ from the guardian ad litem
 6.32 formal report filed with the court. A guardian ad litem must file a timely supplemental
 6.33 report to accommodate new information;
 6.34 (12) foster a friendship with a child or parent by inviting the child or parent into
 6.35 the home of the guardian ad litem, routinely entertaining the child or parent, or giving
 6.36 money or gifts to the child or parent;

- 7.1 (13) give legal advice or hire an attorney for the child or parent;
7.2 (14) supervise visits between the child and parent or third parties;
7.3 (15) provide child care services for the child;
7.4 (16) make placement arrangements for the child or remove a child from the home;
7.5 (17) serve as a message service between parents for communication;
7.6 (18) transport the children; or
7.7 (19) provide guidance or recommendations to the court regarding any financial
7.8 matters.

7.9 (b) Nothing in this subdivision precludes, by party agreement, provider
7.10 recommendations when done in an informal matter.

7.11 Subd. 9. **Remedy of overly broad orders.** The guardian ad litem or the guardian ad
7.12 litem district court manager must immediately notify the court and the parties in writing
7.13 or on the record when an appointment order includes duties or roles that extend beyond
7.14 the statutory authority of a guardian ad litem. An order that is overly expansive does not
7.15 empower or authorize a guardian ad litem to perform outside the statutorily defined roles
7.16 or to perform roles or duties otherwise prohibited.

7.17 Subd. 10. **Notification of misconduct.** A guardian ad litem district court manager
7.18 shall promptly notify the court and the parties in writing with detailed findings of guardian
7.19 ad litem misconduct and the nature of the misconduct.