

SENATE BILL NO. 464

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE APPOINTMENT OF SPECIAL ADVOCATES IN CHILD ABUSE AND NEGLECT PROCEEDINGS; REVISING DUTIES OF SPECIAL ADVOCATES; PROVIDING A DEFINITION OF "SPECIAL ADVOCATE"; AND AMENDING SECTIONS 41-3-102, 41-3-112, AND 41-3-425, 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~~ may 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~~ A governmental department or any member of its staff who has a direct conflict of interest may not be appointed as the ~~guardian ad litem~~ special advocate in a judicial proceeding under this title. ~~When necessary, the guardian ad litem may serve at public expense.~~

(2) A prospective special advocate must meet the following minimum qualifications:

(a) be at least 21 years old and have demonstrated an interest in children and children's welfare;

(b) be willing to commit to the court for a minimum of 1 year of service to a child;

(c) have completed an application and have provided required background information; and

(d) have completed a screening interview.

(3) An appointed special advocate may not:

(a) accept any compensation for the duties and responsibilities of the special advocate's appointment;

(b) have any association that creates a conflict of interest with the special advocate's duties;

(c) be related to any party or attorney involved in a case;

(d) be employed in a position that could result in a conflict of interest or give rise to the appearance of a conflict; or

(e) use the special advocate's position to seek or accept gifts or special privileges.

(2) (4) The guardian ad litem special advocate must have received appropriate training that is specifically related to serving as an advocate for a child's court-appointed representative, the best interests of a child and that includes:

(a) completing preservice training, including instruction on recognizing child abuse and neglect, cultural awareness, child development, education standards, the juvenile court process, permanency planning, volunteer roles and responsibilities, advocacy, information gathering, and documentation; and

(b) observing court proceedings prior to appointment.

(3) (5) The guardian ad litem special advocate is charged with the representation of shall advocate for 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 an independent review regarding the best interests of the child to provide factual information to the court regarding the child and the child's family;

(b) to interview or and observe the child who is the subject of the proceeding and other appropriate individuals and review relevant records and reports;

(c) to through the child's counsel, have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child, and the child's siblings and parents or custodians; including records of siblings, parents, or caretakers if the records are relevant to the issues in the case. Access to medical and psychological records of siblings, parents, or caretakers must be provided in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq., and the legislative findings in 50-16-502.

(d) maintain confidentiality of all information regarding a case and not disclose the information except to the court, to the other parties, or to the department. A special advocate's duty of confidentiality is not extinguished by the dismissal of the case. Special advocates shall follow applicable law, administrative policies, and procedures regarding access to, use of, and release of information about the children served to ensure that confidentiality is maintained at all times.

(d) ~~(e)~~ ~~to make~~ prepare written reports for distribution to the court and the parties concerning the child's welfare;

~~(e)~~ (f) ~~to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare~~ best interests, including if additional services are necessary;

(g) ~~monitor the case to completion to ensure that the child's essential needs are met and that the terms of the court's orders are fulfilled;~~

(h) ~~seek to ensure that reasonable efforts are made to prevent unnecessary placement of the child out of the home and facilitate reunification of the child with the child's family if it is in the child's best interests. In determining whether reasonable efforts are made with respect to a child, the child's health and safety are the paramount concern.~~

(i) ~~if reunification is not possible, work with the child to assist the child in adjusting to another safe and permanent living arrangement;~~

~~(f)~~ (j) ~~to perform other duties as directed by the court; and~~

~~(g)~~ (k) ~~if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights work directly with the child's legal representative to protect the constitutional rights of the child and advocate for the child's best interests.~~

~~(4)~~ ~~Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.~~

(6) ~~Information contained in a report filed by the special advocate or testimony regarding a report filed by the special advocate is not hearsay when it is used to form the basis of the special advocate's opinion as to the best interests of the child.~~

~~(5)~~ (6)(7) ~~Any party may petition the court for the removal and replacement of the guardian ad litem special advocate if the guardian ad litem special advocate fails to perform the duties of the appointment.~~

~~(7)~~ (8) ~~A special advocate may raise concerns to the court about conduct that is contrary to the best interests of the child.~~

(9) ~~If a special advocate is not available for appointment, a judge may appoint an attorney or other~~

qualified person to serve as special advocate and perform the duties enumerated in subsection (5). When necessary, the special advocate may serve at the public expense. Funds from the account established in 3-1-707 may not be used for the purpose of appointing a paid special advocate."

Section 2. Section 41-3-102, MCA, is amended to read:

" 41-3-102. (Temporary) Definitions. As used in this chapter, the following definitions apply:

(1) — (a) "Abandon", "abandoned", and "abandonment" mean:

(i) — leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) — willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) — that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) — the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) — The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) — "A person responsible for a child's welfare" means:

(a) — the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) — a person providing care in a day care facility;

(c) — an employee of a public or private residential institution, facility, home, or agency; or

(d) — any other person responsible for the child's welfare in a residential setting.

(3) — "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) — (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the