

SENATE FILE NO. SF0099

Guardian ad litem program.

Sponsored by: Senator(s) Nicholas, P., Perkins and Ross
and Representative(s) Berger, Gingery and
Lubnau

A BILL

for

1 AN ACT relating to children; providing for continuation of
2 a guardian ad litem program administered by the state
3 public defender's office; statutorily establishing and
4 making modifications to the program; requiring appointment
5 of the program for guardian ad litem cases as specified;
6 providing for county participation and reimbursement;
7 providing for liability of nonparticipating counties for
8 guardian ad litem costs as specified; providing for
9 coverage of attorneys providing guardian ad litem program
10 services under the Wyoming Governmental Claims Act and
11 state self-insurance program; authorizing payments for
12 guardian ad litem services as specified; authorizing
13 rulemaking; specifying standards for the program and
14 participants; making conforming amendments; providing for
15 funding; and providing for an effective date.

1

2 *Be It Enacted by the Legislature of the State of Wyoming:*

3

4 **Section 1.** The guardian ad litem program initially
5 authorized by 2005 Wyoming Session Laws, Chapter 237 and
6 transferred to the state public defender's office pursuant
7 to 2008 Wyoming Session Laws, Chapter 48, Section 316 is
8 authorized and continued by this act and shall be
9 administered as provided in this act.

10

11 **Section 2.** W.S. 14-12-101 through 14-12-104 are
12 created to read:

13

14 CHAPTER 12

15 GUARDIAN AD LITEM PROGRAM

16

17 ARTICLE 1

18 GUARDIAN AD LITEM PROGRAM

19

20 **14-12-101. Guardian ad litem program; administration**
21 **by the public defender's office; standards; rulemaking.**

22

23 (a) The office of the state public defender shall
24 administer a guardian ad litem program. The program shall

1 employ or contract with, supervise and manage attorneys
2 providing legal representation as guardians ad litem in the
3 following cases and actions:

4
5 (i) Child protection cases under W.S. 14-3-101
6 through 14-3-440;

7
8 (ii) Children in need of supervision cases under
9 W.S. 14-6-401 through 14-6-440, to the extent an attorney
10 has been appointed to serve only as a guardian ad litem;

11
12 (iii) Delinquency cases under W.S. 14-6-201
13 through 14-6-252, to the extent an attorney has been
14 appointed to serve only as a guardian ad litem;

15
16 (iv) Termination of parental rights actions
17 under W.S. 14-2-308 through 14-2-319, brought as a result
18 of a child protection, child in need of supervision or
19 delinquency action;

20
21 (v) Appeals to the Wyoming supreme court in the
22 cases or actions specified in this subsection.

23

1 (b) The program shall be administered by an
2 administrator appointed by the state public defender. The
3 administrator shall be an attorney in good standing with
4 the Wyoming state bar with experience in guardian ad litem
5 representation, child welfare and juvenile justice.

6
7 (c) The office shall adopt policies and rules and
8 regulations governing standards for the legal
9 representation by attorneys acting as guardians ad litem in
10 cases under the program and for the training of those
11 attorneys. The policies and rules shall ensure that the
12 program will be separate and distinct from the office's
13 performance of duties involving criminal defense and
14 representation of a juvenile other than as a guardian ad
15 litem in delinquency proceedings. To the maximum extent
16 possible, the policies and rules shall ensure all fiscal
17 and information technology duties for the program are kept
18 separate from the fiscal and information technology duties
19 for the office of the public defender. Any attorney
20 providing services to the program as a guardian ad litem
21 shall meet the standards established by the office for the
22 program.

23

1 **14-12-102. Appointment of program to provide guardian**
2 **ad litem services.**

3

4 (a) In cases specified in W.S. 14-12-101(a), if the
5 county in which the court is located participates in the
6 program:

7

8 (i) The court shall appoint the program to
9 provide services when appointing a guardian ad litem;

10

11 (ii) The administrator or designee shall assign
12 an attorney to act as guardian ad litem in accordance with
13 the court's order.

14

15 (b) The program shall cooperate with juvenile courts
16 in developing a case appointment system in each
17 participating county for all applicable cases requiring the
18 appointment of a guardian ad litem.

19

20 (c) An attorney accepting a guardian ad litem
21 assignment under the program shall be employed by or
22 contract with the program to provide services in accordance
23 with program requirements. The contract shall specify the
24 fees to be paid for the assignment, which may be a defined

1 hourly or per case rate or a defined sum. Fees paid by the
2 program may vary based upon the type and difficulty of the
3 case, location, work required and experience.

4
5 **14-12-103. County participation; reimbursement;**
6 **offices and equipment.**

7
8 (a) The office of the state public defender shall
9 enter into agreements with each county participating in the
10 program. Agreements shall require counties to comply with
11 all program rules and policies. The agreement shall
12 establish the compensation rate within the county for
13 attorneys providing legal representation as guardians ad
14 litem in program cases and the reimbursement requirements.
15 A county may agree with an attorney providing services
16 under the program to pay a rate in excess of the rate set
17 for payment by the program. If a county agrees to do so, it
18 shall enter into a separate contract with the attorney
19 providing services and shall be responsible and obligated
20 to reimburse the program for one hundred percent (100%) of
21 the excess amount. The county shall enter into a separate
22 agreement with the office setting out the agreement, the
23 excess rate and the responsibilities and obligations of all
24 parties.

1

2 (b) The program shall pay from the guardian ad litem
3 account one hundred percent (100%) of the fees for the
4 legal representation of children by attorneys as guardians
5 ad litem in program cases. Participating counties shall
6 reimburse the program an amount equal to not less than
7 twenty-five percent (25%) of the agreed program fees, not
8 less than twenty-five percent (25%) of the program's
9 administrative cost prorated by program funds expended in
10 each county and one hundred percent (100%) of excess rate
11 fees. The program shall invoice the county for its
12 proportionate share. In the event a county does not make
13 payments within ninety (90) days, the state treasurer may
14 deduct the amount from sales tax revenues due to the county
15 from the state and shall credit the amount to the program
16 account.

17

18 (c) There is created a guardian ad litem account.
19 All reimbursements received under the program shall be
20 deposited to the account. Funds within the account are
21 continuously appropriated to the public defender's office
22 for expenditure for the sole purpose of the guardian ad
23 litem program.

24

1 (d) Agreements entered into under this section shall
2 include provision for each county, in which guardians ad
3 litem employed by or under contract with the program are
4 located, to provide separate from any public defender field
5 office, adequate space and utility services, other than
6 telephone service, for the use of the program's guardians
7 ad litem. If suitable office space for all guardians ad
8 litem cannot be provided, the county shall provide, based
9 upon a proportional share, a monthly stipend to all program
10 guardians ad litem housed in private facilities. The
11 proportional share shall be determined by the program,
12 based upon the counties served by each guardian ad litem
13 not provided suitable office space. The stipend shall be
14 paid directly by the county to the program guardian ad
15 litem.

16

17 (e) A county which does not participate in the
18 program, shall be responsible for the full cost of
19 guardians ad litem legal fees as provided by W.S.
20 14-2-318(b)(i), 14-3-434(b)(vi), 14-6-235(b)(vi) and
21 14-6-434(b)(vi).

22

23 (f) The office shall enter into a memorandum of
24 understanding with the department of family services under

1 which a guardian ad litem will be provided for cases in
2 which the department is required by law or court order to
3 provide guardian ad litem services in any of the cases or
4 actions specified in W.S. 14-12-101(a). The department
5 shall reimburse the program an amount equal to not less
6 than twenty-five percent (25%) of the agreed program fees
7 paid to guardians ad litem in actions under this
8 subsection.

9
10 **14-12-104. Applicability of the Wyoming Governmental**
11 **Claims Act and state self-insurance program.**

12
13 Notwithstanding any other provision of law to the contrary,
14 any attorney providing services for the office pursuant to
15 the guardian ad litem program shall, for matters arising
16 out of such services, be considered a state employee for
17 purposes of coverage and representation under the Wyoming
18 Governmental Claims Act, W.S. 1-39-101 through 1-39-121,
19 and the state self-insurance program, W.S. 1-41-101 through
20 1-41-111.

21
22 **Section 3.** W.S. 1-39-103(a)(iv)(B) and by creating a
23 new subparagraph (F), 1-41-102(a)(v)(B)(I) and by creating
24 a new subparagraph (D), 7-6-103(c)(vi) and by creating a

1 new paragraph (viii), 7-6-106(d)(i) and by creating an new
2 paragraph (iii), 7-6-112(a)(iii) and by creating a new
3 paragraph (v) and 7-6-113 by creating a new subsection (d),
4 14-2-318(b)(i) and (d)(iii), 14-3-434(b)(vi) and (c),
5 14-6-235(b)(vi) and (c) and 14-6-434(b)(vi) and (c) are
6 amended to read:

7
8 **1-39-103. Definitions.**

9
10 (a) As used in this act:

11
12 (iv) "Public employee":

13
14 (B) Does not include an independent
15 contractor, except as provided in ~~subparagraph~~
16 subparagraphs (C) and (F) of this paragraph, or a judicial
17 officer exercising the authority vested in him;

18
19 (F) Includes contract attorneys in the
20 course of providing contract services for the state public
21 defenders office as provided in W.S. 7-6-103(k) or
22 14-12-104.

23
24 **1-41-102. Definitions.**

1

2 (a) As used in this act:

3

4 (v) "Public employee" means any officer,
5 employee or servant of the state, provided the term:

6

7 (B) Does not include:

8

9 (I) An independent contractor except
10 as provided in ~~subparagraph~~ subparagraphs (C) and (D) of
11 this paragraph;

12

13 (D) Includes contract attorneys in the
14 course of providing contract services for the state public
15 defenders office as provided in W.S. 7-6-103(k) or
16 14-12-104.

17

18 7-6-103. Creation of office of state public defender;
19 appointment of state public defender and assistants;
20 duties; removal.

21

22 (c) The state public defender shall:

23

1 (vi) Promulgate rules and regulations
2 establishing a standard fee schedule for services provided
3 by attorneys appointed pursuant to W.S. 7-6-109;~~and~~

4
5 (viii) Administer the guardian ad litem program
6 as provided in W.S. 14-12-101 through 14-12-104.

7
8 **7-6-106. Determination of need; reimbursement for**
9 **services.**

10
11 (d) The state public defender shall report in the
12 agency's annual report concerning:

13
14 (i) The number of cases by court in which an
15 attorney was appointed to represent a person at public
16 expense under this act during the preceding calendar
17 quarter;~~and~~

18
19 (iii) For the guardian ad litem program, the
20 number of cases, the amount of monies expended and the
21 amounts of reimbursements from participating counties.

22
23 **7-6-112. Applicability of provisions.**

1 (a) This act does not apply to:

2

3 (iii) Representation of a person charged in
4 municipal court with violation of a municipal ordinance; ~~or~~

5

6 (v) Administration of the guardian ad litem
7 program under W.S. 14-12-101 through 14-12-104, except as
8 provided in W.S. 7-6-103(c)(viii) and 7-6-106(d)(iii).

9

10 **7-6-113. Funding.**

11

12 (d) The provisions of this section shall not be
13 applicable to the guardian ad litem program administered by
14 the office of the public defender and the budget for that
15 program shall be as provided in W.S. 14-12-101 through
16 14-12-104.

17

18 **14-2-318. Costs of proceedings; appointment of**
19 **counsel.**

20

21 (b) Where petitioner is an authorized agency as
22 defined by W.S. 14-2-308(a)(ii)(B), it shall pay for the
23 costs of the action. Costs shall include:

24

1 (i) Fee for the guardian ad litem. If the
2 agency had entered into an agreement with the guardian ad
3 litem program pursuant to W.S. 14-12-101 through 14-12-104
4 and the program was appointed to provide the guardian ad
5 litem, the program shall pay the fee for the guardian ad
6 litem in accordance with that agreement;

7
8 (d) Where petitioner is an authorized agency as
9 defined by W.S. 14-2-308(a)(ii)(A):

10

11 (iii) The authorized agency shall pay the
12 guardian ad litem reasonable fees and expenses approved by
13 the court unless the agency had entered into an agreement
14 with the guardian ad litem program pursuant to W.S.
15 14-12-101 through 14-12-104 and the program was appointed
16 to provide the guardian ad litem. If so, the program shall
17 pay the fee for the guardian ad litem in accordance with
18 that agreement.

19

20 **14-3-434. Fees, costs and expenses.**

21

22 (b) The following costs and expenses, when approved
23 and certified by the court to the county treasurer, shall
24 be a charge upon the funds of the county where the

1 proceedings are held and shall be paid by the board of
2 county commissioners of that county:

3
4 (vi) Reasonable compensation for services and
5 costs of a guardian ad litem appointed by the court, unless
6 the county participates in the guardian ad litem program
7 pursuant to W.S. 14-12-101 through 14-12-104 and the
8 program was appointed to provide the guardian ad litem; and
9

10 (c) In every case in which a guardian ad litem has
11 been appointed to represent the child under this act or in
12 which counsel has been appointed under this act to
13 represent the child's parents, guardian or custodian, the
14 court shall determine whether the child's parents,
15 guardian, custodian or other person responsible for the
16 child's support is able to pay part or all of the costs of
17 representation and shall enter specific findings on the
18 record. If the court determines that any of the parties is
19 able to pay any amount as reimbursement for costs of
20 representation, the court shall order reimbursement or
21 shall state on the record the reasons why reimbursement was
22 not ordered. The court may also in any case order that all
23 or any part of the costs and expenses enumerated in
24 paragraphs (b)(i), (iii), (iv) and (vii) of this section,

1 be reimbursed to the county by the child's parents or any
2 person legally obligated for his support, or any of them
3 jointly and severally, upon terms the court may direct. An
4 order for reimbursement of costs made pursuant to this
5 subsection may be enforced as provided in W.S. 14-3-435.

6 Any reimbursement ordered for guardian ad litem services
7 provided pursuant to W.S. 14-12-101 through 14-12-104 shall
8 be apportioned between the county and the guardian ad litem
9 program in accordance with payments made for those
10 services.

11
12 **14-6-235. Fees, costs and expenses.**

13
14 (b) The following costs and expenses, when approved
15 and certified by the court to the county treasurer, shall
16 be a charge upon the funds of the county where the
17 proceedings are held and shall be paid by the board of
18 county commissioners of that county:

19
20 (vi) Reasonable compensation for services and
21 costs of a guardian ad litem appointed by the court, unless
22 the county participates in the guardian ad litem program
23 pursuant to W.S. 14-12-101 through 14-12-104 and the
24 program was appointed to provide the guardian ad litem; and

1
2 (c) Legal services rendered to a child for his
3 benefit and protection are necessities which the child's
4 parents or any person obligated by law for the child's
5 support may be held responsible. In every case in which a
6 guardian ad litem has been appointed to represent the child
7 under W.S. 14-6-216 or in which counsel has been appointed
8 under W.S. 14-6-222 to represent the child, the child's
9 parents, guardian or other person responsible for the
10 child's support, the court shall determine whether the
11 child, the child's parents, guardian or other person
12 responsible for the child's support is able to pay part or
13 all of the costs of representation and shall enter specific
14 findings on the record. If the court determines that any
15 of the parties is able to pay any amount as reimbursement
16 for costs of representation, the court shall order
17 reimbursement or shall state on the record the reasons why
18 reimbursement was not ordered. The court may also in any
19 case order that all or any part of the costs and expenses
20 enumerated in paragraphs (b)(i), (iii), (iv) and (vii) of
21 this section, be reimbursed to the county by the child, his
22 parents or any person legally obligated for his support, or
23 any of them jointly and severally, upon terms the court may
24 direct. An order for reimbursement of costs made pursuant

1 to this subsection may be enforced as provided in W.S.
2 14-6-236. Any reimbursement ordered for guardian ad litem
3 services provided pursuant to W.S. 14-12-101 through
4 14-12-104 shall be apportioned between the county and the
5 guardian ad litem program in accordance with payments made
6 for those services.

7
8 **14-6-434. Fees, costs and expenses.**

9
10 (b) The following costs and expenses, when approved
11 and certified by the court to the county treasurer, shall
12 be a charge upon the funds of the county where the
13 proceedings are held and shall be paid by the board of
14 county commissioners of that county:

15
16 (vi) Reasonable compensation for services and
17 costs of a guardian ad litem appointed by the court, unless
18 the county participates in the guardian ad litem program
19 pursuant to W.S. 14-12-101 through 14-12-104 and the
20 program was appointed to provide the guardian ad litem; and

21
22 (c) In every case in which a guardian ad litem has
23 been appointed to represent the child under this act or in
24 which counsel has been appointed under this act to

1 represent a child or the child's parents, guardian or
2 custodian, the court shall determine whether the child, the
3 child's parents, guardian, custodian or other person
4 responsible for the child's support is able to pay part or
5 all of the costs of representation and shall enter specific
6 findings on the record. If the court determines that any
7 of the parties is able to pay any amount as reimbursement
8 for costs of representation, the court shall order
9 reimbursement or shall state on the record the reasons why
10 reimbursement was not ordered. The court may also in any
11 case order that all or any part of the costs and expenses
12 enumerated in paragraphs (b)(i), (iii), (iv) and (vii) of
13 this section, be reimbursed to the county by the child, the
14 child's parents or any person legally obligated for his
15 support, or any of them jointly and severally, upon terms
16 the court may direct. An order for reimbursement of costs
17 made pursuant to this subsection may be enforced as
18 provided in W.S. 14-6-435. Any reimbursement ordered for
19 guardian ad litem services provided pursuant to W.S.
20 14-12-101 through 14-12-104 shall be apportioned between
21 the county and the guardian ad litem program in accordance
22 with payments made for those services.

23

Section 4. All funds previously appropriated to the state public defender's office for the guardian ad litem program or appropriated to that office for the program under 2012 House Bill 1 shall be deposited to the guardian ad litem account created by this act and may be expended as provided by this act.

7

8 **Section 5.** This act is effective immediately upon
9 completion of all acts necessary for a bill to become law
10 as provided by Article 4, Section 8 of the Wyoming
11 Constitution.

12

13 (END)