

HOUSE BILL 235

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; EXPANDING THE RIGHTS OF A CHILD TO APPEAR AT THE CHILD'S ABUSE AND NEGLECT HEARINGS; LOWERING THE AGE FOR MANDATORY APPOINTMENT OF AN ATTORNEY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 32A-1-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 16, as amended) is amended to read:

"32A-1-7. GUARDIAN AD LITEM--POWERS AND DUTIES.--

A. A guardian ad litem shall consult with the child to determine the child's stated interests before every hearing.

B. With the child's consent, a guardian ad litem shall convey the child's stated interests to the court at every hearing.

C. A guardian ad litem shall incorporate the child's stated interest as part of the analysis of the child's

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1 best interest.

2 [A.] D. A guardian ad litem shall zealously
3 represent the child's best interests in the proceeding for
4 which the guardian ad litem has been appointed and in any
5 subsequent appeals.

6 [B.] E. Unless excused by a court, a guardian ad
7 litem appointed to represent a child's best interests shall
8 continue the representation in any subsequent appeals.

9 [C.] F. Any party may petition the court for an
10 order to remove a guardian ad litem on the grounds that the
11 guardian ad litem has a conflict of interest or is unwilling or
12 unable to zealously represent the child's best interests.

13 [~~D.~~ ~~After consultation with the child, a guardian~~
14 ~~ad litem shall convey the child's declared position to the~~
15 ~~court at every hearing.~~

16 [E.] G. Unless a child's circumstances render the
17 following duties and responsibilities unreasonable, a guardian
18 ad litem shall:

19 (1) meet with and interview the child prior to
20 custody hearings, adjudicatory hearings, dispositional
21 hearings, judicial reviews and any other hearings scheduled in
22 accordance with the provisions of the Children's Code;

23 (2) communicate with health care, mental
24 health care and other professionals involved with the child's
25 case;

1 (3) review medical and psychological reports
2 relating to the child and the respondents;

3 (4) contact the child prior to any proposed
4 change in the child's placement;

5 (5) contact the child after changes in the
6 child's placement;

7 (6) attend local substitute care review board
8 hearings concerning the child and if unable to attend the
9 hearings, forward to the board a letter setting forth the
10 child's status during the period since the last local
11 substitute care review board review and include an assessment
12 of the department's permanency and treatment plans;

13 (7) report to the court on the child's
14 adjustment to placement, the department's and respondent's
15 compliance with prior court orders and treatment plans and the
16 child's degree of participation during visitations; and

17 (8) represent and protect the cultural needs
18 of the child.

19 [F.] H. A guardian ad litem may retain separate
20 counsel to represent the child in a tort action on a
21 contingency fee basis or any other cause of action in
22 proceedings that are outside the jurisdiction of the children's
23 court. When a guardian ad litem retains separate counsel to
24 represent the child, the guardian ad litem shall provide the
25 court with written notice within ten days of retaining the

1 separate counsel. A guardian ad litem shall not retain or
2 subsequently obtain any pecuniary interest in an action filed
3 on behalf of the child outside of the jurisdiction of the
4 children's court.

5 ~~[G.]~~ I. In the event of a change of venue, the
6 originating guardian ad litem shall remain on the case until a
7 new guardian ad litem is appointed by the court in the new
8 venue and the new guardian ad litem has communicated with and
9 received all pertinent information from the former guardian ad
10 litem.

11 ~~[H.]~~ J. A guardian ad litem shall receive notices,
12 pleadings or other documents required to be provided to or
13 served upon a party. A guardian ad litem may file motions and
14 other pleadings and take other actions consistent with the
15 guardian ad litem's powers and duties.

16 ~~[I.]~~ K. A guardian ad litem shall not serve
17 concurrently as both the child's delinquency attorney and
18 guardian ad litem."

19 **SECTION 2.** Section 32A-4-10 NMSA 1978 (being Laws 1993,
20 Chapter 77, Section 104, as amended) is amended to read:

21 "32A-4-10. BASIC RIGHTS.--

22 A. A child subject to the provisions of the
23 Children's Code is entitled to the same basic rights as an
24 adult, except as otherwise provided in the Children's Code.

25 B. At the inception of an abuse or neglect

1 proceeding, counsel shall be appointed for the parent, guardian
2 or custodian of the child. The appointed counsel shall
3 represent the parent, guardian or custodian who is named as a
4 party until an indigency determination is made at the custody
5 hearing. Counsel shall also be appointed if, in the court's
6 discretion, appointment of counsel is required in the interest
7 of justice.

8 C. At the inception of an abuse and neglect
9 proceeding, the court shall appoint a guardian ad litem for a
10 child under [~~fourteen~~] six years of age. If the child is
11 [~~fourteen~~] six years of age or older, the court shall appoint
12 an attorney for the child. No officer or employee of an agency
13 that is vested with the legal custody of the child shall be
14 appointed as guardian ad litem of or attorney for the child.
15 Only an attorney with appropriate experience shall be appointed
16 as guardian ad litem of or attorney for the child.

17 D. When reasonable and appropriate, the court shall
18 appoint a guardian ad litem or attorney who is knowledgeable
19 about the child's particular cultural background.

20 E. When a child reaches [~~fourteen~~] six years of
21 age, the child's guardian ad litem shall continue as the
22 child's attorney; provided that the court shall appoint a
23 different attorney for the child if:

- 24 (1) the child requests a different attorney;
25 (2) the guardian ad litem requests to be

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1 removed; or

2 (3) the court determines that the appointment
3 of a different attorney is appropriate.

4 F. The court shall assure that the child's guardian
5 ad litem zealously represents the child's best interest and
6 that the child's attorney zealously represents the child.

7 G. A person afforded rights under the Children's
8 Code shall be advised of those rights at that person's first
9 appearance before the court on a petition under the Children's
10 Code."

11 **SECTION 3.** Section 32A-4-20 NMSA 1978 (being Laws 1993,
12 Chapter 77, Section 114, as amended) is amended to read:

13 "32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
14 DISPOSITIONAL MATTERS--PENALTY.--

15 A. The proceedings shall be recorded by
16 stenographic notes or by electronic, mechanical or other
17 appropriate means.

18 B. All abuse and neglect hearings shall be closed
19 to the general public.

20 C. Only the parties, their counsel, witnesses and
21 other persons approved by the court may be present at a closed
22 hearing. The foster parent, preadoptive parent or relative
23 providing care for the child shall be given notice and an
24 opportunity to be heard at the dispositional phase. Those
25 other persons the court finds to have a proper interest in the

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1 case or in the work of the court may be admitted by the court
2 to closed hearings on the condition that they refrain from
3 divulging any information that would identify the child or
4 family involved in the proceedings.

5 D. Accredited representatives of the news media
6 shall be allowed to be present at closed hearings, subject to
7 the condition that they refrain from divulging information that
8 would identify any child involved in the proceedings or the
9 parent, guardian or custodian of that child and subject to
10 enabling regulations as the court finds necessary for the
11 maintenance of order and decorum and for the furtherance of the
12 purposes of the Children's Code. A child who is the subject of
13 an abuse and neglect proceeding and is present at a hearing may
14 object to the presence of the media. The court may exclude the
15 media if it finds that the presence of the media is contrary to
16 the best interests of the child.

17 ~~[E. If the court finds that it is in the best~~
18 ~~interest of a child under fourteen years of age, the child may~~
19 ~~be excluded from a hearing under the Abuse and Neglect Act. A~~
20 ~~child fourteen years of age or older may be excluded from a~~
21 ~~hearing only if the court makes a finding that there is a~~
22 ~~compelling reason to exclude the child and states the factual~~
23 ~~basis for the finding.]~~

24 E. A child who is the subject of an abuse and
25 neglect proceeding has the right to attend and participate

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1 fully in all hearings related to the child's case and shall be
2 notified of that right by the caseworker for the department and
3 the child's guardian ad litem or attorney; provided that if:

4 (1) after consultation with the child's
5 guardian ad litem or attorney, the child requests to appear at
6 a hearing by telephone or video:

7 (a) the guardian ad litem or attorney
8 shall request that the child appear at the hearing by telephone
9 or video; and

10 (b) the court shall arrange for the
11 child to appear at the hearing by telephone or video;

12 (2) the child is not present at a hearing and
13 the court determines that the child requested to appear at the
14 hearing either in person or by telephone or video but that
15 provisions for the child's appearance were not provided, the
16 court shall continue the hearing;

17 (3) the court finds that there is a compelling
18 reason to exclude the child from a hearing and states the
19 factual basis for those findings on the record, the court may
20 exclude the child from the hearing; or

21 (4) after consultation with the child's
22 guardian ad litem or attorney, the child requests to be excused
23 from a hearing, the court may excuse the child from the
24 hearing.

25 F. Those persons or parties granted admission to a

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1 closed hearing who intentionally divulge information in
2 violation of this section are guilty of a petty misdemeanor.

3 G. The court shall determine if the allegations of
4 the petition are admitted or denied. If the allegations are
5 denied, the court shall proceed to hear evidence on the
6 petition. The court, after hearing all of the evidence bearing
7 on the allegations of neglect or abuse, shall make and record
8 its findings on whether the child is a neglected child, an
9 abused child or both. If the petition alleges that the parent,
10 guardian or custodian has subjected the child to aggravated
11 circumstances, then the court shall also make and record its
12 findings on whether the aggravated circumstances have been
13 proven.

14 H. If the court finds on the basis of a valid
15 admission of the allegations of the petition or on the basis of
16 clear and convincing evidence, competent, material and relevant
17 in nature, that the child is neglected or abused, the court
18 shall enter an order finding that the child is neglected or
19 abused and may proceed immediately or at a postponed hearing to
20 make disposition of the case. If the court does not find that
21 the child is neglected or abused, the court shall dismiss the
22 petition and may refer the family to the department for
23 appropriate services.

24 I. A party aggrieved by an order entered pursuant
25 to Subsection H of this section may file an immediate appeal to
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1 the court of appeals.

2 J. In that part of the hearings held under the
3 Children's Code on dispositional issues, all relevant and
4 material evidence helpful in determining the questions
5 presented, including oral and written reports, may be received
6 by the court and may be relied upon to the extent of its
7 probative value even though not competent had it been offered
8 during the part of the hearings on adjudicatory issues.

9 K. On the court's motion or that of a party, the
10 court may continue the hearing on the petition for a period not
11 to exceed thirty days to receive reports and other evidence in
12 connection with disposition. The court shall continue the
13 hearing pending the receipt of the predisposition study and
14 report if that document has not been prepared and received.
15 During any continuances under this subsection, the court shall
16 make an appropriate order for legal custody."

17 SECTION 4. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2024.