

232.89 Right to and appointment of counsel.

1. Upon the filing of a petition the parent, guardian, putative father, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel. A putative father is not a necessary party to a proceeding until the putative father's paternity is established.

2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings. If a guardian ad litem has previously been appointed for the child in a proceeding under [subchapter II](#) or a proceeding in which the court has waived jurisdiction under [section 232.45](#), the court shall appoint the same guardian ad litem upon the filing of the petition under [this part](#). Counsel shall be appointed as follows:

a. If the child is represented by counsel and the court determines there is a conflict of interest between the child and the child's parent, guardian, putative father, or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child, who shall be compensated pursuant to the provisions of [subsection 3](#).

b. If the child is not represented by counsel, the court shall either order the parent, guardian, or custodian to retain counsel for the child or shall appoint counsel for the child, who shall be compensated pursuant to the provisions of [subsection 3](#).

3. The court shall determine, after giving the parent, guardian, or custodian an opportunity to be heard, whether the person has the ability to pay in whole or in part for counsel appointed for the child. If the court determines that the person possesses sufficient financial ability, the court shall then consult with the department, the juvenile probation office, or other authorized agency or individual regarding the likelihood of impairment of the relationship between the child and the child's parent, guardian, or custodian as a result of ordering the parent, guardian, or custodian to pay for the child's counsel. If impairment is deemed unlikely, the court shall order that person to pay an amount the court finds appropriate in the manner and to whom the court directs. If the person fails to comply with the order without good reason, the court shall enter judgment against the person. If impairment is deemed likely or if the court determines that the parent, guardian, or custodian cannot pay any part of the expenses of counsel appointed to represent the child, counsel shall be reimbursed pursuant to [section 232.141, subsection 2](#), paragraph "b".

4. The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interests of the child as guardian ad litem in accordance with [section 232.2, subsection 25](#), paragraph "e", or a separate guardian ad litem is required to fulfill the requirements of [subsection 2](#). If a child's guardian ad litem is also acting as an attorney for the child, each report submitted to a court by the guardian ad litem shall contain a statement indicating whether a separate guardian ad litem is required based on the guardian ad litem's interviews and investigations conducted until the time a report is submitted to the court.

[C24, 27, 31, 35, 39, §3631; C46, 50, 54, 58, 62, §232.15; C66, 71, 73, 75, 77, §232.28; C79, 81, §232.89]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1186, §7; 87 Acts, ch 121, §4; 89 Acts, ch 283, §24; 90 Acts, ch 1271, §1506, 1507; 96 Acts, ch 1193, §5; 97 Acts, ch 23, §22; 97 Acts, ch 99, §3, 11; 2002 Acts, ch 1162, §17; 2020 Acts, ch 1062, §33; 2022 Acts, ch 1098, §34 – 36, 78; 2023 Acts, ch 19, §616

Referred to in §232.108
Subsection 3 amended