

**Senate Study Bill 3103 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON SODDERS)

**A BILL FOR**

- 1 An Act relating to guardians ad litem, attorneys for minor
- 2 children, child custody investigators, and child and
- 3 family reporters involved in child custody and visitation
- 4 proceedings.
- 5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1       Section 1. Section 598.10, subsection 1, paragraph a, Code  
2 2016, is amended to read as follows:

3       a. The court may order either party to pay the clerk a sum  
4 of money for the separate support and maintenance of the other  
5 party and the children and to enable such party to prosecute  
6 or defend the action. The court may on its own motion and  
7 shall upon application of either party or ~~an attorney or a~~  
8 guardian ad litem appointed under section 598.12 or an attorney  
9 appointed under section 598.12A determine the temporary custody  
10 of any minor child whose welfare may be affected by the filing  
11 of the petition for dissolution.

12      Sec. 2. Section 598.12, Code 2016, is amended to read as  
13 follows:

14      598.12 Attorney or guardian Guardian ad litem for minor child  
15 ~~— investigations.~~

16      1. ~~The court may appoint an attorney to represent the legal~~  
17 ~~interests of the minor child or children of the parties. The~~  
18 ~~attorney shall be empowered to make independent investigations~~  
19 ~~and to cause witnesses to appear and testify before the court~~  
20 ~~on matters pertinent to the legal interests of the children.~~

21      2. 1. The court may appoint a guardian ad litem to  
22 represent the best interests of the minor child or children  
23 of the parties. The guardian ad litem shall be a practicing  
24 attorney and shall be solely responsible for representing the  
25 best interests of the minor child or children. The guardian ad  
26 litem shall be independent of the court and other parties to  
27 the proceeding, and shall be unprejudiced and uncompromised in  
28 the guardian ad litem's independent actions.

29      a. Unless otherwise enlarged or circumscribed by a court  
30 ~~or juvenile court~~ having jurisdiction over the child or by  
31 operation of law, the duties of a guardian ad litem with  
32 respect to a child shall include all of the following:

33      (1) Conducting general an initial in-person interviews  
34 interview with the child, if the child's age is appropriate  
35 for the interview, and interviewing each parent, guardian, or

1 other person having custody of the child, if authorized by the  
2 person's legal counsel.

3 (2) Conducting interviews with the child, if the child's age  
4 is appropriate for the interview, prior to any court-ordered  
5 hearing. Maintaining regular contact with the child.

6 (3) Visiting the home, residence, or both home and residence  
7 of the child and any prospective home or residence of the  
8 child, including visiting the home or residence or prospective  
9 home or residence each time placement is changed.

10 (4) Interviewing any person providing medical, mental  
11 health, social, educational, or other services to the child,  
12 prior to any court-ordered hearing.

13 (5) Obtaining firsthand knowledge, if possible, of facts,  
14 circumstances, and parties involved in the matter in which the  
15 person is appointed guardian ad litem.

16 (6) Attending any depositions, hearings, or trials in the  
17 matter in which the person is appointed guardian ad litem,  
18 and filing motions or responses or making objections when  
19 necessary. The guardian ad litem may cause witnesses to  
20 appear, offer evidence, and question witnesses on behalf of the  
21 best interests of the child. The guardian ad litem may offer  
22 proposed or requested relief and arguments in the same manner  
23 allowed the parties by the court. However, the guardian ad  
24 litem shall not testify, serve as a witness, or file a written  
25 report in the matter.

26 b. The order appointing the guardian ad litem shall grant  
27 authorization to the guardian ad litem to interview any  
28 relevant person and inspect and copy any records relevant to  
29 the proceedings, if not prohibited by federal law. The order  
30 shall specify that the guardian ad litem may interview any  
31 person providing medical, mental health, social, educational,  
32 or other services to the child; may attend any meeting with  
33 the medical or mental health providers, service providers,  
34 organizations, or educational institutions regarding the  
35 child, if deemed necessary by the guardian ad litem; and may

1 inspect and copy any records relevant to the proceedings;  
2 and shall specifically be authorized to communicate with  
3 any individual or person appointed by the court to conduct  
4 a home-study investigation. The parent, guardian, or other  
5 person having custody of the child shall immediately execute  
6 any release necessary to allow the guardian ad litem to effect  
7 the authorization granted under this paragraph.

8       3. 2. The same person may shall not serve both as the  
9 child's legal counsel attorney and as guardian ad litem, nor  
10 shall the same person serve both as the child and family  
11 reporter and as guardian ad litem. However, the court may  
12 appoint a separate guardian ad litem, if the same person cannot  
13 properly represent the legal interests of the child as legal  
14 counsel and also represent the best interests of the child as  
15 guardian ad litem, or a separate guardian ad litem is required  
16 to fulfill the requirements of subsection 2.

17       4. The court may require that an appropriate agency make an  
18 investigation of both parties regarding the home conditions,  
19 parenting capabilities, and other matters pertinent to the best  
20 interests of the child or children in a dispute concerning  
21 custody of the child or children. The investigation report  
22 completed by the appropriate agency shall be submitted to the  
23 court and available to both parties. The investigation report  
24 completed by the appropriate agency shall be a part of the  
25 record unless otherwise ordered by the court.

26       5. 3. The court shall enter an order in favor of the  
27 attorney, the guardian ad litem, or an appropriate agency for  
28 fees and disbursements as submitted by the guardian ad litem,  
29 and the amount shall be charged against the party responsible  
30 for court costs unless the court determines that the party  
31 responsible for court costs is indigent, in which event the  
32 fees amount shall be borne by the county.

33       Sec. 3. NEW SECTION. 598.12A Attorney for minor child.

34       1. The court may appoint an attorney to represent the minor  
35 child or children of the parties. If the child does not or is

1 unable to express the child's interests, the attorney shall  
2 advocate the child's legal interests. If appointed under this  
3 section, the child's attorney shall be solely responsible for  
4 representing the minor child or children. The child's attorney  
5 shall be independent of the court and other parties to the  
6 proceeding, and shall be unprejudiced and uncompromised in the  
7 attorney's independent actions.

8       a. Unless otherwise enlarged or circumscribed by a court  
9 having jurisdiction over the child or by operation of law, the  
10 duties of an attorney with respect to a child shall include all  
11 of the following:

12       (1) Conducting an initial in-person interview with the  
13 child, if the child's age is appropriate for the interview,  
14 and interviewing each parent, guardian, or other person having  
15 custody of the child if authorized by the person's legal  
16 counsel.

17       (2) Maintaining regular contact with the child.

18       (3) Interviewing any person providing medical, mental  
19 health, social, educational, or other services to the child, as  
20 necessary to advance the child's interests.

21       (4) Obtaining knowledge of facts, circumstances, and the  
22 parties involved in the matter as necessary to advance the  
23 child's interests.

24       (5) Attending any depositions, hearings, and trials in the  
25 matter and filing motions or responses or making objections  
26 when necessary. The child's attorney may cause witnesses to  
27 appear, offer evidence on behalf of the child, and question  
28 witnesses. The child's attorney may offer proposed or  
29 requested relief and arguments in the same manner allowed the  
30 parties by the court. However, the child's attorney shall not  
31 testify, serve as a witness, or file a written report in the  
32 matter.

33       b. The order appointing the child's attorney shall grant  
34 authorization to the child's attorney to interview any relevant  
35 person and inspect and copy any records relevant to the

1 proceedings, if not prohibited by federal law. The order shall  
2 specify that the child's attorney may interview any person  
3 providing medical, mental health, social, educational, or other  
4 services to the child; may attend any meeting with the medical  
5 or mental health providers, service providers, organizations,  
6 or educational institutions regarding the child, if deemed  
7 necessary by the child's attorney; and may inspect and copy any  
8 records relevant to the proceedings. The parent, guardian,  
9 or other person having custody of the child shall immediately  
10 execute any release necessary to allow the child's attorney to  
11 effect the authorization granted under this paragraph.

12       2. The same person shall not serve as both the child's  
13 guardian ad litem and the child's attorney, nor shall the same  
14 person serve as both the child and family reporter and as the  
15 child's attorney.

16       3. The court shall enter an order in favor of the child's  
17 attorney for fees and disbursements as submitted by the child's  
18 attorney, and the amount shall be charged against the party  
19 responsible for court costs unless the court determines that  
20 the party responsible for court costs is indigent, in which  
21 event the amount shall be borne by the county.

22       Sec. 4. NEW SECTION. 598.12B Child custody investigators  
23 and child and family reporters.

24       1. The supreme court shall prescribe and maintain standards  
25 for child custody investigators and child and family reporters.

26       2. The court may require a child custody investigator or  
27 a child and family reporter to obtain information regarding  
28 both parties' home conditions, parenting capabilities, and  
29 other matters pertinent to the best interests of the child  
30 or children in a dispute concerning custody of the child or  
31 children. A report of the information obtained shall be  
32 submitted to the court and available to both parties. The  
33 report shall be a part of the record unless otherwise ordered  
34 by the court.

35       3. The court shall enter an order in favor of the child

1 custody investigator or child and family reporter for fees and  
2 disbursements, and the amount shall be charged against the  
3 party responsible for court costs unless the court determines  
4 that the party responsible for court costs is indigent, in  
5 which event the amount shall be borne by the county.

6 Sec. 5. Section 598.16, subsection 2, Code 2016, is amended  
7 to read as follows:

8 2. Except as provided in **subsection 7**, upon the application  
9 of the petitioner in the petition or by the respondent in  
10 the responsive pleading thereto to the petition, or, within  
11 twenty days of appointment, of an attorney appointed under  
12 section ~~598.12~~ 598.12A, the court shall require the parties to  
13 participate in conciliation efforts for a period of sixty days  
14 from the issuance of an order setting forth the conciliation  
15 procedure and the conciliator.

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with  
18 the explanation's substance by the members of the general assembly.

19 This bill relates to the guardians ad litem, attorneys for  
20 minor children, child custody investigators, and child and  
21 family reporters involved in child custody and visitation  
22 proceedings under Code chapter 598 (dissolution of marriage and  
23 domestic relations).

24 The bill separates the provisions relating to the  
25 appointment of a guardian ad litem, the appointment of an  
26 attorney, and the requirements for a child custody investigator  
27 or child and family reporter for a minor child in a custody  
28 proceeding, and provides that the same person shall not serve  
29 as both the guardian ad litem and attorney for a minor child in  
30 these proceedings.

31 The bill specifies that the guardian ad litem shall  
32 be a practicing attorney and shall be solely responsible  
33 for representing the best interests of the minor child or  
34 children. The guardian ad litem is required to be independent  
35 of the court and other parties to the proceeding, and to be

1 unprejudiced and uncompromised in the guardian ad litem's  
2 independent actions. The bill specifies the duties of the  
3 guardian ad litem, but prohibits the guardian ad litem from  
4 testifying, serving as a witness, or filing a written report  
5 in the matter.

6 The bill specifies activities that the order appointing  
7 the guardian ad litem shall grant and requires any parent,  
8 guardian, or other person having custody of the child to  
9 immediately execute any release necessary to allow the guardian  
10 ad litem to effect the authorizations granted.

11 The court is directed to enter an order in favor of the  
12 guardian ad litem for fees and disbursements as submitted  
13 by the guardian ad litem, and the amount shall be charged  
14 against the party responsible for court costs unless the  
15 court determines that the party responsible for court costs  
16 is indigent, in which event the amount shall be borne by the  
17 county.

18 The bill provides for the separate appointment of an  
19 attorney for a minor child in custody and visitation  
20 proceedings, but prohibits the child's attorney from  
21 testifying, serving as a witness, or filing a written report  
22 in the matter.

23 The bill specifies activities that the order appointing the  
24 child's attorney shall grant and prohibits the same person from  
25 serving both as the child's guardian ad litem and the child's  
26 attorney, and the same person from serving as both the child  
27 and family reporter and as the child's attorney. The bill  
28 directs that the court shall enter an order in favor of the  
29 child's attorney for fees and disbursements as submitted by the  
30 child's attorney, and the amount shall be charged against the  
31 party responsible for court costs unless the court determines  
32 that the party responsible for court costs is indigent, in  
33 which event the amount shall be borne by the county.

34 The bill directs the supreme court to prescribe and maintain  
35 standards for child custody investigators and child and

1 family reporters involved in child custody and visitation  
2 proceedings; specifies that the court may require a child  
3 custody investigator or child and family reporter to obtain  
4 information regarding both parties' home conditions, parenting  
5 capabilities, and other matters pertinent to the best interests  
6 of the child or children in a dispute concerning custody of the  
7 child or children; requires that a report of the information  
8 obtained be submitted to the court and available to both  
9 parties; and provides that the report completed by the child  
10 custody investigator or the child and family reporter shall be  
11 a part of the record unless otherwise ordered by the court.  
12 The bill directs that the court shall enter an order in favor  
13 of the child custody investigator or the child and family  
14 reporter for fees and disbursements, and the amount shall be  
15 charged against the party responsible for court costs unless  
16 the court determines that the party responsible for court costs  
17 is indigent, in which event the amount shall be borne by the  
18 county.

19 The bill also makes conforming changes in the Code.