

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.