HB 1775 - AS AMENDED BY THE SENATE

6Mar2018... 0671h
04/26/2018 1587s
05/03/2018 1846s

2018 SESSION

18-2953
05/10

HOUSE BILL ***1775***

AN ACT relative to the appointment of guardians ad litem in parenting cases and relative to alcohol and drug free housing.

SPONSORS: Rep. Gargasz, Hills. 27; Rep. S. Schmidt, Carr. 6; Rep. P. Long, Hills. 10; Sen. Lasky, Dist 13

COMMITTEE: Children and Family Law

AMENDED ANALYSIS

This bill revises criteria for appointment of a guardian ad litem under RSA 461-A; limits the role of the guardian ad litem absent express authorization from the court; revises the procedure for determining guardian ad litem fees; and repeals the provision governing supreme court standards for non-certified guardians ad litem. The bill is a request of the committee to study RSA 461-A, relative to parental rights and responsibilities, established in 2016, 281.

This bill also requires the commissioner of the department of health and human services to monitor and certify alcohol and drug free housing in New Hampshire.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to the appointment of guardians ad litem in parenting cases and relative to alcohol and drug free housing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Parental Rights and Responsibilities; Guardian ad Litem. Amend RSA 461-A:16 to read as follows:

461-A:16 Guardian ad Litem.

I. [~~In all proceedings for divorce, separation, annulment, paternity, or determination of parental rights and responsibilities, the court may appoint a guardian ad litem to represent the interests of the children of the parties, upon its own motion or motion of any party. The court may, in its order of appointment, after considering the nature of the issues raised in the case pending before it, specify the concerns to be addressed by the guardian ad litem, and otherwise limit the scope of the appointment. The guardian ad litem may be appointed to continue to serve after the final decree of divorce has been granted.~~] ***In contested proceedings under RSA 461-A, the court may appoint a guardian ad litem for a minor child when the court has reason for special concern regarding the welfare of the child. The role of the guardian ad litem shall be to gather information to assist the court in determining the best interests of the child. In determining whether to appoint a guardian ad litem, the court shall consider:***

(a) The wishes of the parties;

(b) The age of the child;

(c) The nature of the proceeding, including the contentiousness of the hearing;

(d) The financial resources of the parties;

(e) The extent to which a guardian ad litem may assist in providing information concerning the best interest of the child;

(f) Whether the family has experienced a history of domestic abuse;

(g) Abuse of the child by one of the parties;

(h) The educational needs of the child; and

(i) Any other factors the court deems relevant.

I-a. The court shall specify the issues to be addressed by the guardian ad litem in his or her report and may otherwise limit the role of the guardian ad litem.

I-b. The guardian ad litem may participate in hearings and conferences by telephone, except for evidentiary hearings on parenting.

I-c. The guardian ad litem shall file a report of his or her investigation no later than the date of the final pretrial hearing. The report shall not propose any of the following unless specifically requested by the court:

(a) An allocation of decision-making responsibility;

(b) A parenting plan; or

(c) A specific parenting schedule.

I-d. At the court's request or with the court's approval, the guardian ad litem may file a supplemental report on specific issues. A preliminary or temporary report shall not be required unless one is ordered by the court due to the extraordinary or special circumstances of the case.

II. Persons accepting appointment as guardians ad litem agree to serve as officers of the court and have such standing in the proceedings as the court deems appropriate and may, upon approval of the court, utilize the service of others found necessary by the court to represent the child's best interest.

III. Guardians ad litem shall respect communications between themselves and the child and shall disclose such information only as required by the court[~~,~~] in rendering a report [~~with the guardian ad litem's recommendations~~]. All parties to the case shall have access to, and receive a copy of, any report [~~or recommendation~~] made by the guardian ad litem unless the court explicitly finds that such disclosure is not in the child's best interest. When the child's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or some other reason, the guardian ad litem shall be the holder of the privilege and shall have the authority to waive the privilege, but only if the guardian ad litem reasonably believes that the child cannot adequately act in the child's own interest.

IV. When a guardian ad litem is appointed pursuant to this section, the court shall establish a maximum fee for the appointment ***in accordance with this section***. [~~The guardian ad litem may exceed the maximum fee for the appointment, or additional fees may be authorized, only with the prior approval of the presiding judge and when all parties have been notified. The fees for services for the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount as the court may determine.~~]

(a) When appointing a guardian ad litem to be paid from a state fund, the court shall establish an hourly rate and a maximum fee for the appointment, which shall not exceed the hourly rate and maximum fee established by court rule for abuse and neglect cases. No funding from a state fund for guardian ad litem fees shall be available to a party whose income is 200 percent or more of the federal poverty level.

(b) When appointing a guardian ad litem to be paid directly by the parties, the hourly rate and maximum fee for the appointment shall be established by written agreement between the guardian ad litem and the parties. The hourly rate shall be not more than twice the rate for state fund cases and shall not exceed 23 hours, unless the

parties agree otherwise. The fees for services of the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount, as determined by the court. In determining the responsibility for payment or repayment, the court shall consider:

(1) The income of the parties;

(2) The marital or nonmarital assets of the parties;

(3) The division of property made as part of the final divorce, if applicable;

(4) Which party requested appointment of the guardian ad litem; and

(5) Other relevant factors.

V. [~~For good cause shown, the court may waive the requirements of paragraph I. Good cause shall not include the lack of ability to pay by either party.~~] ***The guardian ad litem shall not exceed the maximum fee for the appointment, or provide services, without prior approval from the court, after a hearing. If the parties agree to the guardian ad litem's request to exceed the maximum fee, the hearing may be waived.***

VI. [~~The supreme court shall provide the following relative to non-certified guardians ad litem appointed pursuant to this section:~~

~~(a) Standards and requirements for registration as a guardian ad litem.~~

~~(b) Standards for practice, including but not limited to ethical rules.~~

~~(c) Disciplinary procedures for violating ethical rules and requirements established under this paragraph.~~

~~(d) Penalties for violation of ethical rules and requirements, including, as the court may deem necessary, fines or disciplinary action, or both.~~] ***Unless otherwise ordered by the court or by agreement of the parties, the services of the guardian ad litem shall conclude upon the issuance of the final order.***

2 New Paragraph; Commissioner of Health and Human Services; Alcohol and Drug Free Housing. Amend RSA 126-A:5 by inserting after paragraph XXX the following new paragraph:

XXXI. The commissioner shall monitor and require certification of alcohol and drug free housing in New Hampshire. In this paragraph, "alcohol and drug free housing" means a residence, commonly known as a sober home, that provides or advertises as providing, an alcohol and drug free environment for persons recovering from substance use disorders, provided that "alcohol and drug free housing " shall not include a halfway house, treatment unit, detoxification facility, or any other facility requiring a license pursuant to RSA 151. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to monitoring and certifying alcohol and drug free housing.

3 Effective Date.

I. Section 1 of this act shall take effect January 1, 2019.

II. The remainder of this act shall take effect upon its passage.

LBAO
18-2953
Amended 4/30/18

HB 1775- FISCAL NOTE

AS AMENDED BY THE SENATE (AMENDMENT #2018-1587s)

AN ACT relative to the appointment of guardians ad litem in parenting cases.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Appropriation	$0	$0	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

METHODOLOGY:

The Judicial Council indicates it was previously responsible for paying for guardian ad litem (GALs) costs in divorce and parenting cases, but state funds in the operating budget for these cases was eliminated 2011. The Council assumes, under this bill, it would be responsible again for paying for GALs in divorce and parenting cases. The Council estimates this cost was $890,000 in fiscal year 2011. The Council indicates it could not take on the additional processing work at its current level of staffing. The Council estimates it would require an additional $6,000 to $9,600 per year to pay a part-time data-entry operator for an additional 8-1/2 to 13-1/2 hours per week.

AGENCIES CONTACTED:

Judicial Council