

**PART XII
GUARDIANS AD LITEM
AND GUARDIAN ADVOCATES**

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39.820 Definitions.--As used in this part, the term:

(1) "Guardian ad litem" as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

(2) "Guardian advocate" means a person appointed by the court to act on behalf of a drug dependent newborn pursuant to the provisions of this part.

History.--s. 101, ch. 98-403.

39.821 Qualifications of guardians ad litem.--

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Guardian Ad Litem Program may use any private funds collected by the program, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty

to, any offense prohibited under the provisions of the Florida Statutes specified in s. 435.04(2) or under any similar law in another jurisdiction. Before certifying an applicant to serve as a guardian ad litem, the Guardian Ad Litem Program may request a federal criminal records check of the applicant through the Federal Bureau of Investigation. In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The program has the sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is confidential and exempt from s. 119.07(1).

(2) This section does not apply to a certified guardian ad litem who was certified before October 1, 1995, an attorney who is a member in good standing of The Florida Bar, or a licensed professional who has undergone a comparable security background investigation as a condition of licensure within 5 years of applying for certification as a guardian ad litem.

(3) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person to willfully, knowingly, or intentionally fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for a volunteer position or for paid employment with the Guardian Ad Litem Program, any material fact used in making a determination as to the applicant's qualifications for such position.

History.--s. 2, ch. 96-109; s. 102, ch. 98-403; s. 19, ch. 99-2; s. 25, ch. 2005-236.

Note.--Former s. 415.5077.

39.822 Appointment of guardian ad litem for abused, abandoned, or neglected child.--

(1) A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal. Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(2) In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services shall not be contingent upon successful collection by the court from the parent or parents.

(3) Upon presentation by a guardian ad litem of a court order appointing the guardian ad litem:

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or organization, other than an agency under paragraph (a), shall allow the guardian ad litem to inspect and copy any records related to the best interests of the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records related to the best interests of the child" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(4) The guardian ad litem or the program representative shall review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 10, ch. 84-226; s. 3, ch. 90-211; s. 103, ch. 98-403; s. 51, ch. 99-193; s. 26, ch. 2005-236.

Note.--Former ss. 828.041, 827.07(16); s. 415.508.

39.823 Guardian advocates for drug dependent newborns.--The Legislature finds that increasing numbers of drug dependent children are born in this state. Because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(15)(14). The relative or other adult may be left with a child who is likely to require medical treatment but for whom they are unable to obtain medical treatment. The purpose of this section is to provide an expeditious method for such relatives or other responsible adults to obtain a court order which allows them to provide consent for medical treatment and otherwise advocate for the needs of the child and to provide court review of such authorization.

History.--s. 2, ch. 89-345; s. 104, ch. 98-403; s. 19, ch. 99-168; s. 5, ch. 2003-127; s. 14, ch. 2009-43.

Note.--Former s. 415.5082.

39.824 Procedures and jurisdiction.--

(1) The Supreme Court is requested to adopt rules of juvenile procedure by October 1, 1989, to implement this part. All procedures, including petitions, pleadings, subpoenas, summonses, and hearings in cases for the appointment of a guardian advocate shall be according to the Florida Rules of Juvenile Procedure unless otherwise provided by law.

(2) The circuit court shall have exclusive original jurisdiction of a proceeding in which appointment of a guardian advocate is sought. The court shall retain jurisdiction over a child for whom a guardian advocate is appointed until specifically relinquished by court order.

History.--s. 2, ch. 89-345; s. 105, ch. 98-403.

Note.--Former s. 415.5083.

39.825 Petition for appointment of a guardian advocate.--A petition for appointment of a guardian advocate may be filed by the department, any relative of the child, any licensed health care professional, or any other interested person. The petition shall be in writing and shall be signed by the petitioner under oath stating his or her good faith in filing the petition. The form of the petition and its contents shall be determined by the Florida Rules of Juvenile Procedure.

History.--s. 2, ch. 89-345; s. 72, ch. 97-103; s. 106, ch. 98-403.

Note.--Former s. 415.5084.

39.826 Process and service.--

(1) Personal appearance of a person in a hearing before the court shall obviate the necessity of serving process upon that person.

(2) Upon the filing of a petition requesting the appointment of a guardian advocate, and upon request of the petitioner, the clerk or deputy clerk shall issue a summons.

(3) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. Except in cases of medical emergency, the time shall be not less than 24 hours after service of the summons. The summons shall be directed to and shall be served upon the parents. It shall not be necessary to the validity of a proceeding for the appointment of a guardian advocate that the parents be present if their identity or presence is unknown after a diligent search and inquiry have been made, if they have become residents of a state other than this state, or if they evade service or ignore a summons, but in this event the person who made the search and inquiry shall file a certificate of those facts.

(4) Upon the application of a party, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing.

History.--s. 2, ch. 89-345; s. 107, ch. 98-403.

Note.--Former s. 415.5085.

39.827 Hearing for appointment of a guardian advocate.--

(1) When a petition for appointment of a guardian advocate has been filed with the circuit court, the hearing shall be held within 14 days unless all parties agree to a continuance. If a child is in need of necessary medical treatment as defined in s. 39.01, s. 984.03, or s. 985.03, the court shall hold a hearing within 24 hours.

(2) At the hearing, the parents have the right to be present, to present testimony, to call and cross-examine witnesses, to be represented by counsel at their own expense, and to object to the appointment of the guardian advocate.

(3) The hearing shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases. In a hearing on a petition for appointment of a guardian advocate, the moving party shall prove all the elements in s. 39.828 by a preponderance of the evidence.

(4) The hearing under this section shall remain confidential and closed to the public. The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall be confidential and exempt from the provisions of s. 119.07(1). All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or custodians of the child and their attorneys and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, or authorized agent of the department shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed to anyone other than the authorized personnel of the court or the department and its designees, except upon order of the court.

History.--s. 2, ch. 89-345; s. 19, ch. 91-71; s. 274, ch. 96-406; s. 44, ch. 98-280; s. 108, ch. 98-403.

Note.--Former s. 415.5086.

39.828 Grounds for appointment of a guardian advocate.--

(1) The court shall appoint the person named in the petition as a guardian advocate with all the powers and duties specified in s. 39.829 for an initial term of 1 year upon a finding that:

- (a) The child named in the petition is or was a drug dependent newborn as described in s. 39.01(32)(g);
- (b) The parent or parents of the child have voluntarily relinquished temporary custody of the child to a relative or other responsible adult;
- (c) The person named in the petition to be appointed the guardian advocate is capable of carrying out the duties as provided in s. 39.829; and
- (d) A petition to adjudicate the child dependent under this chapter has not been filed.

(2) The appointment of a guardian advocate does not remove from the parents the right to consent to medical treatment for their child. The appointment of a guardian advocate does not prevent the filing of a subsequent petition under this chapter to have the child adjudicated dependent.

History.--s. 2, ch. 89-345; s. 62, ch. 94-164; s. 109, ch. 98-403; s. 32, ch. 2006-86; s. 29, ch. 2008-245.

Note.--Former s. 415.5087.

39.829 Powers and duties of guardian advocate.--It is the duty of the guardian advocate to oversee the care, health, and medical treatment of the child; to advise the court regarding any change in the status of the child; and to respond to any medical crisis of the child, including providing consent to any needed medical treatment. The guardian advocate shall report to the department if the natural parents abandon the child or if the natural parents reclaim custody of the child.

History.--s. 2, ch. 89-345; s. 110, ch. 98-403.

Note.--Former s. 415.5088.

39.8295 Review and removal of guardian advocate.--

(1) At the end of the initial 1-year appointment, the court shall review the status of the child's care, health, and medical condition for the purpose of determining whether to reauthorize the appointment of the guardian advocate. If the court finds that all of the elements of s. 39.828 are still met, the court shall reauthorize the guardian advocate for another year.

(2) At any time, the court may, upon its own motion, or upon the motion of the department, a family member, or other interested person remove a guardian advocate. A guardian advocate shall be removed if the court finds that the guardian advocate is not properly discharging his or her responsibilities or is acting in a manner inconsistent with his or her appointment, that the parents have assumed parental responsibility to provide for the child, or that the child has been adjudicated dependent pursuant to this chapter.

History.--s. 2, ch. 89-345; s. 111, ch. 98-403.

Note.--Former s. 415.5089.

39.8296 Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.--

(1) LEGISLATIVE FINDINGS AND INTENT

(a) The Legislature finds that for the past 20 years, the Guardian Ad Litem Program has been the only mechanism for best interest representation for children in Florida who are involved in dependency proceedings.

(b) The Legislature also finds that while the Guardian Ad Litem Program has been supervised by court administration within the circuit courts since the program's inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.

(c) The Legislature further finds that the Governors Blue Ribbon Task Force concluded that “if there is any program that costs the least and benefits the most, this one is it,” and that the guardian ad litem volunteer is an “indispensable intermediary between the child and the court, between the child and DCF.”

(d) It is therefore the intent of the Legislature to place the Guardian Ad Litem Program in an appropriate place and provide a statewide infrastructure to increase functioning and standardization among the local programs currently operating in the 20 judicial circuits.

(2) STATEWIDE GUARDIAN AD LITEM OFFICE.--There is created a Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Guardian Ad Litem Office shall not be subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office shall be governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(a) The head of the Statewide Guardian Ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by a Guardian Ad Litem Qualifications Committee. The Guardian Ad Litem Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian Ad Litem Office in accordance with state and federal law. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be permitted to serve more than one term.

(b) The Statewide Guardian Ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.

1. The office shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. The office shall review the current guardian ad litem programs in Florida and other states.

3. The office, in consultation with local guardian ad litem offices, shall develop statewide performance measures and standards.

4. The office shall develop a guardian ad litem training program. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.

5. The office shall review the various methods of funding guardian ad litem programs, shall maximize the use of those funding sources to the extent possible, and shall review the kinds of services being provided by circuit guardian ad litem programs.

6. The office shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. No later than October 1, 2004, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. No later than October 1, 2004, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed plan including alternatives for meeting the state's guardian ad litem and attorney ad litem needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year thereafter, the office shall provide a status report and provide further recommendations to address the need for guardian ad litem services and related issues.

History. -- s 1, ch 2003-53; s. 91, ch. 2003-399; s. 1, ch. 2006-18.

¹Note. --Section 91, ch. 2003-399, amended paragraph (2)(b) “[i]n order to implement Specific Appropriations 819A-819D of the 2003-2004 General Appropriations Act.”

39.8298 Guardian Ad Litem direct-support organization.--

(1) **AUTHORITY.**--The Statewide Guardian Ad Litem Office created under s. 39.8296 is authorized to create a direct-support organization.

(a) The direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617. The direct-support organization shall be exempt from paying fees under s. 617.0122.

(b) The direct-support organization shall be organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office.

(c) If the executive director of the Statewide Guardian Ad Litem Office determines the direct-support organization is operating in a manner that is inconsistent with the goals and purposes of the Statewide Guardian Ad Litem Office or not acting in the best interest of the state, the executive director may terminate the contract and thereafter the organization may not use the name of the Statewide Guardian Ad Litem Office.

(2) **CONTRACT.**--The direct-support organization shall operate under a written contract with the Statewide Guardian Ad Litem Office. The written contract must, at a minimum, provide for:

(a) Approval of the articles of incorporation and bylaws of the direct-support organization by the executive director of the Statewide Guardian Ad Litem Office.

(b) Submission of an annual budget for the approval by the executive director of the Statewide Guardian Ad Litem Office.

(c) The reversion without penalty to the Statewide Guardian Ad Litem Office, or to the state if the Statewide Guardian Ad Litem Office ceases to exist, of all moneys and property held in trust by the direct-support organization for the Statewide Guardian Ad Litem Office if the direct-support organization ceases to exist or if the contract is terminated.

(d) The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

(e) The disclosure of material provisions of the contract and the distinction between the Statewide Guardian Ad Litem Office and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(3) **BOARD OF DIRECTORS.**--The executive director of the Statewide Guardian Ad Litem Office shall appoint a board of directors for the direct-support organization. The executive director may designate employees of the Statewide Guardian Ad Litem Office to serve on the board of directors. Members of the board shall serve at the pleasure of the executive director.

(4) **USE OF PROPERTY AND SERVICES.**--The executive director of the Statewide Guardian Ad Litem Office:

(a) May authorize the use of facilities and property other than money that are owned by the Statewide Guardian Ad Litem Office to be used by the direct-support organization.

(b) May authorize the use of personal services provided by employees of the Statewide Guardian Ad Litem Office. For the purposes of this section, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(c) May prescribe the conditions by which the direct-support organization may use property, facilities, or personal services of the office.

(d) Shall not authorize the use of property, facilities, or personal services of the direct-support organization if the organization does not provide equal employment opportunities to all persons, regardless of race, color, religion, sex, age, or national origin.

(5) **MONEYS.**--Moneys of the direct-support organization may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the Statewide Guardian Ad Litem Office.

(6) **ANNUAL AUDIT.**--The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(7) **LIMITS ON DIRECT-SUPPORT ORGANIZATION.**--The direct-support organization shall not exercise any power under s. 617.0302(12) or (16). No state employee shall receive compensation from the direct-support organization for service on the board of the directors or for services rendered to the direct-support organization.

History.--s. 1, ch. 2007-149.