



Senate

General Assembly

File No. 619

February Session, 2014

Substitute Senate Bill No. 494

Senate, April 17, 2014

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS
FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) Except as provided in
2 subsection (b) of this section, prior to appointing counsel or a guardian
3 ad litem for any minor child in a family relations matter, as defined in
4 section 46b-1 of the general statutes, the court shall provide the parties
5 to the matter with written notification of five persons who the court
6 has determined eligible to serve as counsel or a guardian ad litem for
7 any minor child in such matter. Not later than two weeks after the date
8 on which the court provides such written notification, the parties shall
9 provide written notification to the court of the name of the person who
10 the parties have selected to serve as counsel or a guardian ad litem. In
11 the event that the parties (1) fail to timely provide the court with the
12 name of the person to serve as counsel or guardian ad litem, or (2)
13 cannot agree on the name of the person to serve as counsel or guardian
14 ad litem, the court shall appoint counsel or a guardian ad litem for the

15 minor child by selecting one person from the five names provided to
16 the parties.

17 (b) The provisions of subsection (a) of this section shall not apply
18 when: (1) The parties have requested that counsel or a guardian ad
19 litem be appointed and present to the court a written agreement that
20 contains the name of the person who the parties have selected to serve
21 as counsel or a guardian ad litem for the minor child for their matter;
22 or (2) an emergency situation requires the immediate appointment of
23 counsel or a guardian ad litem for the minor child.

24 (c) Not later than twenty-one days following the date on which the
25 court enters an initial order appointing counsel or a guardian ad litem
26 for any minor child pursuant to this section, the court shall enter a
27 subsequent order that includes the following information: (1) The
28 specific nature of the work that is to be undertaken by such counsel or
29 guardian ad litem; (2) the date on which the appointment of such
30 counsel or guardian ad litem is to end, provided such end date may be
31 extended for good cause shown pursuant to an order of the court; (3)
32 the deadline for such counsel or guardian ad litem to report back to the
33 court concerning the work undertaken; (4) the fee schedule of such
34 counsel or guardian ad litem which shall minimally set forth (A) the
35 amount of the retainer, (B) the hourly rate to be charged, (C) the
36 apportionment of the retainer and hourly fees between the parties, and
37 (D) if applicable, all provisions related to the calculation of fees on a
38 sliding-scale basis; and (5) a proposed schedule of periodic court
39 review of the work undertaken by such counsel or guardian ad litem
40 and the fees charged by such counsel or guardian ad litem. Periodic
41 court review shall be undertaken not less than every six months
42 following the date of the appointment of such counsel or guardian ad
43 litem, unless such periodic court review is waived by the parties and
44 any such counsel or guardian ad litem pursuant to a written agreement
45 filed with the court.

46 Sec. 2. Section 46b-54 of the general statutes is repealed and the
47 following is substituted in lieu thereof (*Effective October 1, 2014*):

48 (a) The court may appoint counsel for any minor child or children of
49 either or both parties at any time after the return day of a complaint
50 under section 46b-45, if the court deems it to be in the best interests of
51 the child or children. The court may appoint counsel on its own
52 motion, or at the request of either of the parties or of the legal guardian
53 of any child or at the request of any child who is of sufficient age and
54 capable of making an intelligent request.

55 (b) Counsel for the minor child or children may also be appointed
56 on the motion of the court or on the request of any person enumerated
57 in subsection (a) of this section in any case before the court when the
58 court finds that the custody, care, education, visitation or support of a
59 minor child is in actual controversy, provided the court may make any
60 order regarding a matter in controversy prior to the appointment of
61 counsel where it finds immediate action necessary in the best interests
62 of any child.

63 (c) If the court deems the appointment of counsel for any minor
64 child or children to be in the best interests of the child or children, such
65 appointment shall be made in accordance with the provisions of
66 section 1 of this act.

67 [(c)] (d) Counsel for the minor child or children shall be heard on all
68 matters pertaining to the interests of any child, including the custody,
69 care, support, education and visitation of the child, so long as the court
70 deems such representation to be in the best interests of the child.

71 Sec. 3. Section 46b-57 of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective October 1, 2014*):

73 In any controversy before the Superior Court as to the custody of
74 minor children, and on any complaint under this chapter or section
75 46b-1 or 51-348a, if there is any minor child of either or both parties,
76 the court, if it has jurisdiction under the provisions of chapter 815p,
77 may allow any interested third party or parties to intervene upon
78 motion. The court may award full or partial custody, care, education
79 and visitation rights of such child to any such third party upon such

80 conditions and limitations as it deems equitable. Before allowing any
81 such intervention, the court may appoint counsel for the child or
82 children pursuant to the provisions of section 46b-54, as amended by
83 this act, and section 1 of this act. In making any order under this
84 section, the court shall be guided by the best interests of the child,
85 giving consideration to the wishes of the child if the child is of
86 sufficient age and capable of forming an intelligent preference.

87 Sec. 4. (NEW) (*Effective October 1, 2014*) Any party to an action
88 involving the custody, care, support, education or visitation of a minor
89 child shall have standing to file a motion that seeks removal of counsel
90 for the minor child or a guardian ad litem for the minor child. The
91 Judicial Branch shall establish a procedure to effectuate the hearing of
92 such motion. Prior to hearing such motion, the court may refer the
93 parties to the family services unit of the Judicial Branch. If the
94 allegations set forth in the motion cannot be resolved, a hearing shall
95 be held on the motion and a decision on the motion shall be made by
96 the court. The presiding judge shall determine the judge who is
97 assigned to hear such motion.

98 Sec. 5. Section 46b-62 of the general statutes is repealed and the
99 following is substituted in lieu thereof (*Effective October 1, 2014*):

100 (a) In any proceeding seeking relief under the provisions of this
101 chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to
102 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court may order
103 either spouse or, if such proceeding concerns the custody, care,
104 education, visitation or support of a minor child, either parent to pay
105 the reasonable attorney's fees of the other in accordance with their
106 respective financial abilities and the criteria set forth in section 46b-82.
107 If, in any proceeding under this chapter and said sections, the court
108 appoints [an attorney] counsel or a guardian ad litem for a minor child,
109 the court may order the father, mother or an intervening party,
110 individually or in any combination, to pay the reasonable fees of [the
111 attorney] such counsel or guardian ad litem or may order the payment
112 of [the attorney's] such counsel's or guardian ad litem's fees in whole

113 or in part from the estate of the child. If the child is receiving or has
114 received state aid or care, the compensation of [the attorney] such
115 counsel or guardian ad litem shall be established and paid by the
116 Public Defender Services Commission.

117 (b) If, in any proceeding under this chapter and sections 17b-743,
118 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g,
119 51-348a and 52-362, the court appoints counsel or a guardian ad litem
120 for a minor child, the court may not order the father, mother or an
121 intervening party, individually or in any combination, to pay the
122 reasonable fees of such counsel or guardian ad litem from a college
123 savings account, including any account established pursuant to any
124 qualified tuition program, as defined in Section 529(b) of the Internal
125 Revenue Code, that has been established for the benefit of the minor
126 child.

127 (c) In any proceeding under this chapter and sections 17b-743, 17b-
128 744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-
129 348a and 52-362, in which the court appoints counsel or a guardian ad
130 litem for a minor child, the court may order that the fees to be paid to
131 such counsel or guardian ad litem be calculated on a sliding-scale basis
132 after giving due consideration to the income and assets of the parties to
133 the proceeding.

134 (d) The Judicial Branch shall develop and implement a methodology
135 for calculating, on a sliding-scale basis, the fees owing to counsel or a
136 guardian ad litem for a minor child appointed in any proceeding
137 under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6,
138 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362.

139 Sec. 6. (NEW) (*Effective July 1, 2014*) The Judicial Branch shall
140 develop a publication that informs parties to a family relations matter,
141 as defined in section 46b-1 of the general statutes, about the roles and
142 responsibilities of counsel for a minor child and the guardian ad litem
143 for a minor child when such persons are appointed by the court to
144 serve in a family relations matter. Such publication shall be available to
145 the public in hard copy and be accessible electronically on the Internet

146 web site of the Judicial Branch.

147 Sec. 7. (NEW) (*Effective from passage*) Not later than October 1, 2014,
 148 the Judicial Branch shall develop and implement a professional code of
 149 conduct applicable to any counsel or guardian ad litem for a minor
 150 child appointed in a family relations matter, as defined in section 46b-1
 151 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	46b-54
Sec. 3	<i>October 1, 2014</i>	46b-57
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	46b-62
Sec. 6	<i>July 1, 2014</i>	New section
Sec. 7	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In sections 1(a) and 4 to 7, inclusive, technical changes were made for conciseness, clarity and statutory consistency.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill establishes new procedures and makes various changes to laws related to the appointment of guardians ad litem and counsels for minor children which do not result in a fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sSB 494*****AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.*****SUMMARY:**

This bill makes several modifications to laws related to the appointment of guardians ad litem (GALs) and counsels for minor children (CMC). It:

1. establishes new procedures for courts to follow when appointing GALs and CMCs in family relations matters or before allowing certain third-party interventions but exempts emergency situations from the procedures;
2. allows parties to (a) request the appointment of a specific GAL or CMC, with a written agreement, or (b) choose one from a list of five provided by the court;
3. allows the court to appoint a GAL or CMC from the list if the parties do not make a selection within a specific period of time;
4. requires the court to include in its orders, the GAL's or CMC's specific duties, appointment duration, deadline for reporting to the court, fee schedule, and proposed schedule for periodic court review;
5. allows parties, in a case involving a minor child's care, custody, support, education, or visitation, to file a motion to seek removal of a GAL or CMC and requires the Judicial Branch to establish procedures to have a hearing on such a motion;
6. establishes new compensation requirements, such as (a) allowing courts to order payment of GALs' reasonable fees in

the same manner currently available to CMCs, (b) prohibiting courts from ordering payment of fees from a minor child's college savings funds, and (c) allowing courts to order the calculation of fees on a sliding-scale basis (i.e., fees that vary based on a person's ability to pay), using a methodology the Judicial Branch develops; and

7. requires the Judicial Branch to develop a (a) GAL and CMC professional code of ethics and (b) publication on their roles and responsibilities applicable to family relations matters.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014, except for (1) the section on the Judicial Branch's publication, which is effective July 1, 2014 and (2) the section on the GAL and CMC professional code of conduct, which is effective upon passage.

§§ 1-3 — GAL AND CMC IN FAMILY MATTERS

Appointment

By law, a GAL is a person, not necessarily an attorney, appointed by the court during certain proceedings to gather information at the court's request and report on what he or she believes to be in a person's best interest. A CMC is an attorney appointed by the court to advocate in court for a minor child's best interest.

New Appointment Procedure. Under current law, a court may appoint a GAL or CMC in "family relations matters" (see below) involving minor children. The court may also appoint a CMC (1) after the return date of a divorce, annulment, or legal separation action and (2) in certain cases where a third party wishes to be awarded full or partial custody of a minor child.

Under the bill, before appointing a GAL or CMC in any of these cases, the:

1. court must provide the parties with a list of five people it has

determined eligible to serve as GAL or CMC;

2. parties, within two weeks after the court provides the list, must notify the court in writing of the name of the person they have selected to serve; and
3. court must appoint one of the people from the list to serve, if the parties cannot agree or do not notify the court in a timely manner.

Emergency Situation or Written Agreement. Under the bill, the new appointment procedures do not apply in an emergency situation or if the parties ask the court to appoint a specific GAL or CMC by submitting a written agreement to the court with the name of the person they have selected to serve.

Duties, Duration of Appointment, Fee Schedule, and Periodic Review

Under the bill, within 21 days after the court has ordered the appointment of a GAL or CMC, it must enter a subsequent order, which must include the:

1. specific nature of GAL's or CMC's work;
2. appointment end date, which may be extended by a court order for good cause shown;
3. deadline for the GAL or CMC to report to the court on the work he or she has done;
4. fee schedule, which must include the (a) retainer amount, (b) hourly rate, (c) each party's share of the retainer and hourly fees, and (d) if applicable, information related to the calculation of fees on a sliding-scale basis; and
5. proposed schedule of periodic court review of the GAL's or CMC's work done and fees charged.

Under the bill, the periodic court review of the GAL's or CMC's

work and fees must occur at least every six months after his or her appointment. The bill allows the parties and the GAL or CMC to waive the periodic court review by filing a written agreement with the court.

Family Relations Matters

By law, “family relations matters” are matters affecting or involving divorce; legal separation; annulment; alimony; support; custody; visitation; change of name; civil restraining orders; civil support obligations; petitions on behalf of a mentally ill person not charged with a criminal offense; wrongful convictions; paternity; appeals from probate court decisions concerning adoption, termination of parental rights, appointment and removal of guardians, custody of a minor child, appointment and removal of conservators, orders for custody of any child, and orders to commit persons to public and private institutions and to other appropriate facilities; actions related to prenuptial and separation agreements and to matrimonial and civil union decrees of a foreign jurisdiction; dissolution; legal separation or annulment of a civil union performed in a foreign jurisdiction; interstate child custody matters; and all other matters within the Superior Court’s jurisdiction concerning children or family relations as the court determines (CGS § 46b-1).

§ 4 — STANDING TO SEEK REMOVAL OF GAL OR CMC

The bill allows parties to a case involving a minor child’s care, custody, support, education, or visitation to file a motion to seek removal of a GAL or CMC (i.e., it gives such parties “standing”). The judge presiding over the underlying case must assign the judge to hear the motion for removal.

The bill requires the Judicial Branch to establish procedures to have a hearing on the motion for removal of GALs and CMCs.

Under the bill, the court (1) may, before hearing the motion, refer the parties to the Judicial Branch’s family services unit and (2) if there is no resolution, must have a hearing and make a decision on the

motion for removal.

§ 5 — GAL AND CMC COMPENSATION

Reasonable Fees

Under current law, if the court appoints an attorney for a minor child in a case involving divorce, annulment, legal separation, child support enforcement, revocation or construction of wills, or in any family relations matter, it may order the attorney's reasonable fees be paid:

1. by the father, mother, or intervening party, individually or in any combination;
2. from the child's estate, in whole or in part; or
3. by the Public Defender Services commissioner, if the child is receiving or has received state aid or care.

The bill allows the court, in cases where a GAL is appointed, to also order these payment options for the GAL's reasonable fees.

The bill updates the reference to the term "attorney for a minor child" with the terminology "counsel for a minor child" (CMC), for consistency.

College Savings Accounts Exempt from Payment Orders

The bill prohibits the court from ordering the father, mother, or intervening party to pay the GAL's or CMC's reasonable fees from a college savings account established for the minor child. These accounts include certain tuition programs established and maintained by a state or its agency or instrumentality, or by one or more eligible education institutions (i.e., "qualified tuition programs") (see BACKGROUND).

Sliding-Scale Basis

Under the bill, in cases where the court appoints a GAL or CMC, after considering the parties' income and assets, the judge may order the fees to be calculated on a sliding-scale basis. The bill requires the

Judicial Branch to develop and implement a methodology for calculating GALs' and CMCs' fees on a sliding-scale basis.

§ 6 — JUDICIAL BRANCH'S FAMILY RELATIONS PUBLICATION

The bill requires the Judicial Branch to develop a publication on the roles and responsibilities of GALs and CMCs in family relations matters. The publication must be available to the public in hard copy and on the Judicial Branch's website.

§ 7 — GAL AND CMC CODE OF CONDUCT

Under the bill, by October 1, 2014, the Judicial Branch must develop and implement a professional code of conduct for GALs and CMCs appointed in family relations matters.

BACKGROUND

Qualified Tuition Program

The term "qualified tuition program" means a program established and maintained by a state, its agency or instrumentality, or by one or more eligible educational institutions that allows a person to:

1. purchase tuition credits or certificates on behalf of a designated beneficiary entitling him or her to the waiver or payment of his or her qualified higher education expenses or
2. make contributions to an account established for the beneficiary's qualified higher education expenses.

A qualified tuition program must meet other specified requirements that pertain to things such as cash contributions, separate accounting, investment direction, and tax treatment (26 U.S.C.A. § 529(b)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 0 (04/01/2014)