

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

## A Bill

DRAFT MGF/NJR  
SENATE BILL

5 By: Senator <NA>  
6

### For An Act To Be Entitled

8 AN ACT TO PROVIDE A RIGHT TO ATTORNEY AD LITEM FOR  
9 CHILDREN UNDER THE CHILD MALTREATMENT ACT; AND FOR  
10 OTHER PURPOSES.  
11  
12

### Subtitle

13 AN ACT TO PROVIDE A RIGHT TO ATTORNEY AD  
14 LITEM FOR CHILDREN UNDER THE CHILD  
15 MALTREATMENT ACT.  
16  
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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code Title 12, Chapter 18, Subchapter 1 is amended  
22 to add an additional section to read as follows:

23 12-18-108. Right to counsel.

24 (a)(1) In a child maltreatment case under this chapter, a child  
25 alleged to have been maltreated and his or her parent, guardian, or  
26 custodian, shall be advised by the child safety center team and by the court  
27 at the child's first appearance before the circuit court that the child has  
28 the right to be represented at all stages of the proceedings by counsel.

29 (2) In a child maltreatment case under this chapter, a minor  
30 sibling of the child alleged to have been maltreated and his or her parent,  
31 guardian or custodian, and a child residing with the child alleged to have  
32 been maltreated and his or her parent, guardian, or custodian shall be  
33 advised by the child safety center team, as soon as possible, that the minor  
34 sibling of the child alleged to have been maltreated and a child residing  
35 with the child alleged to have been maltreated has the right to be  
36 represented by counsel at all stages of the proceedings that court determines

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1 may affect the health or safety of the sibling or other child.

2 (b)(1)(A) The inquiry concerning the ability of a parent, guardian, or  
3 custodian of the child alleged to have been maltreated, a parent, guardian,  
4 or custodian of a minor sibling of the child alleged to have been maltreated,  
5 or a parent, guardian, or custodian of a child residing with the child  
6 alleged to have been maltreated to retain counsel shall include a  
7 consideration of the financial resources of the family of the child, the  
8 minor sibling, or another child residing with the child.

9 (B) However, the failure of the family of the child  
10 alleged to have been maltreated, a minor sibling of the child alleged to have  
11 been maltreated, or another child residing with the child alleged to have  
12 been maltreated to retain counsel for the child, minor sibling, or other  
13 child shall not deprive the child, minor sibling, or other child of the right  
14 to appointed counsel if required under this section.

15 (2) After review by the court of an affidavit of financial means  
16 completed and verified by the parent of the child alleged to have been  
17 maltreated, the parent of a minor sibling of the child alleged to have been  
18 maltreated or the parent of another child residing with the child alleged to  
19 have been maltreated and a determination by the court that the parent of  
20 child, the parent of a minor sibling of the child, or the parent of another  
21 child, or parent of a minor sibling or another child residing with the child  
22 has the ability to pay, the court may order a financially able parent of the  
23 child, minor sibling, other child, to pay all or part of reasonable  
24 attorney's fees and expenses for representation of the child, minor sibling,  
25 or other child.

26 (3) All moneys collected by the circuit clerk under this  
27 subsection shall be retained by the clerk and deposited into a special fund  
28 to be known as the "child maltreatment representation fund".

29 (4) The court may direct that money from this fund be used in  
30 providing counsel for children under this section.

31 (5) Money remaining in the fund at the end of the fiscal year  
32 shall not revert to any other fund but shall carry over into the next fiscal  
33 year in the child maltreatment representation fund.

34 (c) Appointment of counsel shall be made at a time sufficiently in  
35 advance of the court appearance to allow adequate preparation by appointed  
36 counsel and adequate consultation between the appointed counsel and the

1 client.

2 (d)(1) The court shall appoint an attorney ad litem who shall meet  
3 standards and qualifications established by the Supreme Court to represent  
4 the best interest of the child alleged to have been maltreated, a minor  
5 sibling of the child alleged to have been maltreated, or another child  
6 residing with the child alleged to have been maltreated when a petition is  
7 filed or when an emergency ex parte order is entered in a case under this  
8 chapter, whichever occurs earlier.

9 (2) The court may appoint an attorney ad litem to represent the  
10 best interest of a child alleged to have been maltreated, a minor sibling of  
11 the child alleged to have been maltreated, or another child residing with the  
12 child alleged to have been maltreated involved in any case before the court  
13 under this chapter and shall consider the best interest of the child, a minor  
14 sibling of the child, or another child residing with the child in determining  
15 whether to appoint an attorney ad litem.

16 (3) Each attorney ad litem shall:

17 (A) File written motions, responses, or objections at all  
18 stages of the proceedings when necessary to protect the best interest of the  
19 child alleged to have been maltreated, a minor sibling of the child alleged  
20 to have been maltreated, or another child residing with the child alleged to  
21 have been maltreated;

22 (B) Attend all hearings and participate in all telephone  
23 conferences with the court unless excused by the court; and

24 (C) Present witnesses and exhibits when necessary to  
25 protect the best interest of the child alleged to have been maltreated, a  
26 minor sibling of the child alleged to have been maltreated, or another child  
27 residing with the child alleged to have been maltreated.

28 (4) An attorney ad litem shall be provided access to all records  
29 relevant to the case, including, but not limited to, school records, medical  
30 records, all court records relating to the child and his or her family, and  
31 records of the Department of Human Services to the extent permitted by  
32 federal law.

33 (5)(A) An attorney ad litem shall represent the best interest of  
34 the child alleged to have been maltreated, a minor siblings of the child  
35 alleged to have been maltreated, or another child residing with the child  
36 alleged to have been maltreated.

1                   (B) If the wishes of the child alleged to have been  
2 maltreated, a minor sibling of the child alleged to have been maltreated, or  
3 another child residing with the child alleged to have been maltreated differ  
4 from the attorney's determination of the best interest of the child, a minor  
5 sibling of the child, or another child residing with the child, the attorney  
6 ad litem shall communicate the wishes of the child, a minor sibling of the  
7 child, or another child residing with the child to the court in addition to  
8 presenting his or her determination of the best interest of the child, a  
9 minor siblings of the child, or another child residing with the child.

10           (e)(1) The court may appoint a volunteer court-appointed special  
11 advocate from a program that shall meet all state and national court-  
12 appointed special advocate standards to advocate for the best interest of the  
13 child alleged to have been maltreated, a minor sibling of the child alleged  
14 to have been maltreated, or another child residing with the child alleged to  
15 have been maltreated.

16                   (2) A court-appointed special advocate shall not be assigned a  
17 case before:

18                           (A) Completing a training program in compliance with  
19 National Court Appointed Special Advocate Association and state standards;  
20 and

21                           (B) Being approved by the local court-appointed special  
22 advocate program that shall include appropriate criminal background and child  
23 abuse registry checks.

24                   (3) Each court-appointed special advocate shall:

25                           (A)(i) Investigate the case to which he or she is assigned  
26 to provide independent factual information to the court through the attorney  
27 ad litem, court testimony, or court reports.

28                                   (ii) The court-appointed special advocate may  
29 testify if called as a witness.

30                                   (iii) When the court-appointed special advocate  
31 prepares a written report for the court, the advocate shall provide all  
32 parties or the attorney of record with a copy of the written report seven (7)  
33 business days before the relevant hearing; and

34                                   (B) Monitor the case to which he or she is assigned to  
35 ensure compliance with the court's orders.

36                   (4) Upon presentation of an order of appointment, a court-

1 appointed special advocate shall be provided access to all records relevant  
2 to the case of the child alleged to have been maltreated, a minor sibling of  
3 the child alleged to have been maltreated, or another child residing with the  
4 child alleged to have been maltreated, including, but not limited to, school  
5 records, medical records, all court records relating to the child, a minor  
6 sibling of the child, or another child residing with the child and his or her  
7 family, and department records to the extent permitted by federal law.

8 (5) A court-appointed special advocate is not a party to the  
9 case to which he or she is assigned and shall not call witnesses or examine  
10 witnesses.

11 (6) A court-appointed special advocate shall not be liable for  
12 damages for personal injury or property damage pursuant to the Arkansas  
13 Volunteer Immunity Act, § 16-6-101 et seq.

14 (7) Except as provided in this subsection, a court-appointed  
15 special advocate shall not disclose any confidential information or reports  
16 to anyone except as ordered by the court or otherwise provided by law.

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