



1995 ASSEMBLY BILL 742

December 19, 1995 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Judiciary.

1 **AN ACT to repeal** 758.19 (5) (e) 4. and 891.39 (1) (b); **to renumber** 891.39 (1) (a);
2 **to amend** 48.27 (8), 48.275 (2) (a), 48.275 (2) (c), 48.275 (2) (d), 55.06 (9) (b),
3 758.19 (6) (b), 880.33 (2) (a) 3. and 891.39 (2) (a); **to repeal and recreate** 48.235
4 (8); and **to create** 48.275 (3) (c) and 758.19 (6) (cm) of the statutes; **relating to:**
5 state payments to counties for guardian ad litem costs and the responsibility
6 of parents and guardians for guardian ad litem compensation in children's code
7 proceedings.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in
the bill.

For further information see the *state and local* fiscal estimate, which will be
printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:***

PREFATORY NOTE: This bill was developed by the joint legislative council's special
committee on use and compensation of guardians ad litem.

State payments to counties for guardian ad litem costs

The state program to reimburse counties for costs incurred in compensating
guardians ad litem (GALs) was revised by 1995 Wisconsin Act 27 from a reimbursement
program to a straight payment program. Under the revised program, the director of state
courts distributes, once annually, the total annual amount appropriated for the program.
Each county's share of the annual payment is determined by the following formula:

1. One-third of the appropriation is distributed based on the proportionate number of circuit court branches in the county;
2. One-third of the appropriation is distributed based on the proportionate judicial need in the county under the weighted case load formula for cases that are likely to involve a GAL; and
3. One-third of the appropriation is distributed based on the proportionate amount of the court support services fee generated by the county.

Payments under the program are intended to defray counties' GAL costs, but the director of state courts may not require a county to account for the county's GAL costs or the manner in which or the purposes for which the county expends the payment. Each county is required annually to report to the director of state courts: 1) the total cost of GAL compensation incurred by the county in the previous calendar year; and 2) the total GAL compensation that the county initially paid but that was recovered in the previous calendar year from another responsible person.

This bill:

1. Provides that if a county's share of the state payment program exceeds the county's GAL costs, the county is to utilize the excess payment to provide or pay for training for GALs and for GAL support services, such as social, family and mental health services.
2. Expressly encourages counties to consider contracting for GAL services, including GAL support services, in order to enhance the efficient use and compensation of qualified and competent GALs. The director of state court's office is directed in the bill, upon request, to furnish a county with information on the practices of other counties, in connection with contracting for GALs and GAL support services.

Parental responsibility for guardian ad litem compensation in children's code proceedings

Currently, the county of venue is generally required to pay the compensation of GALs appointed in children's code proceedings [s. 48.235 (8)]. The bill, subject to exceptions, makes parents of children who have a court-appointed GAL in certain proceedings under the children's code (ch. 48) liable for the compensation of the GAL if the parent is able to pay the compensation. This treatment parallels the current obligation imposed on parents of children to pay the cost of advocacy counsel in such proceedings.

Current law requires the parents of a child who has been provided advocacy counsel by the state or a county in a child in need of protection or services (CHIPS) proceeding or delinquency proceeding under ch. 48 to reimburse the state or county for the costs of the counsel unless: 1) the parent is the complaining or petitioning party in the proceeding; 2) the court finds that the interests of the parent and the interests of the child are "substantially and directly adverse and that reimbursement would be unfair to the parent" [s. 48.275 (2) (a)]; or 3) the court or county social or human services department determines that the parent is indigent [s. 48.275 (2) (a) and (c)].

Under the current procedure, in the case of county-provided legal counsel, the court either makes a determination of indigency itself or appoints the county department of social services or human services to make the indigency determination. If the court or county department finds that the parent is not indigent or is partially indigent, the court is required to establish the amount of reimbursement and order the parent to pay it.

Section 48.275 has been held not to apply to parental reimbursement of counties for GAL compensation, based on the current statutory language. Specifically, the Wisconsin court of appeals in *In Interest of G. and L.P.*, 119 Wis. 2d 349 N.W. 2d 743 (Ct. App. 1984) construed the term "legal counsel", as used in s. 48.275, to mean advocacy counsel but not a GAL. There is no apparent public policy rationale to distinguish parental liability for GAL compensation from parental liability for advocacy counsel compensation under s. 48.275.

The bill also adds an additional exemption from liability for advocacy counsel or GAL compensation. Under this exemption, a court is precluded from ordering reimbursement for either advocacy counsel or a GAL if the child's guardian is not guardian of the child's estate and the court finds that reimbursement would be unfair to the child's guardian. The intent of this exemption is to avoid discouraging persons, such as foster parents, from agreeing to serve as guardians of the person due to the potential liability for attorney fees.

Clarifications

The bill clarifies some miscellaneous GAL-related statutes by: 1) making language consistent with other GAL-related statutes; and 2) removing an unclear cross-reference and deleting redundant material.

See the NOTES to individual provisions of the bill for additional information.

1 **SECTION 1.** 48.235 (8) of the statutes, as affected by 1995 Wisconsin Act 27, is
2 repealed and recreated to read:

3 48.235 (8) COMPENSATION. (a) A guardian ad litem appointed under this
4 chapter shall be allowed reasonable compensation, and, except as provided in par.
5 (b) or in s. 48.275 (2) (a), or unless the court orders otherwise, the county of venue
6 shall pay that compensation. If the court orders a county to pay the compensation
7 of a guardian ad litem, the amount ordered may not exceed the compensation paid
8 to private attorneys under s. 977.08 (4m) (b).

9 (b) The compensation of a guardian ad litem appointed under this chapter shall
10 be paid by the proposed adoptive parents in uncontested termination proceedings
11 and uncontested adoption cases under ss. 48.835 and 48.837 and by the agency in
12 uncontested termination proceedings and uncontested adoptions under s. 48.833. If
13 the proposed adoptive parents are unable to pay, the court may direct that the county
14 of venue pay the compensation, in whole or in part, and may direct that the proposed
15 adoptive parents reimburse the county, in whole or in part, for the payment. At any
16 time before the final order for adoption, the court may order that payments be placed
17 in an escrow account in an amount estimated to be sufficient to pay the compensation
18 of the guardian ad litem.

NOTE: Repealed and recreated to:

SECTION 1

1. Make express reference to s. 48.275 (2) (a) which, under the bill, makes a parent responsible for GAL compensation under certain circumstances in ch. 48 proceedings;
2. Provide for improved organization and readability; and
3. Provide, in par. (a), reference to “unless the court orders otherwise”, to make the text of the statute consistent with the 1990 JUDICIAL COUNCIL NOTE explaining the provision.

1 **SECTION 2.** 48.27 (8) of the statutes is amended to read:

2 48.27 (8) When a petition is filed under s. 48.12 or 48.13, the court shall notify,
3 in writing, the child’s parents or guardian that they may be ordered to reimburse this
4 state or the county for the costs of legal counsel or guardian ad litem provided for the
5 child, as provided under s. 48.275 (2).

6 **SECTION 3.** 48.275 (2) (a) of the statutes, as affected by 1995 Wisconsin Act 27,
7 is amended to read:

8 48.275 (2) (a) If this state or a county provides legal counsel to or a guardian
9 ad litem for a child subject to a proceeding under s. 48.12 or 48.13, the court shall
10 order the child’s parent to reimburse the state or county in accordance with par. (b)
11 or (c). The court may not order reimbursement if a parent is the complaining or
12 petitioning party or if the court finds that the interests of the parent and the interests
13 of the child in the proceeding are substantially and directly adverse and that
14 reimbursement would be unfair to the parent. The court may not order a child’s
15 guardian to reimburse the state or county if the child’s guardian is not guardian of
16 the child’s estate and the court finds that reimbursement would be unfair to the
17 child’s guardian. The court may not order reimbursement until the completion of the
18 proceeding or until the state or county is no longer providing the child with legal
19 counsel or a guardian ad litem in the proceeding.

20 **SECTION 4.** 48.275 (2) (c) of the statutes is amended to read:

1 48.275 (2) (c) If the county provides the child with legal counsel or with a
2 guardian ad litem and the court orders reimbursement under par. (a), the court shall
3 either make a determination of indigency or shall appoint the county department to
4 make the determination. If the court or the county department finds that the parent
5 is not indigent or is indigent in part, the court shall establish the amount of
6 reimbursement and shall order the parent to pay it.

7 **SECTION 5.** 48.275 (2) (d) of the statutes, as affected by 1995 Wisconsin Act 27,
8 is amended to read:

9 48.275 (2) (d) Reimbursement payments shall be made to the clerk of courts
10 of the county where the proceedings took place. Each payment shall be transmitted
11 to the county treasurer, who shall deposit 25% of the amount paid for state-provided
12 counsel in the county treasury and transmit the remainder to the state treasurer.
13 Payments transmitted to the state treasurer shall be deposited in the general fund
14 and credited to the appropriation account under s. 20.550 (1) (L). The county
15 treasurer shall deposit 100% of the amount paid for county-provided counsel or
16 county-provided guardian ad litem in the county treasury.

NOTE: Revisions in SECTIONS 2 to 5 extend the provisions of s. 48.275 that provide
for parental reimbursement for county-provided legal counsel in a ch. 48 proceeding to
provide for parental reimbursement for GAL services in such proceedings. See the
PREFATORY NOTE.

17 **SECTION 6.** 48.275 (3) (c) of the statutes is created to read:

18 48.275 (3) (c) Any proceeding covered under s. 48.235 (8) (b).

NOTE: Clarifies that s. 48.275 does not apply to GAL compensation in proceedings
covered under s. 48.235 (8) (b). See the treatment of the latter section by SECTION 1 of this
bill.

19 **SECTION 7.** 55.06 (9) (b) of the statutes is amended to read:

20 55.06 (9) (b) Transfer may be made between placement units or from a
21 placement unit to a medical facility other than those specified in pars. (c) to (e) by a

1 guardian or placement facility without approval by a court. When transfer is made
2 by a placement facility, 24 hours' prior written notice of the transfer shall be provided
3 to the guardian, when feasible. If it is not feasible to notify the guardian in advance,
4 written notice shall be provided immediately upon transfer, and notice shall also be
5 provided to the court and to the board designated under s. 55.02 or an agency
6 designated by it within a reasonable time, not to exceed 48 hours from the time of the
7 transfer. Upon petition to a court by a guardian, ward, or attorney, or other
8 interested person specifying objections to a transfer, the court shall order a hearing,
9 within 96 hours after filing of the petition, to determine whether there is probable
10 cause to believe that the transfer is consistent with the requirements specified in par.
11 (a) and is necessary for the best interests of the ward. The court shall notify the ward,
12 guardian and petitioner of the time and place of the hearing, and a guardian ad litem
13 shall be appointed to represent the ward. If the person is indigent, the county of legal
14 settlement shall be liable for guardian ad litem fees compensation. The petitioner,
15 ward and guardian shall have the right to attend, and to present and cross-examine
16 witnesses.

NOTE: Substitutes "compensation" for "fees" to make reference to GAL
compensation consistent with other statutes.

17 **SECTION 8.** 758.19 (5) (e) 4. of the statutes is repealed.

18 **SECTION 9.** 758.19 (6) (b) of the statutes, as affected by 1995 Wisconsin Act 27,
19 is amended to read:

20 758.19 (6) (b) From the appropriation under s. 20.625 (1) (e), the director of
21 state courts, beginning on July 1, 1995, shall annually on July 1 pay to each county
22 the county's share, as determined under par. (c), of the total appropriation under s.
23 20.625 (1) (e). The payment is designed to defray a county's guardian ad litem costs

1 but, except as provided in par. (d), the director of state courts may not require a
2 county to account for the county's guardian ad litem costs or the manner in which or
3 the purposes for which the county expends the payment. If a payment under this
4 subsection exceeds the county's guardian ad litem costs, the county is to utilize that
5 portion of the payment to provide or pay for training for guardians ad litem and for
6 guardian ad litem support services, such as social, family and mental health services.

NOTE: Encourages counties, when their share of the state program to reimburse counties for GAL compensation exceeds the county's costs, to utilize the excess payment for the specified GAL-related purposes. Use of GAL support services has the potential to result in significant savings in county GAL compensation.

7 **SECTION 10.** 758.19 (6) (cm) of the statutes is created to read:

8 758.19 (6) (cm) In order to enhance the efficient use and compensation of
9 qualified and competent guardians ad litem, counties are urged to consider
10 contracting for guardian ad litem services, including support services for guardians
11 ad litem. The director of state courts, upon request, shall furnish a county with
12 information on the practices of other counties in this state in connection with
13 contracting for guardians ad litem and for support services for guardians ad litem.

NOTE: Reflects the joint legislative council special committee's determination that contracting for GAL services can be a cost-effective method for counties to provide qualified and competent GALs.

14 **SECTION 11.** 880.33 (2) (a) 3. of the statutes is amended to read:

15 880.33 (2) (a) 3. If the person is indigent, the county of legal settlement shall
16 be the county liable for any fees compensation due the guardian ad litem and, if
17 counsel was not appointed under s. 977.08, for any legal fees due the person's legal
18 counsel.

NOTE: Substitutes "compensation" for "fees" to make reference to guardian ad litem compensation consistent with other statutes.

19 **SECTION 12.** 891.39 (1) (a) of the statutes is renumbered 891.39 (1).

