



1995 SENATE BILL 432

November 22, 1995 - Introduced by Senators HUELSMAN, BUETTNER, DARLING, FITZGERALD, PANZER, PETAK and ROSENZWEIG, cosponsored by Representatives LAZICH, DOBYNS, DUFF, GOETSCH, GROTHMAN, GUNDERSON, HAHN, HANDRICK, HUBER, KLUSMAN, LADWIG, F. LASEE, LEHMAN, LORGE, OTTE, OWENS, SCHNEIDERS and ZIEGELBAUER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 48.27 (8), 48.275 (2) (a), 48.275 (2) (c) and 48.275 (2) (d); and
2 **to repeal and recreate** 48.235 (8) of the statutes; **relating to:** the
3 responsibility of parents and guardians for guardian ad litem compensation in
4 children's code proceedings.

Analysis by the Legislative Reference Bureau

Currently, the county of venue is generally required to pay the compensation of guardians ad litem (GALs) appointed in children's code (ch. 48, stats.) proceedings. Current law requires the parents (or the guardian) 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 the children's code 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"; or 3) the court or county social or human services department determines that the parent is indigent.

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. Current law has been held not to apply to parental reimbursement of counties for GAL compensation.

This bill makes parents or guardians 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 or guardian is able to pay the compensation. Under the bill, 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.

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:

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), the county of venue shall pay that compensation. If the court
6 orders a county to pay the compensation of a guardian ad litem, the amount ordered
7 may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b).

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

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

19 48.27 (8) When a petition is filed under s. 48.12 or 48.13, the court shall notify,
20 in writing, the child's parents or guardian that they may be ordered to reimburse this

1 state or the county for the costs of legal counsel or guardian ad litem provided for the
2 child, as provided under s. 48.275 (2).

3 **SECTION 3.** 48.275 (2) (a), as affected by 1995 Wisconsin Act 27, is amended to
4 read:

5 48.275 (2) (a) If this state or a county provides legal counsel to or a guardian
6 ad litem for a child subject to a proceeding under s. 48.12 or 48.13, the court shall
7 order the child's parent to reimburse the state or county in accordance with par. (b)
8 or (c). The court may not order reimbursement if a parent is the complaining or
9 petitioning party or if the court finds that the interests of the parent and the interests
10 of the child in the proceeding are substantially and directly adverse and that
11 reimbursement would be unfair to the parent. The court may not order a child's
12 guardian to reimburse the state or county if the child's guardian is not guardian of
13 the child's estate and the court finds that reimbursement would be unfair to the
14 child's guardian. The court may not order reimbursement until the completion of the
15 proceeding or until the state or county is no longer providing the child with legal
16 counsel or a guardian ad litem in the proceeding.

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

18 48.275 (2) (c) If the county provides the child with legal counsel or with a
19 guardian ad litem and the court orders reimbursement under par. (a), the court shall
20 either make a determination of indigency or shall appoint the county department to
21 make the determination. If the court or the county department finds that the parent
22 is not indigent or is indigent in part, the court shall establish the amount of
23 reimbursement and shall order the parent to pay it.

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

