

# House Bill 3115

Sponsored by Representative WITT (at the request of Eric McGuire)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits court in family law proceeding involving custody, parenting time or visitation to appoint guardian ad litem for minor child to protect child's best interests. Establishes requirements for appointment of guardian ad litem. Sets forth duties of guardian ad litem. Authorizes court to appoint guardian ad litem from CASA Volunteer Program. Directs CASA Volunteer Programs to establish background information record for court appointed special advocates appointed as guardians ad litem.

## A BILL FOR AN ACT

1  
2 Relating to guardians ad litem for children in family law proceedings.

3 **Be It Enacted by the People of the State of Oregon:**

4     **SECTION 1. (1) In any proceeding under ORS chapter 107 or 109 that involves custody**  
5 **of, or parenting time or visitation with, a minor child, the court may appoint a guardian ad**  
6 **litem to represent the interests of the minor child when the court believes the appointment**  
7 **of a guardian ad litem is necessary to protect the best interests of the minor child. The court**  
8 **may appoint a guardian ad litem from the CASA Volunteer Program, as defined in ORS**  
9 **458.580, that serves the county in which the court is located. The court may request that**  
10 **the CASA Volunteer Program that serves the county in which the court is located recom-**  
11 **mend a court appointed special advocate, as defined in ORS 458.580, and, upon recommen-**  
12 **dation, the court shall appoint the advocate recommended by the program. The court shall**  
13 **attempt to match a minor child with special needs with a guardian ad litem who has specific**  
14 **training or education related to the child's special needs. The parties and the parties' attor-**  
15 **neys, if any, in the proceeding may also make a recommendation to the court regarding**  
16 **whether a guardian ad litem should be appointed for the minor child. The court may request**  
17 **that the parties authorize disclosure and inspection of confidential information related to the**  
18 **parties' minor child and to the issues the court has ordered the guardian ad litem to report**  
19 **on and investigate. The appointment is subject to the court's review and approval of the**  
20 **background information record described in subsection (5) of this section or, if the prospec-**  
21 **tive guardian ad litem is not a court appointed special advocate, to the court's review and**  
22 **approval of information that is substantially similar to the information in the background**  
23 **information record and is provided by the prospective guardian ad litem to the court before**  
24 **appointment.**

25     **(2) Upon appointment, the role of the guardian ad litem is to investigate and report on**  
26 **factual information regarding the issues that the court has ordered be reported on or in-**  
27 **vestigated. The guardian ad litem shall always represent the best interests of the child. A**  
28 **guardian ad litem may make recommendations to the court based upon the guardian ad**  
29 **litem's investigation, which the court may consider and weigh in conjunction with the rec-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 ommendations of all of the parties and the parties' attorneys, if any, in the proceeding. If a  
 2 child expresses a preference with respect to a provision in a parenting plan under ORS  
 3 107.102, the guardian ad litem shall report the preference to the court, together with the  
 4 facts relative to whether the preference expressed by the minor child is voluntary and the  
 5 degree to which the minor child understands the preference the child has made under the  
 6 circumstances existing in the proceeding.

7 (3)(a) The court may require the guardian ad litem to provide periodic reports to the  
 8 court and the parties or the parties' attorneys, if any, regarding the status of the guardian  
 9 ad litem's investigation. The guardian ad litem shall file a final report regarding the guardian  
 10 ad litem's investigation at least 60 days prior to trial in the proceeding.

11 (b) The parties to the proceeding may file with the court written responses to any report  
 12 filed by the guardian ad litem. The court shall consider all written responses to a report filed  
 13 by the guardian ad litem, including any factual information or recommendations made by the  
 14 guardian ad litem, in any order or judgment made by the court.

15 (4) The court may enter an order for costs, fees and disbursements to cover the costs  
 16 of the guardian ad litem. The court may order either or both parents of the minor child to  
 17 pay for the costs, fees or disbursements to a guardian ad litem according to the parent's  
 18 ability to pay. If both parents are indigent, the CASA Volunteer Program that serves the  
 19 county in which the court presiding over the proceeding is located shall bear the cost of the  
 20 guardian ad litem, regardless of whether the guardian ad litem is a court appointed special  
 21 advocate in that CASA Volunteer Program. The guardian ad litem shall provide the court  
 22 and the parties or the parties' attorneys, if any, with an itemized accounting of the time  
 23 spent by guardian ad litem in the matter and a billing for services on a monthly basis.

24 (5)(a) If the guardian ad litem appointed in the matter is from the CASA Volunteer Pro-  
 25 gram, the program must supervise the guardian ad litem. The program is entitled to receive  
 26 timely notice of all proceedings in the matter to which the guardian ad litem has been ap-  
 27 pointed.

28 (b) The program must maintain a background information record for each guardian ad  
 29 litem who is a court appointed special advocate that has been appointed under this section.  
 30 The record must include, but is not limited to, information regarding the guardian ad litem  
 31 with respect to:

32 (A) Level of formal education;

33 (B) General training related to duties of the guardian ad litem;

34 (C) Specific training related to issues potentially faced by children in dissolution, custody,  
 35 paternity and other family law proceedings;

36 (D) Specific training or education related to child disability or developmental issues;

37 (E) Number of years of experience as a guardian ad litem;

38 (F) Number of appointments as a guardian ad litem and the county or counties in which  
 39 appointed;

40 (G) The counties in which the guardian ad litem was removed from appointment pursuant  
 41 to court order or a grievance procedure, and the case number of the proceeding in which the  
 42 guardian ad litem was removed;

43 (H) Founded allegations of abuse or neglect against the guardian ad litem, if any;

44 (I) Results of a required examination to include a background check conducted by the  
 45 program; and

1       **(J) Criminal history, including prior arrests, convictions and sentences, for the period**  
2 **covering 10 years prior to appointment.**

3       **(c) The background information record maintained by the program must be updated an-**  
4 **nually.**

5       **(d) Except as otherwise provided in this paragraph, upon appointment, the guardian ad**  
6 **litem shall provide the parties or the parties' attorneys, if any, with a copy of the back-**  
7 **ground information record or, if the guardian ad litem is not a court appointed special ad-**  
8 **vocate, with a copy of substantially similar information provided to the court for the court's**  
9 **consideration under subsection (1) of this section. The portion of the background information**  
10 **record containing the results of the background check and the criminal history of the**  
11 **guardian ad litem may not be disclosed to the parties or the parties' attorneys, if any, and**  
12 **identifying information that may be used to harm a guardian ad litem, including but not**  
13 **limited to home addresses and telephone numbers, may not be disclosed. The court may allow**  
14 **guardians ad litem to use maiden names or pseudonyms as necessary for the safety of the**  
15 **guardians ad litem.**

16       **(6) If a party in a case or a party's attorney reasonably believes the appointed guardian**  
17 **ad litem is inappropriate or unqualified, the party or attorney may file a motion requesting**  
18 **a review of the appointment and removal of the guardian ad litem on the grounds that the**  
19 **guardian ad litem is inappropriate or unqualified.**

20       **SECTION 2.** **Section 1 of this 2015 Act applies to proceedings under ORS chapters 107 and**  
21 **109 that involve custody of, or parenting time or visitation with, a minor child commenced**  
22 **on or after the effective date of this 2015 Act.**

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