

By: Senator(s) Williamson

To: Judiciary, Division B

SENATE BILL NO. 2950

1 AN ACT TO BRING FORWARD SECTIONS 9-5-89 AND 43-21-121,
2 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT IN ORDER TO
3 REVISE THE ABUSIVE ASPECTS OF THE GUARDIAN AD LITEM SYSTEM IN
4 YOUTH COURTS ACROSS THE STATE; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 9-5-89, Mississippi Code of 1972, is
7 brought forward as follows:

8 9-5-89. The court may appoint a guardian ad litem to any
9 infant or defendant of unsound mind, and allow him suitable
10 compensation payable out of the estate of such party, but the
11 appointment shall not be made except when the court shall consider
12 it necessary for the protection of the interest of such defendant;
13 and a decree or judgment of any court shall not be void or
14 erroneous because of the failure to have a guardian ad litem.

15 **SECTION 2.** Section 43-21-121, Mississippi Code of 1972, is
16 brought forward as follows:

17 43-21-121. (1) The youth court shall appoint a guardian ad
18 litem for the child:

19 (a) When a child has no parent, guardian or custodian;

20 (b) When the youth court cannot acquire personal
21 jurisdiction over a parent, a guardian or a custodian;

22 (c) When the parent is a minor or a person of unsound
23 mind;

24 (d) When the parent is indifferent to the interest of
25 the child or if the interests of the child and the parent,
26 considered in the context of the cause, appear to conflict;

27 (e) In every case involving an abused or neglected
28 child which results in a judicial proceeding; or

29 (f) In any other instance where the youth court finds
30 appointment of a guardian ad litem to be in the best interest of
31 the child.

32 (2) The guardian ad litem shall be appointed by the court
33 when custody is ordered or at the first judicial hearing regarding
34 the case, whichever occurs first.

35 (3) In addition to all other duties required by law, a
36 guardian ad litem shall have the duty to protect the interest of a
37 child for whom he has been appointed guardian ad litem. The
38 guardian ad litem shall investigate, make recommendations to the
39 court or enter reports as necessary to hold paramount the child's
40 best interest. The guardian ad litem is not an adversary party
41 and the court shall insure that guardians ad litem perform their
42 duties properly and in the best interest of their wards. The
43 guardian ad litem shall be a competent person who has no adverse
44 interest to the minor. The court shall insure that the guardian
45 ad litem is adequately instructed on the proper performance of his
46 duties.

47 (4) The court may appoint either a suitable attorney or a
48 suitable layman as guardian ad litem. In cases where the court
49 appoints a layman as guardian ad litem, the court shall also
50 appoint an attorney to represent the child. From and after
51 January 1, 1999, in order to be eligible for an appointment as a
52 guardian ad litem, such attorney or lay person must have received
53 child protection and juvenile justice training provided by or
54 approved by the Mississippi Judicial College within the year
55 immediately preceding such appointment. The Mississippi Judicial
56 College shall determine the amount of child protection and
57 juvenile justice training which shall be satisfactory to fulfill
58 the requirements of this section. The Administrative Office of
59 Courts shall maintain a roll of all attorneys and laymen eligible
60 to be appointed as a guardian ad litem under this section and
61 shall enforce the provisions of this subsection.

62 (5) Upon appointment of a guardian ad litem, the youth court
63 shall continue any pending proceedings for a reasonable time to
64 allow the guardian ad litem to familiarize himself with the
65 matter, consult with counsel and prepare his participation in the
66 cause.

67 (6) Upon order of the youth court, the guardian ad litem
68 shall be paid a reasonable fee as determined by the youth court
69 judge or referee out of the county general fund as provided under
70 Section 43-21-123. To be eligible for such fee, the guardian ad
71 litem shall submit an accounting of the time spent in performance
72 of his duties to the court.

73 (7) The court, in its sound discretion, may appoint a
74 volunteer trained layperson to assist children subject to the
75 provisions of this section in addition to the appointment of a
76 guardian ad litem.

77 **SECTION 3.** This act shall take effect and be in force from
78 and after July 1, 2006.