

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 600

S. P. 215

In Senate, February 16, 1979

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Gill of Cumberland.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Assure Notice and Hearing Prior to Appointment of a Special  
Guardian.**

Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. 18 MRSA § 3510** is amended to read:

**§ 3510. Special guardian for minor or adult**

When a petition is pending for the appointment of a guardian for a minor or for an adult, the judge of probate authorized by law to make such appointment **may**, in his descretion ~~may, at any time and without notice~~ **with prior notice to the ward and after hearing**, appoint a special guardian who shall have the same powers and perform the same duties with respect to the estate of the ward as a guardian appointed under this chapter.

**Sec. 2. 18 MRSA § 3648, 2nd sentence**, as repealed and replaced by PL 1977, c. 627, § 17, is amended to read;

The special guardian ~~may~~ **shall** be appointed ~~without notice to the ward, but only with prior notice to the ward and after hearing~~ and the department shall be notified and given opportunity to be heard prior to its appointment as a special guardian.

## STATEMENT OF FACT

The current statutes, controlling appointment of a special guardian, enable a person (ward) to be deprived of his property, right to contract and personal liberty, without notice, without an opportunity to be heard and without the requirement of a finding that the individual poses a threat to himself or others.

On the basis of recent holdings by the United States Supreme Court it is indisputable that the constitutional guarantee of due process of law prohibits a substantial deprivation of any individual's liberty without adequate and fair procedural safeguards, the most fundamental of which is the right to notice and an opportunity to be heard.

This bill amends the special guardianship statutes by guaranteeing that an individual will receive notice and have a hearing before a guardian is appointed for them.