

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1885

6
7 H.P. 1349

House of Representatives, January 16, 1986

8 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 26.

9 Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Hayden of Brunswick.

Cosponsored by Representative Foster of Ellsworth, Representative Lisnik
of Presque Isle and Representative Davis of Monmouth.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT Concerning the Court Appointed Special
18 Advocate Program and the Conduct of
19 Court Appointed Special Advocates.
20

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

23 Sec. 1. 4 MRSA c. 31 is enacted to read:

24 CHAPTER 31

25 COURT APPOINTED SPECIAL ADVOCATE PROGRAM

26 §1501. Court Appointed Special Advocate Program

27 There is established within the Judicial Depart-
28 ment the Court Appointed Special Advocate Program to
29 provide volunteer lay persons to serve as court ap-
30 pointed special advocates or guardians ad litem under
31 Title 22, section 4005, subsection 1, in child abuse
32 and neglect cases.

1 §1502. Staff

2 With the advice and approval of the Court Ap-
3 pointed Special Advocate Advisory Panel, the Chief
4 Judge of the District Court shall appoint a Director
5 of the Court Appointed Special Advocate Program, who
6 shall serve at his pleasure. The Chief Judge of the
7 District Court may also appoint one or more deputy
8 directors, who also shall serve at his pleasure. The
9 Chief Judge of the District Court shall provide nec-
10 essary clerical assistance to the Court Appointed
11 Special Advocate Program, within the limit of funds
12 available.

13 §1503. Court appointed special advocates

14 The Director of the Court Appointed Special Advo-
15 cate Program shall recruit the services of qualified
16 persons to serve as volunteer court appointed special
17 advocates. The volunteer court appointed special ad-
18 vocates shall not be considered employees of the
19 State for any purpose and shall receive no compensa-
20 tion, but shall be reimbursed for their actual, nec-
21 essary and reasonable expenses incurred in the per-
22 formance of their duties, consistent with policies
23 established by the Administrative Office of the
24 Courts.

25 §1504. Facilities

26 The Chief Judge of the District Court shall pro-
27 vide a principal office for the Court Appointed Spe-
28 cial Advocate Program and shall arrange for such fa-
29 ilities throughout the State as are necessary and
30 adequate for the court appointed special advocates to
31 conduct their duties.

32 §1505. Court Appointed Special Advocate Advisory
33 Panel

34 A Court Appointed Special Advocate Advisory Panel
35 shall be appointed by the Chief Judge of the District
36 Court to set the policy for and monitor the Court Ap-
37 pointed Special Advocate Program. The committee
38 shall include, but not be limited to: The Chief Judge
39 of the District Court or his designee; the State
40 Court Administrator or his designee; the Commissioner

1 of Human Services or his designee; and the Attorney
2 General or his designee.

3 Sec. 2. 22 MRSA §4005, sub-§1, as amended by PL
4 1983, c. 783, §1, is further amended to read:

5 1. Child; guardian ad litem. The following
6 provisions shall govern guardians ad litem. The term
7 guardian ad litem is inclusive of lay court appointed
8 special advocates under Title 4, chapter 31.

9 A. The court, in every child protection proceed-
10 ing except a request for a preliminary protection
11 order under section 4034 or a petition for a med-
12 ical treatment order under section 4071, but in-
13 cluding hearings on those orders, shall appoint a
14 guardian ad litem for the child. His reasonable
15 costs and expenses shall be paid by the District
16 Court. The appointment shall be made as soon as
17 possible after the proceeding is initiated.

18 B. The guardian ad litem shall act in pursuit of
19 the best interests of the child. He shall be
20 given access to all reports and records relevant
21 to the case. He shall investigate to ascertain
22 the facts. His investigation shall include,
23 where possible and appropriate, the following:

24 (1) Review of relevant mental health
25 records and materials;

26 (2) Review of relevant medical records;

27 (3) Review of relevant school records and
28 other pertinent materials;

29 (4) Interviews with the child with or with-
30 out other persons present; and

31 (5) Interviews with parents, foster par-
32 ents, teachers, caseworkers and other per-
33 sons who have been involved in caring for or
34 treating the child.

35 C. The guardian ad litem may subpoena, examine
36 and cross-examine witnesses and shall make a rec-
37 ommendation to the court.

1 D. The guardian ad litem shall make a written
 2 report of his investigation, findings and recom-
 3 mendations, and shall provide a copy of his re-
 4 port to each of the parties reasonably in advance
 5 of the hearing, and to the court on consent of
 6 all parties, except that he need not provide a
 7 written report prior to a hearing on a prelimi-
 8 nary protection order.

9 E. The guardian ad litem shall make the wishes
 10 of the child known to the court if the child has
 11 expressed his wishes, regardless of the recommen-
 12 dation of the guardian ad litem.

13 F. The guardian ad litem may request the court
 14 to appoint legal counsel for him. The District
 15 Court shall pay reasonable costs and expenses of
 16 his legal counsel.

17 FISCAL NOTE

18 COURT APPOINTED SPECIAL ADVOCATE PROGRAM
 19 FOR FISCAL YEAR 1987

20	<u>PERSONAL SERVICES</u>			<u>FISCAL YEAR</u>
21				<u>1987 TOTAL</u>
22		<u>First 6</u>	<u>2nd 6</u>	
23		<u>months</u>	<u>months</u>	
24	Director	\$11,560	\$14,667	\$26,227
25	Receptionist/Secretary	9,040	7,865	<u>16,905</u>
26	Total			<u>\$43,132</u>
27	Fringe			<u>10,783</u>
28	Total Personal Services			\$53,915
29	<u>ALL OTHER</u>		<u>MONTHLY</u>	
30	Travel		\$420	\$5,040
31	Telephone		35	420
32	Office Supplies,			
33	Postage, etc.		75	900
34	Space Rental		<u>272</u>	<u>3,264</u>

1	Total	\$802	\$9,624
2	<u>CAPITAL</u>		
3	Office Equipment		<u>\$3,500</u>
4	Grand Total		<u>\$67,039</u>

5 STATEMENT OF FACT

6 The problem of child abuse is enormous and con-
7 tinues to increase. In 1984, the Department of Human
8 Services received 10,541 reports of suspected child
9 abuse and neglect, of this 5,420 warranted a full
10 child protective services investigation. This number
11 represented a 12.9% increase over 1983.

12 While many families voluntarily accepted assist-
13 ance from the Department of Human Services, approxi-
14 mately 500 cases required judicial intervention.

15 The Maine Revised Statutes, Title 22, section
16 4005, requires that a guardian ad litem be appointed
17 in every case brought to court in which a child is
18 alleged to be abused or neglected. Although not
19 mandated, in the vast majority of cases attorneys are
20 appointed by the courts to act as guardians ad litem.

21 Due to court budget limitations, these attorneys
22 are currently reimbursed at a rate significantly low-
23 er than standard legal fees and are frequently con-
24 sidered to be donating much of their time in child
25 abuse and neglect cases. This situation has resulted
26 in a very high turnover rate in the number of attor-
27 neys willing to act as guardians ad litem, often less
28 than vigorous advocacy for the child and very little
29 follow through or attention to permanency planning
30 for the child.

31 Earlier in 1985, the District Court established a
32 Permanency Planning Committee to begin assessing the
33 feasibility of establishing a volunteer lay guardian
34 ad litem program. To distinguish a volunteer lay
35 guardian ad litem from the traditional, but not
36 mandated attorney guardian ad item, the term court

1 appointed special advocate was applied.

2 The committee consisted primarily of the Chief
3 Judge of the District Court, the State Court Adminis-
4 trator, a private attorney and an Assistant Attorney
5 General familiar with the area of child protective
6 litigation and legislation. The committee determined
7 that the establishment of a Court Appointed Special
8 Advocate Program to serve all children who have been
9 alleged to be abused or neglected was the next logi-
10 cal step in a steady progression which has occurred
11 in Maine since the enactment of the Child and Family
12 Services and Child Protection Act in 1980. That Act,
13 which brought together all of the State's child abuse
14 and neglect legislation, set out clear standards,
15 definitions and procedures for child abuse and ne-
16 glect proceedings.

17 In, 1983, the section of the Child and Family
18 Services and Child Protection Act dealing with the
19 appointment of the guardian ad litem was amended to
20 require that the guardian undertake an extensive in-
21 vestigation in each case and provide a written report
22 to all parties. The development of a volunteer lay
23 Court Appointed Special Advocate Program takes that
24 legislation one step further and begins to assure
25 that the persons appointed to act as guardians ad li-
26 tem for children are in fact interested in undertak-
27 ing this responsibility and are thoroughly trained.

28 The committee secured a grant from the National
29 Council of Juvenile and Family Court Judges to set up
30 a one-year pilot program in Androscoggin, Knox and
31 Lincoln counties. The committee selected a Director
32 of the Court Appointed Special Advocate Program and
33 set up an office in the District Court in Lewiston.
34 Volunteers from Androscoggin County have been
35 recruited, screened, interviewed and trained. Sever-
36 al volunteers have been assigned and are actively
37 working as guardians ad litem in the Lewiston area.
38 In Knox and Lincoln County, volunteers are awaiting
39 training which began November 4, 1985.

40 The Court Appointed Special Advocate Program is a
41 volunteer program, administered by paid staff, dedi-
42 cated to provide the court with considered,
43 thoughtful recommendations on what should be planned

1 for the child, based on an independent investigation
2 of the facts. Its sole function is to determine
3 which course of action is in the child's best inter-
4 est.

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