

MAINE STATE LEGISLATURE

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1 SECOND SPECIAL SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2422

6
7 H.P. 1730

House of Representatives, May 27, 1986

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

9 Received by the Clerk of the House on May 23, 1986. Referred to the
Committee on Judiciary, and ordered printed pursuant to Joint Rule 14.

10 EDWIN H. PERT, Clerk

Presented by Representative Paradis of Augusta.

Cosponsored by Representative Davis of Monmouth and Representative
Diamond of Bangor.

11
12 STATE OF MAINE
13

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

17 AN ACT Regarding Special Costs in
18 Guardianship Proceedings.
19

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

22 18-A MRSA §5-613, as amended by PL 1983, c. 241,
23 §3, is repealed and the following enacted in its
24 place:

25 §5-613. Incapacitated persons; guardian ad litem
26 costs

27 (1) Whenever the following occur, the costs of
28 the guardian ad litem, or any other special costs,
29 shall be paid by the Bureau of Mental Health and Men-
30 tal Retardation, if the person involved is mentally
31 retarded and in all other cases by the Department of
32 Human Services:

33 (a) An allegedly incapacitated person is in need
34 of protective services and:

1 (1) A guardian ad litem is appointed under
2 the provisions of this Code; or

3 (2) A court incurs special costs in a pro-
4 ceeding concerning such a person; and

5 (b) Appointment of a public guardian or conser-
6 vator is sought on the allegedly incapacitated
7 person, within 3 months prior to the filing of
8 the petition:

9 (1) Is or has been a client of the Bureau
10 of Mental Health and Mental Retardation;

11 (2) Is or has been a client of the Depart-
12 ment of Human Services; or

13 (3) Has received services from a worker
14 from the Bureau of Mental Health and Mental
15 Retardation or the Department of Human Ser-
16 vices.

17 2. Exception. The Bureau of Mental Health and
18 Mental Retardation or the Department of Human Ser-
19 vices shall not be liable for the costs set out in
20 subsection 1, if the bureau or the department can
21 demonstrate that the allegedly incapacitated person
22 has assets against which the costs may be assessed or
23 that another more appropriate funding source is
24 available and subject to the court's jurisdiction.

25 STATEMENT OF FACT

26 The Bureau of Mental Health and Mental Retarda-
27 tion currently recommends that parents of retarded
28 persons apply to become private guardians. Techni-
29 cally, these proceedings are not covered by the cur-
30 rent language of the Maine Revised Statutes, Title
31 18-A, section 5-312. Thus, the county in which the
32 case is heard pays court costs, which can be substan-
33 tial now that a guardian ad litem is required in al-
34 most every case, instead of the State. The Depart-
35 ment of Human Services does not currently appear to
36 be doing this, but could do so.

1 Currently, the counties in which the hearings are
2 held bear these costs.

3 Because a disproportionate number of incapacitated
4 persons live in the counties with state or federal
5 institutions, these counties seem to be paying
6 more than their fair share of these costs. State
7 payment of these costs would be more equitable.

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