

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 494

S.P. 165

In Senate, January 28, 1997

**An Act to Change the Time for Appointment of a Visitor or Guardian Ad Litem after Appointment of a Temporary Conservator or Guardian.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2           **Sec. 1. 18-A MRSA §5-310-A, sub-§(a-1)**, as enacted by PL 1995,  
4 c. 203, §2, is amended to read:

6           (a-1) If the court takes action to exercise the powers of a  
7 guardian or to appoint a temporary guardian under subsection (a),  
8 then the court, within ~~48 hours~~ 2 days, excluding Saturdays,  
9 Sundays and legal holidays, of taking the action, shall appoint a  
10 visitor or a guardian ad litem to visit the allegedly  
11 incapacitated person and make a report to the court within 10  
12 days of the appointment of the visitor or guardian ad litem. The  
13 visitor or guardian ad litem shall serve the allegedly  
14 incapacitated person with a copy of the order appointing the  
15 temporary guardian and shall explain the meaning and consequences  
16 of the appointment. The visitor or guardian ad litem shall  
17 inquire of the allegedly incapacitated person whether that person  
18 wishes to contest any aspect of the temporary guardianship or  
19 seek any limitation of the temporary guardian's powers. The  
20 visitor or guardian ad litem shall advise the allegedly  
21 incapacitated person of that person's right to contest the  
22 temporary guardianship by requesting a hearing under subsection  
23 (b) and shall advise the allegedly incapacitated person of that  
24 person's right to be represented in the proceeding by counsel of  
25 that person's own choice or by counsel appointed by the court.  
26 The visitor or guardian ad litem shall also interview the  
27 temporary guardian, except in cases where the court itself has  
28 taken action to exercise the powers of a temporary guardian. In  
29 the report to the court, the visitor or guardian ad litem shall  
30 inform the court that the allegedly incapacitated person has  
31 received a copy of the order appointing the temporary guardian.  
32 The visitor or guardian ad litem shall advise the court as to  
33 whether the allegedly incapacitated person wishes to contest any  
34 aspect of the temporary guardianship or seek a limitation of the  
35 temporary guardian's powers and whether the allegedly  
36 incapacitated person is already represented by counsel. The  
37 visitor or guardian ad litem shall also advise the court whether  
38 any issue exists with respect to whether the appointment of the  
39 temporary guardian is in the allegedly incapacitated person's  
40 best interest.

42           **Sec. 2. 18-A MRSA §5-408-A, sub-§(a-1)**, as enacted by PL 1995,  
43 c. 203, §6, is amended to read:

44           (a-1) If the court takes action to exercise the powers of a  
45 conservator or to appoint a temporary conservator under  
46 subsection (a), then the court, within ~~48 hours~~ 2 days, excluding  
47 Saturdays, Sundays and legal holidays, of taking the action,  
48 shall appoint a visitor or a guardian ad litem to visit the  
49 protected person and make a report to the court within 10 days of  
50 the appointment of ~~the temporary conservator~~ the visitor or  
51 guardian ad litem. The visitor or guardian ad litem shall serve

2 the protected person with a copy of the order appointing the  
temporary conservator and shall explain the meaning and  
4 consequences of the appointment. The visitor or guardian ad  
litem shall inquire of the protected person whether that person  
6 wishes to contest any aspect of the temporary conservatorship or  
seek any limitation of the temporary conservator's powers. The  
8 visitor or guardian ad litem shall advise the protected person of  
that person's right to contest the temporary conservatorship by  
10 requesting an expedited hearing under subsection (b) and shall  
advise the protected person of that person's right to be  
12 represented by counsel of that person's own choice or by counsel  
appointed by the court. The visitor or guardian ad litem shall  
14 also interview the temporary conservator, except in cases where  
the court itself has taken action to exercise the powers of a  
16 temporary conservator. In the report to the court, the visitor  
or guardian ad litem shall inform the court that the protected  
18 person has received a copy of the order appointing the temporary  
conservator and shall advise the court as to whether the  
20 protected person wishes to contest any aspect of the temporary  
conservatorship or seek a limitation of the temporary  
22 conservator's powers and whether the protected person is already  
represented by counsel. The visitor or guardian ad litem shall  
24 also advise the court whether any issue exists with respect to  
whether the appointment of the temporary conservator is in the  
26 protected person's best interest.

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### SUMMARY

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This bill requires a court to appoint a visitor or guardian  
ad litem within 2 days, excluding weekends and holidays, of  
32 appointing a temporary guardian or temporary conservator. The  
current law requires appointment within 48 hours. The bill also  
34 requires the visitor or guardian ad litem to make a visit and  
report to the court within 10 days of that person's appointment.