

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 522

S.P. 212

In Senate, February 19, 2013

An Act To Amend the Guardian Ad Litem Laws

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator VALENTINO of York.
Cosponsored by Representative PRIEST of Brunswick and
Senator: BURNS of Washington, Representatives: CROCKETT of Bethel, GUERIN of
Glenburn, MONAGHAN-DERRIG of Cape Elizabeth, VILLA of Harrison.

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

2 **Sec. 1. 19-A MRSA §1507, sub-§5**, as repealed and replaced by PL 2001, c. 253,
3 §3, is amended to read:

4 **5. Written report.** ~~A~~ If directed by the court, a guardian ad litem shall make a final
5 written report to the parties and the court reasonably in advance of the hearing. The
6 report is admissible as evidence and subject to cross-examination and rebuttal, whether or
7 not objected to by a party.

8 **Sec. 2. 19-A MRSA §1507, sub-§9** is enacted to read:

9 **9. Rules.** The Supreme Judicial Court may adopt rules governing guardians ad litem
10 regarding registration or certification, qualifications, standards of practice, continuing
11 education requirements and discipline, which includes the just determination of
12 complaints from parties in actions pursuant to this Title and Title 22, section 4005. The
13 court may assess such fees upon the guardians ad litem as may be necessary to provide
14 for the regulation of guardians ad litem and the protection of the public interest. The
15 judicial branch may authorize a separate program of supervision, mentoring or
16 professional oversight if funding is allocated for that purpose.

17 **Sec. 3. 22 MRSA §4005, sub-§1**, as amended by PL 2001, c. 696, §12, is further
18 amended to read:

19 **1. Child; guardian ad litem.** The rules adopted by the Supreme Judicial Court
20 under Title 19-A, section 1507, subsection 9 and the following provisions shall govern
21 guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special
22 advocates under Title 4, chapter 31.

23 A. The court, in every child protection proceeding except a request for a preliminary
24 protection order under section 4034 or a petition for a medical treatment order under
25 section 4071, but including hearings on those orders, shall appoint a guardian ad
26 litem for the child. The guardian ad litem's reasonable costs and expenses must be
27 paid by the District Court. The appointment must be made as soon as possible after
28 the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000
29 must meet the qualifications established by the Supreme Judicial Court.

30 B. The guardian ad litem shall act in pursuit of the best interests of the child. The
31 guardian ad litem must be given access to all reports and records relevant to the case
32 and investigate to ascertain the facts. The investigation must include, when possible
33 and appropriate, the following:

- 34 (1) Review of relevant mental health records and materials;
- 35 (2) Review of relevant medical records;
- 36 (3) Review of relevant school records and other pertinent materials;
- 37 (4) Interviews with the child with or without other persons present; and
- 38 (5) Interviews with parents, foster parents, teachers, caseworkers and other
39 persons who have been involved in caring for or treating the child.

1 The guardian ad litem shall have face-to-face contact with the child in the child's
2 home or foster home within 7 days of appointment by the court and at least once
3 every 3 months thereafter or on a schedule established by the court for reasons
4 specific to the child and family. The guardian ad litem shall report to the court and
5 all parties in writing at 6-month intervals, or as is otherwise ordered by the court,
6 regarding the guardian ad litem's activities on behalf of the child and
7 recommendations concerning the manner in which the court should proceed in the
8 best interest of the child. The court may provide an opportunity for the child to
9 address the court personally if the child requests to do so or if the guardian ad litem
10 believes it is in the child's best interest.

11 C. The guardian ad litem may subpoena, examine and cross-examine witnesses and
12 shall make a recommendation to the court.

13 D. The guardian ad litem shall make a written report of the investigation, findings
14 and recommendations and shall provide a copy of the report to each of the parties
15 reasonably in advance of the hearing and to the court, except that the guardian ad
16 litem need not provide a written report prior to a hearing on a preliminary protection
17 order. The court may admit the written report into evidence.

18 E. The guardian ad litem shall make the wishes of the child known to the court if the
19 child has expressed his wishes, regardless of the recommendation of the guardian ad
20 litem.

21 F. The guardian ad litem or the child may request the court to appoint legal counsel
22 for the child. The District Court shall pay reasonable costs and expenses of the
23 child's legal counsel.

24 G. A person serving as a guardian ad litem under this section acts as the court's agent
25 and is entitled to quasi-judicial immunity for acts performed within the scope of the
26 duties of the guardian ad litem.

27 **SUMMARY**

28 This bill implements the recommendations included in the report "Recommendations
29 for an Improved Process for Complaints Regarding Guardians Ad Litem" submitted to
30 the Supreme Judicial Court in 2012 by the Guardian Ad Litem Task Force, appointed by
31 Chief Justice Saufley.

32 Current law requires a guardian ad litem appointed in a family matters case to submit
33 a written report to the parties and the court. This bill requires a written report only if the
34 court directs the guardian ad litem to file one.

35 This bill provides that the Supreme Judicial Court may adopt rules governing
36 guardians ad litem appointed in family matters cases under the Maine Revised Statutes,
37 Title 19-A and in child protective cases under Title 22. The rules may cover registration
38 or certification, qualifications, standards of practice, continuing education requirements
39 and discipline. Discipline includes a process to provide for the just determination of
40 complaints from parties in actions under Title 19-A and Title 22.