

MAINE STATE LEGISLATURE

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Date: 6/17/2013

JUDICIARY

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**STATE OF MAINE
SENATE
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 297, L.D. 872, Bill, "An Act To Improve the Quality of Guardian ad Litem Services for the Children and Families of Maine"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 4 MRSA c. 32 is enacted to read:

CHAPTER 32

CHILDREN'S GUARDIANS AD LITEM

§1551. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Division. "Division" means the Family Division within the District Court established in section 183.

2. Guardian ad litem. "Guardian ad litem" means a person appointed as the court's agent to represent the best interests of one or more children pursuant to Title 18-A, section 1-112, Title 19-A, section 1507 or Title 22, section 4005.

3. Best interests of the child. "Best interests of the child" means an outcome that serves or otherwise furthers the health, safety, well-being, education and growth of the child. In applying the standard of best interests of the child in Title 18-A and Title 19-A cases, the relevant factors set forth in Title 19-A, section 1653, subsection 3 must be considered.

§1552. Children's guardians

1. Guardian ad litem roster. The division shall assist the Chief Judge of the District Court in the establishment and maintenance of a roster of guardians ad litem pursuant to section 1553.

COMMITTEE AMENDMENT

1 **2. Administration of guardians ad litem under Title 19-A and Title 22.** For
2 guardians ad litem appointed under Title 19-A and Title 22, the division shall assist the
3 Chief Judge of the District Court in:

4 A. Establishing standardized billing, itemization requirements and time reporting
5 processes for all guardians ad litem;

6 B. Establishing guidelines for preparation of required reports; and

7 C. Collecting, maintaining and reporting data about orders of appointment,
8 submission of required reports, caseloads and other information as directed by the
9 Chief Judge of the District Court.

10 **3. Staff.** The State Court Administrator shall provide necessary professional and
11 clerical or other staff and logistical support to the division within the limit of funds
12 available.

13 **4. Public information.** The division shall provide public information about the role
14 of guardians ad litem, how to provide comments about a guardian ad litem and the
15 complaint process established pursuant to section 1557.

16 **§1553. Roster of guardians ad litem**

17 Rules adopted by the Supreme Judicial Court govern the establishment and
18 maintenance of a roster of guardians ad litem. The rules must address:

19 **1. Application process.** The process for applying to be included on the roster,
20 including application forms;

21 **2. Criteria.** Criteria for initial listing on the roster, including:

22 A. Credentials, including professional licenses and minimum education
23 requirements;

24 B. Core training; and

25 C. Good character;

26 **3. Continuing education.** Continuing education requirements;

27 **4. Criminal background check.** Obtaining criminal history record information on
28 an individual, including, at a minimum, criminal history record information from the
29 Department of Public Safety, State Bureau of Identification;

30 **5. Other requirements.** Any other requirements necessary to remain in good
31 standing and included on the roster; and

32 **6. Removal.** The process for removing a guardian ad litem from the roster.

33 **§1554. Guardian ad litem responsibilities**

34 **1. Role of guardian ad litem.** The court may appoint a guardian ad litem to provide
35 information to assist the court in determining the best interests of the child involved in the
36 determination of parental rights and responsibilities and guardianship of a minor under
37 Title 18-A, in the determination of parental rights and responsibilities under Title 19-A,
38 section 904 or 1653 and in the determination of contact with grandparents under Title

1 19-A, section 1803. The court shall appoint a guardian ad litem in a child protection case
2 under Title 22, chapter 1071.

3 **2. Standards of conduct.** Guardians ad litem shall abide by the standards of
4 conduct as adopted by rule by the Supreme Judicial Court.

5 **3. General responsibilities.** A person appointed by the court to serve as a guardian
6 ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts
7 performed within the scope of the duties of the guardian ad litem. As a quasi-judicial
8 officer, the guardian ad litem shall perform the assigned duties independently and
9 impartially in all relevant matters within the scope of the order of appointment, respecting
10 the court's obligation to dispose of all judicial matters promptly, efficiently and fairly as
11 provided in the Maine Code of Judicial Conduct. A guardian ad litem shall:

12 A. Represent consistently the best interests of the child and provide information to
13 the court that assists the court in determining the best interests of the child;

14 B. Understand and uphold the law and court orders related to the guardian ad litem's
15 appointment;

16 C. Maintain the highest standards of professionalism, cultural sensitivity and ethics;

17 D. Recognize that timely resolution of each matter serves the best interests of the
18 child and the child's need for stability;

19 E. Within the scope of authority defined by statute or court order, plan, carry out,
20 document and complete thorough, appropriate and fair investigations in a timely
21 fashion;

22 F. Communicate in a developmentally appropriate way with the child;

23 G. Make well-reasoned and factually based written recommendations regarding the
24 best interests of the child as directed by the order of appointment;

25 H. Pursuant to the order of appointment, include parties in the investigation, use
26 effective communication techniques, recognize limitations that may be imposed by
27 the financial resources of the parties as applicable and be aware of the cultural and
28 socioeconomic status of the parties; and

29 I. Complete assignments and written reports in a timely manner and communicate
30 effectively with the court in motions, reports, recommendations and testimony.

31 **§1555. Appointment of guardians ad litem in Title 18-A and Title 19-A cases**

32 **1. Appointment of guardian ad litem.** In proceedings to determine parental rights
33 and responsibilities and guardianship of a minor under Title 18-A and in contested
34 proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is
35 involved, the court may appoint a guardian ad litem for the child when the court has
36 reason for special concern as to the welfare of the child. The court may appoint a
37 guardian ad litem on the court's own motion, on the motion of one of the parties or upon
38 agreement of the parties.

39 A. A court may appoint, without any findings, any person listed on the roster. In
40 addition, when a suitable guardian ad litem included on the roster is not available for
41 appointment, a court may, for good cause shown and after consultation with the

1 parties, appoint an attorney admitted to practice in this State who, after consideration
2 by the court of all of the circumstances of the particular case, in the opinion of the
3 appointing court has the necessary skills and experience to serve as a guardian ad
4 litem. For the purposes of this paragraph, good cause may include the appointment
5 of a guardian ad litem on a pro bono basis.

6 B. In determining whether to make an appointment, the court shall consider:

7 (1) The wishes of the parties;

8 (2) The age of the child;

9 (3) The nature of the proceeding, including the contentiousness of the hearing;

10 (4) The financial resources of the parties;

11 (5) The extent to which a guardian ad litem may assist in providing information
12 concerning the best interests of the child;

13 (6) Whether the family has experienced a history of domestic abuse;

14 (7) Abuse of the child by one of the parties; and

15 (8) Other factors the court determines relevant.

16 **2. Order.** An appointment of a guardian ad litem must be by court order.

17 A. The appointment order must be written on a court-approved form and must
18 specify the guardian ad litem's length of appointment, the specific duties for the
19 particular case, including the filing of a written report, and fee arrangements.

20 B. The guardian ad litem has no authority to perform and may not be expected to
21 perform any duties beyond those specified in the appointment order, unless
22 subsequently ordered to do so by the court.

23 C. If, in order to perform any specified duties, the guardian ad litem needs
24 information concerning the child or parents, the court may order the parents to sign
25 an authorization form allowing the release of the necessary information. The court
26 order may specify that the guardian ad litem must be allowed access to the child by
27 the caretakers of the child, whether the caretakers are individuals, authorized agencies
28 or child care providers.

29 D. When appointment of the guardian ad litem or the fee arrangements for payment
30 of the guardian ad litem are not agreed to by the parties, the court shall state in the
31 appointment order its findings, based on the criteria stated in this section, supporting
32 the appointment of the guardian ad litem and the fee payment order.

33 **3. Payment for services; fees and billing; enforcement.** The order under
34 subsection 2 must specify that payment for the services of the guardian ad litem is the
35 responsibility of the parties, with the terms of payment specified in the order.

36 A. The fee arrangements in the order must specify hourly rates or a flat fee, the
37 timing of payments to be made and by whom and the maximum amount of fees that
38 may be charged for the case without further order of the court. If the payments
39 ordered to be made before the guardian ad litem commences the investigation, if any,

1 are not paid as ordered, the guardian ad litem shall notify the court, and the court may
2 vacate the appointment order or take such other action it determines appropriate
3 under the circumstances.

4 B. In determining the responsibility for payment, the court shall consider:

5 (1) The income of the parties;

6 (2) The marital and nonmarital assets of the parties;

7 (3) The division of property made or anticipated as part of the final divorce or
8 separation;

9 (4) Which party requested appointment of a guardian ad litem; and

10 (5) Other factors considered relevant by the court, which must be stated with
11 specificity in the appointment order.

12 C. The guardian ad litem shall use standardized billing, itemization requirements and
13 time reporting processes as established by the division. The guardian ad litem may
14 collect fees, if a collection action is necessary, pursuant to Title 14 and may not
15 pursue collection in the action in which the guardian ad litem is appointed.

16 **4. Best interests of the child.** In performance of duties specified in the appointment
17 order, the guardian ad litem shall use the standard of the best interests of the child.

18 **5. Wishes of the child.** The guardian ad litem shall make the wishes of the child
19 known to the court if the child has expressed them, regardless of the recommendation of
20 the guardian ad litem.

21 **6. Report.** The guardian ad litem shall provide a copy of each report ordered by the
22 court to the parties and the court at least 14 days before each report is due. A guardian ad
23 litem shall provide a copy of the final written report to the parties and the court at least 14
24 days in advance of the final hearing. Reports are admissible as evidence and subject to
25 cross-examination and rebuttal, whether or not objected to by a party. Any objections to a
26 report must be filed at least 7 days before the applicable hearing.

27 **§1556. Appointment of guardian ad litem in child protection cases under Title 22**

28 **1. Appointment of guardian ad litem.** An order appointing a guardian ad litem
29 pursuant to Title 22, section 4005 must specify the terms and conditions of the
30 appointment as provided in Title 22, this chapter and rules adopted by the Supreme
31 Judicial Court.

32 **2. Order.** An appointment of a guardian ad litem must be by court order.

33 **A.** The appointment order must be written on a court-approved form and must
34 specify the guardian ad litem's length of appointment and specific duties, including
35 the filing of a written report.

36 **B.** The guardian ad litem has no authority to perform and may not be expected to
37 perform any duties beyond those specified in the appointment order, unless
38 subsequently ordered to do so by the court.

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C. In pursuit of the best interests of the child, the guardian ad litem must be given access to all reports and records relevant to the case and shall investigate to ascertain the facts.

D. The guardian ad litem must be provided access to the child by any agency or person.

E. The guardian ad litem shall file such reports, motions, responses or objections as necessary and appropriate to the stage of the case to assist the court in identifying the best interests of the child and provide copies to all parties of record.

F. The guardian ad litem shall appear at all child protection proceedings, unless previously excused by order of the court, and other proceedings as ordered by the court. The guardian ad litem may present evidence and ensure that, when appropriate, witnesses are called and examined, including, but not limited to, foster parents and psychiatric, psychological, medical or other expert witnesses. If the guardian ad litem testifies, the guardian ad litem must be duly sworn as a witness and be subject to cross-examination. In the event any new developments or significant changes in the child's circumstances occur during the pendency of the court process, the guardian ad litem may file appropriate pleadings.

G. The guardian ad litem shall protect the interests of the child who is a witness in any judicial proceeding relating to the case in which the guardian ad litem has been appointed. The guardian ad litem may advocate for special procedures, including, but not limited to, special procedures to protect the child witness from unnecessary psychological harm resulting from the child's testimony, with or without the consent of other parties.

H. The guardian ad litem shall recommend appropriate services, by motion for court order if necessary, to access entitlements, to protect the child's interests and to implement a service plan.

3. Best interests of the child. In performance of duties specified in the appointment order, the guardian ad litem shall use the standard of the best interests of the child.

4. Wishes of the child. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

§1557. Complaint process

1. Rules. The Supreme Judicial Court shall provide by rule for a complaint process concerning guardians ad litem appointed under Title 18-A, Title 19-A and Title 22 that provides for at least the following:

A. The ability of a party to make a complaint before the final judgment as well as after the final judgment is issued;

B. Written instructions on how to make a complaint;

C. Clear criteria for making a complaint;

D. Transparent policies and procedures concerning the investigation of complaints and the provision of information to complainants;

1 E. A central database to log and track complaints; and

2 F. Policies and procedures for using complaints and investigations for
3 recommending the removal of a guardian ad litem from a particular case or other
4 consequences or discipline.

5 **2. Complaint process.** The division shall provide written and electronic information
6 to communicate the complaint process to the public and to all parties.

7 **3. Minor complaint option.** The rules may provide for a minor complaint option
8 that authorizes corrective action without the necessity of completing the full complaint
9 and investigatory process.

10 **4. Motion to remove.** The complaint process adopted pursuant to this section is in
11 addition to the right of a party to file a motion to remove the guardian ad litem while the
12 case is pending. The court shall hold a hearing on the motion at the request of the party
13 filing the motion. The motion may be advanced on the docket and receive priority over
14 other cases when the court determines that the interests of justice so require.

15 **§1558. Repeal**

16 This chapter is repealed October 1, 2017.

17 **Sec. 2. Information technology system.** In developing the request for proposals
18 for the new case management system for the courts, the judicial branch shall require the
19 inclusion of at least the following information about guardians ad litem:

- 20 1. Information on rostering, training status, availability and case assignment; and
21 2. Case management information relating to guardians ad litem, including:
22 A. Data to track orders of appointment, submission of required reports, caseloads
23 and other relevant information; and
24 B. Data making guardian ad litem activities transparent to all parties.

25 **Sec. 3. Post-judgment evaluation policy and process.** The judicial branch
26 shall develop and implement a post-judgment evaluation policy and process to collect and
27 analyze data from the parties in cases in which guardians ad litem have been appointed.

28 **Sec. 4. Report.** The Chief Judge of the District Court shall report to the Joint
29 Standing Committee on Judiciary by February 15, 2014 on the following with regard to
30 implementing the Maine Revised Statutes, Title 4, chapter 32:

- 31 1. The adoption of rules;
32 2. The establishment of a complaint process;
33 3. The development of a post-judgment evaluation policy and process; and
34 4. The adoption of standards of conduct for guardians ad litem.

35 **Sec. 5. Appropriations and allocations.** The following appropriations and
36 allocations are made.

37 **JUDICIAL DEPARTMENT**

38 **Courts - Supreme, Superior and District 0063**

1 Initiative: Provides funds for one Family Process Specialist position, one Administrative
 2 Assistant position and one part-time Computer Programmer position and related costs to
 3 provide oversight of guardians ad litem.

4	GENERAL FUND	2013-14	2014-15
5	POSITIONS - LEGISLATIVE COUNT	2.500	2.500
6	Personal Services	\$162,775	\$195,330
7	All Other	\$30,834	\$16,000
8			
9	GENERAL FUND TOTAL	<u>\$193,609</u>	<u>\$211,330</u>

10

11 **SUMMARY**

12 This amendment replaces the bill. It enacts a new chapter on children's guardians ad
 13 litem. The chapter uses current requirements for guardians ad litem as a base, and
 14 includes some of the recommendations of the reports to the Supreme Judicial Court,
 15 "Recommendations for an Improved Process for Complaints Regarding Guardians Ad
 16 Litem," dated September 21, 2012, and "Recommendations for Amending the Maine
 17 Rules for Guardians Ad Litem," dated January 14, 2013, by the Guardian Ad Litem
 18 Stakeholders Group. Under the new chapter, guardians ad litem appointed under the
 19 Maine Revised Statutes, Title 18-A are subject to the general provisions and rules
 20 adopted by the Supreme Judicial Court, including the complaint process. Guardians ad
 21 litem appointed under Title 19-A and Title 22 are subject to the general provisions and
 22 the rules, as well as specific provisions for the different types of cases.

23 The amendment directs the family division within the judicial branch to assist the
 24 Chief Judge of the District Court to roster guardians ad litem and in the administration of
 25 guardians ad litem appointed under Title 19-A and Title 22. The amendment requires the
 26 family division to collect, maintain and report data about the appointment of guardians ad
 27 litem, reports, caseloads and other information.

28 The amendment clarifies the process of rostering guardians ad litem, although the
 29 details will be established by rules adopted by the Supreme Judicial Court. The rules
 30 must include criminal background checks.

31 The amendment establishes in statute the role of a guardian ad litem and requires
 32 compliance with standards of conduct, which will be adopted by rule by the Supreme
 33 Judicial Court.

34 The order of appointment must specify the duties of the guardian ad litem. A
 35 guardian ad litem has no authority to perform and will not be expected to perform any
 36 duties beyond those specified in the order, unless subsequently ordered to do so by the
 37 court.

38 The order appointing a guardian ad litem in a case under Title 18-A and Title 19-A
 39 must also specify the hourly rate or flat fee for the guardian ad litem, the timing of the
 40 payments to be made and by whom and the maximum amount of fees that may be
 41 charged for the case without further order of the court.

1 The amendment requires the Supreme Judicial Court to provide by rule for a
2 complaint process concerning guardians ad litem. The complaint process is in addition to
3 the right of a party to file a motion to remove the guardian ad litem while the case is
4 pending.

5 The entire chapter is repealed October 1, 2017.

6 The judicial branch is directed to include guardian ad litem elements in its request for
7 proposals for the new case management system for the courts.

8 The Chief Judge of the District Court is directed to report to the Joint Standing
9 Committee on Judiciary by February 15, 2014 on the adoption of rules to implement the
10 new chapter, establishment of a complaint process, recommendations concerning
11 evaluations by parties and the adoption of standards of conduct for guardians ad litem.

12 The amendment also adds an appropriations and allocations section.

13 **FISCAL NOTE REQUIRED**

14 **(See attached)**



126th MAINE LEGISLATURE

LD 872

LR 874(02)

An Act To Improve the Quality of Guardian ad Litem Services for the Children and Families of Maine

Fiscal Note for Bill as Amended by Committee Amendment *A"(S-297)*
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
Net Cost (Savings)				
General Fund	\$193,609	\$211,330	\$212,190	\$218,226
Appropriations/Allocations				
General Fund	\$193,609	\$211,330	\$212,190	\$218,226

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$193,609 in fiscal year 2013-14 and \$211,330 in fiscal year 2014-15 for the Judicial Department for one Family Process Specialist position, one Administrative Assistant position and one part-time Computer Programmer position and related costs to provide oversight of Guardians Ad Litem.