

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 975

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H.P. 689

House of Representatives, March 12, 2013

### **An Act To Ensure Accountability of Guardians Ad Litem and Parenting Coordinators**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative VILLA of Harrison.  
Cosponsored by Senator DUTREMBLE of York and  
Representatives: BEAR of the Houlton Band of Maliseet Indians, DICKERSON of Rockland,  
NADEAU of Fort Kent, POWERS of Naples, RYKERSON of Kittery, Senator: GERZOFKY  
of Cumberland.

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

2 **Sec. 1. 18-A MRSA §1-112, sub-§§(a) and (b),** as enacted by PL 2005, c. 360,  
3 §1, are amended to read:

4 (a). In any proceeding under this Title for which the court may appoint a guardian ad  
5 litem for a child involved in the proceeding, at the time of the appointment, the court shall  
6 specify in writing the guardian ad litem's length of appointment, duties and fee  
7 arrangements.

8 (b). A guardian ad litem appointed on or after October 1, 2005 must meet the  
9 qualifications established by the Supreme Judicial Court. The qualifications must include  
10 at least a minimum amount of completed course work in social work.

11 **Sec. 2. 18-A MRSA §1-112, sub-§(f),** as enacted by PL 2005, c. 360, §1, is  
12 amended to read:

13 (f). A person appointed by the court as a guardian ad litem acts as the court's agent  
14 ~~and is entitled to quasi-judicial immunity for acts performed within the scope of the~~  
15 ~~duties of the guardian ad litem.~~ A party who is injured by a guardian ad litem's false  
16 accusations of abuse or neglect or intentionally excluding relevant information in  
17 required reports has a civil cause of action against the guardian ad litem for damages,  
18 including punitive damages.

19 **Sec. 3. 19-A MRSA §1507, sub-§1,** as amended by PL 2005, c. 360, §2, is  
20 further amended to read:

21 **1. Guardian ad litem; appointment.** In contested proceedings under sections 904,  
22 1653 and 1803 in which a minor child is involved, the court may appoint a guardian ad  
23 litem for the child. The appointment may be made at any time, but the court shall make  
24 every effort to make the appointment as soon as possible after the commencement of the  
25 proceeding. The court may appoint a guardian ad litem when the court has reason for  
26 special concern as to the welfare of a minor child. In determining whether an  
27 appointment must be made, the court shall consider:

- 28 A. The wishes of the parties;
- 29 B. The age of the child;
- 30 C. The nature of the proceeding, including the contentiousness of the hearing;
- 31 D. The financial resources of the parties;
- 32 E. The extent to which a guardian ad litem may assist in providing information  
33 concerning the best interest of the child;
- 34 F. Whether the family has experienced a history of domestic abuse;
- 35 G. Abuse of the child by one of the parties; and
- 36 H. Other factors the court determines relevant.

1 At the time of the appointment, the court shall specify the guardian ad litem's length of  
2 appointment, duties and fee arrangements as described in subsection 7.

3 **Sec. 4. 19-A MRSA §1507, sub-§2,** as amended by PL 1999, c. 251, §1, is  
4 further amended to read:

5 **2. Qualifications.** A guardian ad litem appointed on or after March 1, 2000 must  
6 meet the qualifications established by the Supreme Judicial Court. The qualifications  
7 must include at least a minimum amount of completed course work in social work.

8 **Sec. 5. 19-A MRSA §1507, sub-§3,** as amended by PL 2005, c. 683, Pt. B, §9, is  
9 further amended to read:

10 **3. Duties; investigation limits.** The court shall describe in writing the specific  
11 duties of the guardian ad litem ~~has both mandatory and optional duties~~ and establish the  
12 limits of investigations to be undertaken.

13 A. ~~A~~ The court shall direct the guardian ad litem ~~shall~~ to:

14 (1) Interview the child face-to-face with or without another person present; and

15 (3) Make a written report of investigations, findings and recommendations as  
16 ordered by the court, with copies of the report to each party and the court.

17 B. The court shall specify the optional duties of the guardian ad litem. The optional  
18 duties of the guardian ad litem may include:

19 (1) Interviewing the parents, teachers and other people who have knowledge of  
20 the child or family;

21 (2) Reviewing mental health, medical and school records of the child;

22 (3) Reviewing mental health and medical records of the parents;

23 (4) Having qualified people perform medical and mental evaluations of the child;

24 (5) Having qualified people perform medical and mental evaluations of the  
25 parents;

26 (6) Procuring counseling for the child;

27 (7) Retaining an attorney to represent the guardian ad litem in the pending  
28 proceeding, with approval of the court;

29 (8) Subpoenaing witnesses and documents and examining and cross-examining  
30 witnesses;

31 (9) Serving as a contact person between the parents and the child; or

32 (10) Other duties that the court determines necessary, including, but not limited  
33 to, filing pleadings.

34 If, in order to perform the duties, the guardian ad litem needs information concerning the  
35 child or parents, the court may order the parents to sign an authorization form allowing  
36 the release of the necessary information. The guardian ad litem must be allowed access

1 to the child by caretakers of the child, whether the caretakers are individuals, authorized  
2 agencies or child care providers.

3 **Sec. 6. 19-A MRSA §1507, sub-§§6 and 7**, as enacted by PL 1995, c. 694, Pt.  
4 B, §2 and affected by Pt. E, §2, are amended to read:

5 **6. Court's agent.** A person serving as a guardian ad litem under this section acts as  
6 the court's agent ~~and is entitled to quasi-judicial immunity for acts performed within the~~  
7 ~~scope of the duties of the guardian ad litem.~~

8 **7. Payment for services.** Payment for the services of the guardian ad litem is the  
9 responsibility of the parties, as ordered by the court. The court shall establish expenditure  
10 limits on the fees and any other costs that may be incurred in an investigation conducted  
11 pursuant to subsection 3. In determining the responsibility for payment, the court shall  
12 consider:

- 13 A. The income of the parties;
- 14 B. The marital and nonmarital assets of the parties;
- 15 C. The division of property made as part of the final divorce;
- 16 D. Which party requested appointment of a guardian ad litem; and
- 17 E. Other relevant factors.

18 **Sec. 7. 19-A MRSA §1507, sub-§9** is enacted to read:

19 **9. Cause of action.** A party who is injured by a guardian ad litem's false accusations  
20 of abuse or neglect or intentionally excluding relevant information in required reports has  
21 a civil cause of action against the guardian ad litem for damages, including punitive  
22 damages.

23 **Sec. 8. 19-A MRSA §1659, sub-§1, ¶A**, as enacted by PL 2009, c. 345, §2, is  
24 amended to read:

25 A. "Parenting coordinator" means a neutral 3rd party appointed by the court to  
26 oversee and resolve disputes that arise between parents in interpreting and  
27 implementing the parenting plan set forth in the court's order and who:

28 (1) On July 1, 2009 is listed ~~in~~ on the roster of guardians ad litem maintained by  
29 the Chief Judge of the District Court pursuant to rules adopted by the Supreme  
30 Judicial Court, or who holds one or more of the licenses listed in the rules and is  
31 listed on the roster after July 1, 2009 after completing the other requirements set  
32 forth in the rules. The requirements must include at least a minimum amount of  
33 completed course work in social work; and

34 (2) Meets any other qualifications and requirements established by the Supreme  
35 Judicial Court.

36 **Sec. 9. 19-A MRSA §1659, sub-§2, ¶B**, as enacted by PL 2009, c. 345, §2, is  
37 amended to read:

1 B. The order of appointment must include apportionment of responsibility for  
2 payment of the parenting coordinator's fee, if any, between the parties. The order  
3 must establish expenditure limits on the fees and any other costs that may be incurred  
4 in the completion of the duties of the appointment. State funds may not be used to  
5 pay parenting coordinator fees.

6 **Sec. 10. 19-A MRSA §1659, sub-§7**, as enacted by PL 2009, c. 345, §2, is  
7 amended to read:

8 **7. Agent of court; liability.** An individual serving as a parenting coordinator acts as  
9 the court's agent ~~and is entitled to quasi-judicial immunity for acts performed within the~~  
10 ~~scope of the duties of the parenting coordinator as set forth in the court's order.~~ A party  
11 who is injured by a parenting coordinator's false accusations of abuse or neglect or  
12 intentionally excluding relevant information in required reports has a civil cause of action  
13 against the parenting coordinator for damages, including punitive damages.

14 **Sec. 11. 22 MRSA §4005, sub-§1, ¶G**, as enacted by PL 2001, c. 253, §4, is  
15 amended to read:

16 G. A person serving as a guardian ad litem under this section acts as the court's agent  
17 ~~and is entitled to quasi-judicial immunity for acts performed within the scope of the~~  
18 ~~duties of the guardian ad litem.~~ A party who is injured by a guardian ad litem's false  
19 accusations of abuse or neglect or intentionally excluding relevant information in  
20 required reports has a civil cause of action against the guardian ad litem for damages,  
21 including punitive damages.

## 22 SUMMARY

23 This bill ensures that guardians ad litem and parenting coordinators are accountable.  
24 This bill:

25 1. Requires the court to impose limits on the extent of investigations to be  
26 undertaken by a guardian ad litem to prevent escalation of conflict and antagonistic  
27 conduct of the parents and to protect children from long-term exposure to traumatic  
28 processes;

29 2. Requires all guardians ad litem and parenting coordinators to have sufficient  
30 education and training in social work;

31 3. Requires the court to set expenditure limits on guardian ad litem and parenting  
32 coordinator fees and any other costs incurred in investigations or the completion of the  
33 duties of the appointment;

34 4. Removes the quasi-judicial immunity provided to guardians ad litem and  
35 parenting coordinators by statute; and

36 5. Allows a cause of action and the award of punitive damages against guardians ad  
37 litem and parenting coordinators who falsely accuse parties of abuse or neglect or who  
38 intentionally exclude from reports to the parties or the court relevant information.