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Legislative Document

No. 872

S.P. 297

In Senate, March 5, 2013

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

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 DUTREMBLE of York.

Cosponsored by Representative KESCHL of Belgrade, Representative VILLA of Harrison and
Senators: GERZOFSKY of Cumberland, PATRICK of Oxford, Representatives: BROOKS of
Winterport, KNIGHT of Livermore Falls, POWERS of Naples, VEROW of Brewer.

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

CONCEPT DRAFT

SUMMARY

This bill is a concept draft pursuant to Joint Rule 208.

This bill restructures the current guardian ad litem program in Maine for the greater benefit of children and their kinship supports involved in the crises of divorce and child protection complaints. It is based on the findings and recommendations of the 2006 report, "Performance Audit of Guardians ad litem for Children in Child Protection Cases" submitted to the Government Oversight Committee by the Office of Program Evaluation and Government Accountability. It proposes a comprehensive program governing guardians ad litem appointed under the Maine Revised Statutes, Titles 18-A, 19-A and 22. The bill must include statutory provisions that explicitly address program objectives, job description, recruitment, qualifications, selection and appointment, oversight and performance monitoring, quality assurance, consumer protection, a complaint process and a consumer-sensitive framework for compensation, as well as the organizational location of the program and its structural elements.

The program will include, but not be limited to, the following:

1. The development of a mission statement for a guardian ad litem program that addresses the support needs of children and families in the crises of divorce and child protection and the informational needs of the courts;

2. The development of a statutory guardian ad litem job description, including a definition of role boundaries, that explicitly states allowable guardian ad litem functions that may be performed. These permitted functions are to be the foundation for all guardian ad litem education and training, performance evaluations and compensation and complaints against guardians ad litem;

3. A requirement that state of the art information systems for government oversight of guardians ad litem that are used in other jurisdictions be evaluated to assist in the development of an oversight system in this State. The oversight system must be developed to take into account the components of mandatory duties, as well as quality assurance and consumer protection, and must include:

A. Case management, including:

(1) Recording and tracking guardian ad litem job activities and court events in each case, to be reviewed by appropriate judicial branch management on a regular basis. Data in the form of statistical reports of guardian ad litem activities from each family court may be used as a macro-management oversight tool to identify regional variations and symptoms of problems and to allow strategic corrective interventions as necessary;

- 1 (2) Sharing information among guardians ad litem and other persons for the sole
2 purpose of improved service to children, families and courts, to be governed by
3 the standards of confidentiality and information protection observed by health
4 and human services agencies;
- 5 (3) Maximizing the sharing between the courts and the Department of Health
6 and Human Services when necessary, using the existing standards governing the
7 release of personal information; and
- 8 (4) Electronically generating, maintaining and sharing case management and
9 financial information for use in planning, managing and ensuring the quality of
10 guardian ad litem services, to be reviewed by judicial branch management;
- 11 B. Annual guardian ad litem evaluations conducted by an independent entity without
12 conflicts of interest or special interest and involving consumers of services to the
13 greatest extent possible;
- 14 C. Guardian ad litem compliance with standards and other requirements; and
- 15 D. Compensation information that includes the total financial charges to parties and
16 the court incurred by guardians ad litem and other family intervention professionals
17 involved in generating fees, as well as fee caps or means tests;
- 18 4. A process that provides for the selection of qualified individuals to be included on
19 the guardian ad litem roster and for individual cases, including:
 - 20 A. Qualifications;
 - 21 B. A process for the court to conduct interviews, background checks and reference
22 checks for prospective paid guardians ad litem, the results of which are a factor in
23 deciding whether an individual is added to the roster;
 - 24 C. Support for recruiting professionals other than attorneys to serve as paid
25 guardians ad litem, especially in geographic areas where there are shortages, and
26 recommend modifications to accommodate nonattorneys as guardians ad litem;
 - 27 D. Initial guardian ad litem training and education and continuing education
28 requirements, including interpersonal skills development. All training and
29 educational efforts for guardians ad litem must be designed as a series of approaches
30 to educational goals connected to the components of the guardian ad litem job
31 description; qualifying and post-training testing must be employed and will be a basis
32 for training remediation when necessary. A supervised practicum, or internship, must
33 be a part of practice training, aimed at greater technical and experiential
34 professionalism and reducing beginner's mistakes of trial and error on consumers; and
 - 35 E. Quality assurance and consumer protection. The history of evaluations,
36 complaints and disciplinary action, as well as case load information, must be
37 incorporated into public quality assurance information, as a part of consumer
38 protection;
- 39 5. Recruitment of individuals to serve as guardians ad litem, including:

- 1 A. Creating differentiated rates of pay to reflect the market variations in pay rates for
2 different types of professional expertise while also recognizing the economic
3 situation of parties who are paying; and
- 4 B. Other means to enhance the pool of quality guardians ad litem and to remove
5 those who function poorly;
- 6 6. Appropriate procedures concerning court-appointed special advocates, including a
7 mechanism to ensure that the court-appointed special advocates adhere as closely as
8 possible to national court-appointed special advocates program requirements, including,
9 but not limited to, supervisor-to-volunteer ratios, annual performance evaluations and
10 continuing education requirements;
- 11 7. A process to provide for the management and supervision of guardians ad litem,
12 including:
- 13 A. Continuously assessing the level of knowledge, skill, experience and attitude of
14 guardians ad litem in their job performance and documenting and correcting
15 identified deficiencies. The purpose of all methods of the supervision of guardians ad
16 litem should be improved management of their functions for the benefit of all parties;
- 17 B. Identifying managers within the judicial branch who can oversee guardian ad
18 litem job performance. Management must be conducted outside of special interests
19 or conflicts of interest;
- 20 C. Conducting performance monitoring, evaluation and assessment of the delivery of
21 guardian ad litem services, including:
- 22 (1) Methods to assess and provide feedback about each guardian ad litem's
23 interaction with children;
- 24 (2) A process to identify guardians ad litem who are:
- 25 (a) Not complying with mandated requirements;
- 26 (b) Not sufficiently involved in the lives of children to effectively identify
27 their best interests; and
- 28 (c) Behaving in a manner that negatively affects children and others involved
29 with their cases; and
- 30 (3) Methods of soliciting feedback on guardian ad litem performance from people
31 who do not have access to judges;
- 32 D. The development of public information about the guardian ad litem job
33 description for guardians ad litem themselves and others, including:
- 34 (1) An education program for judges about guardian ad litem activities, the
35 judges' oversight responsibilities and the importance of clarifying the guardian ad
36 litem's role with all interested persons in advance; and
- 37 (2) Development of educational materials, appropriate for different ages,
38 explaining what to expect of guardians ad litem, to include training in obtaining
39 informed consent agreements from parties before working with them and

- 1 contracts for guardian ad litem services that are freely agreed to and that reflect
2 the full understanding of participants;
- 3 E. Development of a code of conduct for guardians ad litem;
- 4 F. Development of sanctions for noncompliance, including a range of sanctions for
5 guardians ad litem who are not in compliance or meeting performance standards; and
- 6 G. A standardized form for guardian ad litem reports;
- 7 8. The establishment of a complaint process, including:
- 8 A. Written instructions about how to make a complaint and who can help and clear
9 written criteria to serve as the basis for legitimate public complaints;
- 10 B. Transparent policies and procedures for handling complaints so that those
11 complaining will have a procedural road map of what to expect as well as the ability
12 to make a complaint pro se;
- 13 C. Clear definition of management's structural responsibility for implementing
14 processes, policies and procedures for using complaints to dismiss guardians ad litem
15 from cases and to require guardians ad litem to take specific actions to improve
16 performance or to remove them from the case;
- 17 D. A central database to log complaints and track their status;
- 18 E. Information about how substantiated complaints will be reviewed by judges
19 before appointing a particular guardian ad litem to a case;
- 20 F. A process to investigate guardian ad litem complaints, recommend dismissal of
21 guardians ad litem from specific cases and remove guardians ad litem from the roster;
- 22 G. Methods to communicate the complaint process to all parties in cases when
23 guardians ad litem are appointed;
- 24 H. A minor complaint option to request managerial corrective action on a guardian
25 ad litem to allow a management review of complaints involving a guardian ad litem's
26 deficiencies of knowledge, skill, experience or attitude; and
- 27 I. The assignment of specific persons or groups, other than the judge presiding over
28 the case, responsible for oversight of both legal and managerial complaints;
- 29 9. The establishment of compensation regulations, including:
- 30 A. Standardized billing information and level of detail that must be submitted with
31 guardian ad litem invoice forms;
- 32 B. Accounting codes and time reporting processes so all costs associated with
33 guardian ad litem services can be accurately captured and classified;
- 34 C. Evidence of the guardian ad litem obtaining informed consent from parties being
35 billed such that the parties understand the basis of billable hours, and that they have
36 freely entered into a contract for services; and
- 37 D. Appropriate bill collecting procedures, which do not make use of the court in
38 which the guardian ad litem works and is known, and which do not include punitive

1 methods of bill collecting in cases of financial hardship, such as liens, wage
2 garnishment or threats of prison;

3 10. Review of budgetary considerations, including a proposed budget using existing
4 resources and identifying additional needs. Court leadership shall perform financial
5 analysis of guardian ad litem costs and communicate the results in a way that shows the
6 impact of providing guardian ad litem services on the court budget; and

7 11. Administrative location for the guardian ad litem program that is appropriate to
8 carry out the responsibilities concerning guardian ad litem qualifications and rostering,
9 supervision of guardians ad litem and a complaint process.