



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 363

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H.P. 269

House of Representatives, February 2, 2017

**An Act To Make a Child Living with a Custodial Relative Caregiver  
Eligible for State-paid Legal Services**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative PICCHIOTTI of Fairfield.

Cosponsored by Representatives: CRAIG of Brewer, PRESCOTT of Waterboro, SIROCKI of Scarborough, STROM of Pittsfield, TUELL of East Machias, WALLACE of Dexter, Senator: WHITTEMORE of Somerset.

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

2 **Sec. 1. 4 MRSA §1802, sub-§4**, as enacted by PL 2009, c. 419, §2, is amended to  
3 read:

4 **4. Indigent legal services.** "Indigent legal services" means legal representation  
5 provided to:

6 A. An indigent defendant in a criminal case in which the United States Constitution  
7 or the Constitution of Maine or federal or state law requires that the State provide  
8 representation;

9 B. An indigent party in a civil case in which the United States Constitution or the  
10 Constitution of Maine or federal or state law requires that the State provide  
11 representation; ~~and~~

12 C. Juvenile defendants; and

13 D. Children who are the subject of a child protection proceeding and who are living  
14 with a relative as provided in Title 22, section 4005, subsection 4.

15 "Indigent legal services" does not include the services of a guardian ad litem appointed  
16 pursuant to Title 22, section ~~4105~~ 4005, subsection 1.

17 **Sec. 2. 22 MRSA §4005, sub-§1**, as amended by PL 2001, c. 696, §12, is further  
18 amended to read:

19 **1. Guardian ad litem.** The following provisions ~~shall~~ govern guardians ad litem.  
20 The term guardian ad litem is inclusive of lay court appointed special advocates under  
21 Title 4, chapter 31.

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

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

33 (1) Review of relevant mental health records and materials;

34 (2) Review of relevant medical records;

35 (3) Review of relevant school records and other pertinent materials;

36 (4) Interviews with the child with or without other persons present; and

37 (5) Interviews with parents, foster parents, teachers, caseworkers and other  
38 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~~ a child not entitled to legal counsel pursuant to subsection 4. The District  
23 Court shall pay reasonable costs and expenses of the child's legal counsel appointed  
24 pursuant to this paragraph.

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

28 **Sec. 3. 22 MRSA §4005, sub-§4** is enacted to read:

29 **4. Child.** A child who is the subject of a proceeding under this chapter and who is  
30 residing with a relative is entitled to legal counsel at state expense in child protection  
31 proceedings, excluding a request for a preliminary protection order under section 4034 or  
32 a petition for a medical treatment order under section 4071 but including hearings on  
33 those orders.

34 **SUMMARY**

35 This bill provides that a child who is the subject of a child protection proceeding and  
36 who is living with a relative has a right to legal counsel at state expense during the child  
37 protection proceeding.