

HOUSE BILL No. 6092

September 17, 1998, Introduced by Rep. Schauer and referred to the Committee on Judiciary.

A bill to amend 1978 PA 642, entitled "Revised probate code," by amending section 443a (MCL 700.443a), as added by 1988 PA 398.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 443a. (1) The duties of a guardian ad litem ~~shall~~
2 include all of the following:

3 (a) Personally visiting the person alleged to be legally
4 incapacitated.

5 (b) Explaining to the person alleged to be legally incapaci-
6 tated the nature, purpose, and legal effects of ~~the~~ A
7 GUARDIAN'S appointment. ~~of a guardian.~~

8 (c) Explaining to the person alleged to be legally
9 incapacitated the hearing procedure and the person's rights in
10 the hearing procedure, including, but not limited to, the right

1 to contest the petition, to request limits on the guardian's
2 powers, to object to a particular person being appointed guardi-
3 an, to be present at the hearing, AND to be represented by legal
4 counsel, ~~and~~ INCLUDING EXPLAINING that legal counsel will be
5 appointed for the person if he or she is unable to afford legal
6 counsel.

7 (d) Informing the person alleged to be legally incapacitated
8 of the name of any person known to be seeking appointment as
9 guardian.

10 (e) Making determinations, and informing the court of those
11 determinations, on all of the following:

12 (i) WHETHER THERE ARE APPROPRIATE ALTERNATIVES TO A GUARD-
13 IANSHIP OR WHETHER GUARDIANSHIP IS OTHERWISE UNNECESSARY AS A
14 MEANS OF PROVIDING FOR THE INDIVIDUAL'S CONTINUING CARE AND
15 SUPERVISION. WITHOUT EXCLUDING OTHER POSSIBLE ALTERNATIVES, AN
16 APPROPRIATE ALTERNATIVE MAY BE THE INDIVIDUAL'S DESIGNATION OF A
17 PATIENT ADVOCATE UNDER SECTION 496; THE INDIVIDUAL'S EXECUTION OF
18 ANOTHER TYPE OF MEDICAL DECISION-MAKING DOCUMENT, INCLUDING, BUT
19 NOT LIMITED TO, A MEDICAL POWER OF ATTORNEY OR ADVANCE DIRECTIVE
20 REGARDING MEDICAL CARE; OR THE COURT'S ISSUANCE OF AN ORDER
21 DETERMINING THAT A PATIENT ADVOCATE DESIGNATION OR ANOTHER MEDI-
22 CAL DECISION-MAKING DOCUMENT IS VALID, BINDING, OR IN EFFECT.

23 (ii) ~~(i)~~ Whether the person alleged to be legally incapac-
24 itated wishes to be present at the hearing.

25 (iii) ~~(ii)~~ Whether the person alleged to be legally inca-
26 pacitated wishes to contest the petition.

1 (iv) ~~(iii)~~ Whether the person alleged to be legally
2 incapacitated wishes limits placed on the guardian's powers. IF
3 THE INDIVIDUAL ALLEGED TO BE LEGALLY INCAPACITATED DOES NOT WISH
4 TO CONTEST THE PETITION, THE GUARDIAN AD LITEM SHALL INFORM THE
5 COURT AS TO WHAT SPECIFIC LIMITATIONS, IF ANY, SHOULD BE PLACED
6 ON THE GUARDIAN'S POWERS.

7 (v) ~~(iv)~~ Whether the person alleged to be legally incapac-
8 itated objects to a particular person being appointed guardian.

9 (2) If the person alleged to be legally incapacitated wishes
10 to contest the petition, to have limits placed on the guardian's
11 powers, or to object to a particular person being appointed
12 guardian AND IF THE INDIVIDUAL HAS NOT SECURED LEGAL COUNSEL, the
13 court shall appoint legal counsel ~~, if legal counsel has not~~
14 ~~been secured,~~ to represent the person alleged to be legally
15 incapacitated. If the person alleged to be legally incapacitated
16 is indigent, the state shall bear the LEGAL COUNSEL'S expense.
17 ~~of legal counsel.~~

18 (3) If the person alleged to be legally incapacitated
19 requests legal counsel ~~,~~ or if the guardian ad litem determines
20 it is in the best interest of the person to have legal counsel,
21 and if legal counsel has not been secured, the court shall
22 appoint legal counsel. If the person alleged to be legally inca-
23 pacitated is indigent, the state shall bear the LEGAL COUNSEL'S
24 expense. ~~of legal counsel.~~

25 (4) ~~if~~ UNLESS OTHERWISE ORDERED BY THE COURT, IF the
26 person alleged to be legally incapacitated has legal counsel
27 appointed ~~pursuant to~~ UNDER subsection (2) or (3), the

1 ~~appointment of a guardian ad litem shall terminate~~ GUARDIAN AD

2 LITEM'S APPOINTMENT TERMINATES.